

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable John D. McLess, Administrative Law Court Judge

Case No. 11ALJ-15-0030-AP

Court of Appeals Case Tracking No. 2011203266

Phillip Brown, #118100

Appellant,

v.

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

Respondent.

PETITION FOR REHEARING EN BANC

COMES NOW, Phillip Brown, Appellant, pro se, petitioning for a rehearing, en banc, of the above referenced matter for the following reasons:

1) The Court of Appeals mistated and misapplied Jago v Van Curen, 454 U.S. 14, 17 (1981) on the law and the facts. Van Curen misinformed the Ohio Parole Board regarding his actual intentions to live at another residence other than the one stated at his parole hearing and he misled the Board as to the amount of funds he embezzled.

Appellant here did not mislead the South Carolina Parole Board concerning any fact. He satisfied every criteria. The parole granted was conditioned thereupon and did not violate any provision therein.

Every party involved was aware of every fact involved and the annual frequency of the eligibility hearings.

The implied contract aspect of this granting of parole falls under the substantive due process clause of the Fifth Amendment and the procedural due process clause of the Fourteenth Amendment implicating a liberty interest.

2) The Final agency decision of the administrative agency [DPPPS] is not supported by substantial evidence and did not consider the record as a whole, to which reasonable minds could reach the same conclusion the ALC reached.

The record as a whole clearly indicates (ROA pgs. 18, lines 13 thru pgs. 20, lines 12) that the Parole Board members were not cognizant of any due process or procedure in which to rescind parole in a case such as the instant matter. The process employed lacked substantive due process and was employed solely with an eye toward rescinding the parole (ROA pg. 27, line 25 thru pg. 28, line 24).

Thus, the ALC's decision was not supported by and did not consider the record as a whole and reasonable minds would not reach the same conclusion.

This Court may, it is suggested, reverse or modify the decision which is clearly erroneous in view of the substantial evidence on the record as a whole.

3) The ALC failed to address the issue properly before the court regarding the lack of substantive due process. Similarly, this Court did not address the issue raised on appeal that the ALC failed to address the issue.

No due process procedure for rescission of parole in the instant circumstances exist, or, on which parole board members were cognizant or trained, to rescind a properly granted parole 106 days after Appellant vested an interest therein, absent any violation of any criteria to warrant the rescission.

CONCLUSION

Appellant/Petitioner prays this Honorable Court reverse or modify the ALC decision for full consideration on the issues raised.

Respectfully Submitted,
Phillip Brown
#118100
SA-23, Lieber C.I.
P.O. Box 205
Ridgeville, S.C. 29472

Date: June 14, 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Phillip Brown, Appellant,

v.

South Carolina Department of Probation, Parole and
Pardon Services, Respondent.

Appellate Case No. 2011-203266

Appeal From the Administrative Law Court
John D. McLeod, Administrative Law Judge

Unpublished Opinion No. 2013-UP-233
Submitted April 1, 2013 – Filed June 5, 2013

AFFIRMED

Phillip Brown, pro se.

Tommy Evans, Jr., of the South Carolina Department of
Probation, Parole and Pardon Services, of Columbia, for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *Sanders v. S.C. Dep't of Corr.*, 379 S.C. 411, 417, 665 S.E.2d 231, 234
(Ct. App. 2008) ("In an appeal of the final decision of an administrative agency,

the standard of appellate review is whether the AL[C]'s findings are supported by substantial evidence."); *id.* ("In determining whether the AL[C]'s decision was supported by substantial evidence, this court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the AL[C] reached."); *James v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 376 S.C. 392, 396, 656 S.E.2d 399, 401 (Ct. App. 2008) ("[A]n inmate has a liberty interest in gaining *access* to the parole board, although there is no protected right to parole."); *Greenholtz v. Inmates of Neb. Penal and Corr. Complex*, 442 U.S. 1, 9 (1979) ("There is a crucial distinction between being deprived of a liberty one has, as in parole, and being denied a conditional liberty that one desires."); *Jago v. Van Curen*, 454 U.S. 14, 17-21 (1981) (holding no liberty interest or due process protections were implicated when an inmate was initially granted parole but the order was rescinded at a later meeting without providing the inmate a hearing); *id.* at 17 ("We do not doubt that respondent suffered 'grievous loss' upon [the board's] rescission of his parole."); *id.* ("But we have previously 'reject[ed]' . . . the notion that *any* grievous loss visited upon a person by the State is sufficient to invoke the procedural protections of the Due Process Clause." (quoting *Meachum v. Fano*, 427 U.S. 215, 224 (1976))); *id.* at 19 ("We would severely restrict the necessary flexibility of . . . parole authorities were we to hold that any one of their myriad decisions with respect to individual inmates may . . . give rise to protected 'liberty' interests which could not thereafter be impaired without a constitutionally mandated hearing under the Due Process Clause.").

AFFIRMED.¹

FEW, C.J., and GEATHERS and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable John D. McLeod, Administrative Law Judge

Case No. 11 ALJ-15-0030-AP
Court of Appeals Case Tracking No. 2011203266

Phillip Brown, # 118100

Appellant

v. **RECEIVED**
JUN 20 2013

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

SC Court of Appeals

Respondent.

CERTIFICATE OF SERVICE

I, Phillip Brown, Appellant, pro se, do hereby certify that I have served one true copy of "Petition for Rehearing En Banc" on Respondents by depositing the same in the United States mail, postage prepaid, first class delivery to:

Tommy Evans, Jr., Legal Counsel
S.C. Department of Probation, Parole and Pardon Services
2221 Devine Street, Suite 600
P.O. Box 50666
Columbia, S.C. 29250

cc: Jenny Abbott Kitchings, Clerk
files

Date: June 14, 2013

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To: Ms. Jenny Abbott Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RECEIVED
JUN 20 2013
-SC Court of Appeals

RE: Court of Appeals Case Tracking No. 2011203266
Phillip Brown, # 118100 v. S.C. Department of Probation, Parole and Pardon
Services

Date: June 14, 2013

Dear Ms. Kitchings.

Please find enclosed one original and six (6) copies of Appellant's "Petition For Rehearing En Banc", one original "Certificate Of Service" for filing, both dated June 14, 2013 in the above referenced case.

Thank you for your help in this matter.

Respectfully Submitted,
Phillip Brown

cc: Tommy Evans, Jr., SCDPPPS Legal Counsel
Jana Shealy, Clerk, Administrative Law Court
files