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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge
Appellate Case No. 2021-001149

Russell Mawyer, #139176,.....Appellant,

v.

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

APPELLANT'S MOTION FOR REHEARING

Appellant, pursuant to Rule 221, SCACR, moves the Court to reconsider its decision affirming the decision of the Administrative Law Court (ALC) in the above-captioned case, received by Appellant on Monday April 10, 2023. In support of his motion Appellant shows the following to the Court:

1. The Court failed to address the essential issue of Appellant's appeal, which he raised before the ALC and in his brief's before this Court. In his brief to the ALC, Appellant makes clear that the issue of his appeal is not a routine denial of parole, but a gross abuse of discretion by the parole board, when it made an arbitrary and capricious decision which was not supported by the substantial evidence in the record as a whole before them, and which the board knows can not change, in violation of the legislative intent of §24-21-640 of the S.C. Code of Law, effectively subjecting Appellant to a permanent denial of his parole eligibility.

2. This is the exact same issue which Appellant raised before this Honorable Court. See Appellant's Initial Brief, p.4.

3. The issue of Appellant's appeal was not that the parole board denied his request for parole as a routine denial of parole using the same justifications for the third time which the board knows can not change. Appellant is fully aware that in response to such a challenge, all that the Court requires of the Respondent is to simply state, the board stated in a denial letter that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form, without any proof in the record that they actually did so or that its decision is in accord with the substantial evidence in the record before them as a whole, and the Court will unquestionably accept it as a routine denial of parole.

4. Appellant raised the issue that the parole board grossly abused its discretion in violation of the legislative intent of S.C. Code of Law §24-21-540, when it rendered an arbitrary and capricious decision which was contrary to the substantial evidence in the record as a whole before it. Essentially, did the parole board abuse its discretion; did the parole board place its discretion above the intent of the S.C. Legislative in §24-21-640 and did the parole board make an arbitrary and capricious decision which was not supported by the substantial evidence before it in the record as a whole?

WHEREFORE, Appellant respectfully requests the Court to reconsider its decision affirming the decision of the ALC in the above-captioned case, and rule in favor of the Appellant.

April 17, 2023
DATE

Russell Lee Mawyer
Russell Lee Mawyer
SCDC# 139176
Perry C.I., Q4A 221
430 Oaklawn Road
Pelzer, S.C. 29669

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Russell Mawyer, #139176,Appellant,

v.

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

CERTIFICATE OF SERVICE

I, Russell Lee Mawyer hereby certify that I have served APPELLANT'S MOTION FOR REHEARING in the above-captioned appeal to the Respondent's Counsel of record Matthew C. Buchanan, Esquire, by depositing a copy of same in the U.S. Mail, postage prepaid and addressed as follows:

Matthew C. Buchanan, Esquire
General Counsel, S.C. Dept. of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, S.C. 29202

on the 17th day of April, 2023.

Russell Lee Mawyer
Russell Lee Mawyer
Appellant

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SC Court of Appeals

Russell Lee Mawyer #139176
Perry C.I., Q4A 221
430 oaklawn Road
Pelzer, S.C. 29669

April 17, 2023

S.C. Court of Appeals
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, S.C. 29211

Re: Russell Mawyer, #139176 v. SCDPPPS
Appellate Case No. 2021-991149

Dear Honorable Clerk:

Please file the APPELLANT'S MOTION FOR REHEARING in the above referenced case, for filing in your office and with the court.

By copy of this letter and a CERTIFICATE OF SERVICE I have also served a copy to the Respondent's counsel of record, Matthew C. Buchanan.

Sincerely,

Russell Lee Mawyer

Russell Lee Mawyer

cc: Matthew C. Buchanan, Esq.
P.O. Box 207
Columbia, S.C. 29202

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