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BRCI STATE OF SOUTH CAROLINA
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SC Court of Appeals

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2023-001050

Charles Williams, #086721 ----- Appellant,

v.

South Carolina Department of Probation, Parole and Pardon Services,

----- Respondent.

MOTION FOR REHEARING, RULE 204(i)

I, Charles Williams, SCDC #086721, an indigent inmate whose crimes were committed on September 26, 1975, hereby motions this Court for a rehearing on his Motion to Proceed In Forma Pauperis, which was denied on July 20, 2023. Pursuant to Rule 240(i), SCACR, this Court can rehear and entertain this matter because "the action of the court on the motion or petition [will have] the effect of dismissing ... the appeal."

Appellant is informed and believes that this Court's denial of Appellant's motion was an error in law. This Court stated in its order that, "[a]lthough Appellant alleges a fundamental right is implicated in his case, this Court has held that the denial of an inmate's parole request absent a permanent denial of parole eligibility does not implicate a state-created liberty interest." James v. S.C. Dep't of Probation, Parole, and Pardon Servs., 377 S.C. 564, 660 S.E.2d 288 (Ct. App. 2008).

Appellant's issue before this Court does implicate a state-created liberty interest because it involves an "as-applied" constitutional claim that challenges the procedure the Respondent employed in denying Appellant's request for parole. Cooper v. S.C. Dep't of Probation, Parole, and Pardon Servs., 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008) ("If a Parole Board deviates from or renders its decision without consideration of the **appropriate criteria**, ... it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest.").

As this Court noted in Steele v. Benjamin, 362 S.C. 66, 72-73, 606 S.E.2d 499, 503 (Ct. App. 2004), a sufficient liberty interest may be implicated to trigger due

process requirements even though the Parole Board's decision did not constitute a permanent denial of parole eligibility. This Court reasoned in Steele that his complaint that the Department's application of biannual parole review to him constituted an *ex post facto* violation implicated a protected liberty interest which warranted judicial review under the Administrative Procedures Act.

Similar to the issue in Steele, Appellant's appeal in the ALC sought to challenge the Respondent's application of a statute. As an "as-applied" constitutional claim, the ALC was the proper jurisdiction for judicial review. Essentially, the ALC made its decision to dismiss the appeal as a "routine denial" of parole based solely on the outcome of the Parole Board's decision, and without allowing Appellant to submit a brief pursuant to Rule 60, 3CALC, which was merely an oversimplification and involved a matter of semantics. Cooper, 377 S.C. at 498, 661 S.E.2d at 111.

Appellant's access to the courts is a fundamental right. Woodford v. Ngo, 548 U.S. 81, 126 S.Ct. 2378, 165 L.Ed.2d 368 (2006). This access was abrogated and denied when the ALC erroneously dismissed Appellant's appeal without first allowing Appellant to brief his

"as-applied" Constitutional claim. Pursuant to Rule 65, SCALC, motions for reconsideration or rehearing are not permitted and will not be considered by the administrative law judge. Appellant has no other remedies available to correct this error, and it would be fundamentally unfair to require an indigent inmate to pay the \$256.00 filing fee to appeal an "as-applied" Constitutional claim that our South Carolina Supreme Court has recognized implicates a protected liberty interest warranting judicial review by the ALC—especially the one the ALC summarily dismissed in error as a "routine denial" without first allowing Appellant full access to the court to actually brief the claim.

Wherefore, Appellant prays this Court grants this motion and waives the filing fee. Otherwise, this Court's action will have "the effect of dismissing... the appeal."

Date: July 26, 23

Charles Williams

Charles Williams #086721

Broad River C.I., GRN 2104

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Columbia, SC 29210

Appellant Pro Se

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PROOF OF SERVICE

I certify that I have served the Motion For Rehearing, Rule 204(i), SCACR, on the S.C. Department of Probation, Parole, and Pardon Services by depositing a copy of the same in the United States Mail, postage prepaid, on July 26, 2023, addressed to the attorney of record, Matthew C. Buchanan, General Counsel, S.C. Department of Probation, Parole, and Pardon Services, 293 Greystone Blvd., P.O. Box 207, Columbia, S.C. 29250. I further

certify that all parties required by rule to be served have been served.

July 26, 2023
Columbia, South Carolina

~~Charles Williams~~
Charles Williams #086721
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cc: Matthew C. Buchanan
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