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The State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court

Decision of Honorable ROBERT L. REIBOLD ~ A.L.J.

A.L.C. CASE NO. 23-ALT-15-0001-AP (5-2-2023)

APPELLATE CASE NO. 2023-000847

South Carolina Department of Parole,
Probation and Pardon Services

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v.

Respondant,

Appellant.

The Initial Brief of Appellant

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S.C. SUPREME COURT

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SC Court of Appeals

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STATEMENT OF ISSUES

- 1.) DID THE AGENCY DEPART FROM THE REQUIREMENTS AND MANDATORY LANGUAGE CONTAINED IN THE INTER STATE COMPACT REGARDING THE PAROLEE'S 'RETAKING' AND REVOCATION OF HIS PAROLE STATUS?

- 2.) DID THE AGENCY'S DEPARTURES FROM THE ICAOS COMPACT VIOLATE PAROLEE'S DUE PROCESS RIGHTS?

- 3.) DID THE AGENCY'S PROCEEDINGS MEET THE MINIMUM DUE PROCESS REQUIREMENTS OF THE 4TH AND 14TH AMENDMENTS AND THE ICAOS COMPACT?

- 4.) IS THE AGENCY'S DECISION "CAPABLE OF REPETITION, YET EVADING REVIEW" DUE TO THE AGENCY'S FAILURE OR REFUSAL TO ISSUE THE WRITTEN FINAL REVOCATION ORDER AND REFUSAL TO ACKNOWLEDGE THE PAROLEE'S DEFENSES?

- 5.) DID THE ABSENCE OF COUNSEL OR THE PRELIMINARY HEARING JUSTICE'S FAILURE TO INFORM PAROLEE OF HIS RIGHT TO HIRE OR HAVE COUNSEL PRESENT, VIOLATE PAROLEE'S DUE PROCESS RIGHTS?

- 6.) DID THE PRELIMINARY HEARING ADMINISTRATOR PROCEED ARBITRARILY AND CAPRICIOUSLY IN THE PROCEEDINGS DENYING THE PAROLEE HIS DUE PROCESS RIGHTS?

DID THE ADMINISTRATIVE LAW COURT ERR IN NOT RECOGNIZING A CAUSE FOR A CLAIM TO JUDICIAL REVIEW OF THE PRECEDING ISSUES? S.C. CODE 1976 § 24-21-1170(B) STATES THE COURTS ARE SUPPOSED TO ENFORCE THE RULES OF THE COMPACT. APPELLANT POINTED OUT SEVERAL DEVIATIONS FROM THE COMPACT RULES AND REGULATIONS BUT THE ALC DECLINED TO HEAR THEM. THESE ISSUES ARE STILL OUTSTANDING AND UNRESOLVED.

STATEMENT OF CASE

THE APPELLANT RONALD ALBRIGHT WAS GRANTED PAROLE IN 2015 BY A UNANIMOUS 7/0 VOTE. HIS SUPERVISION WAS TRANSFERRED TO FLA. UNDER THE PROVISIONS OF THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION OR (ICAOS). TWO YEARS INTO THIS SUPERVISION, THE FLORIDA PAROLE AGENT SUBMITTED ERRONEOUS OFFENDER VIOLATION REPORTS TO S.C., AND BASED ON THESE ALLEGATIONS, S.C. ISSUED A "PAROLE VIOLATION WARRANT" AND HAD PAROLEE EXTRADITED BACK TO S.C. AND REVOKED HIS PAROLE.

IN 2017, UPON RETURN TO S.C., A "PRELIMINARY" PROBABLE CAUSE HEARING WAS HELD, PRESUMABLY ON THE WARRANT OR EXTRADITION THAT HAD ALREADY BEEN EXECUTED. AT THIS HEARING, PAROLEE WAS TOLD TO TELL HIS DEFENSES TO THE PAROLE BOARD WHEN HE GOES BACK IN FRONT OF THEM. PAROLEE WAS UNREPRESENTED DURING THIS PROCESS. PAROLEE NEVER WAIVED THIS HEARING AND DENIED THE ALLEGATIONS AGAINST HIM.

THE PAROLEE PRESENTED HIS DEFENSES AND EVIDENCE TO THE BOARD, AS DIRECTED, NUMEROUS TIMES INCLUDING 2017, 2018, 2021, AND MOST RECENTLY IN 2023. THE OFFENDER VIOLATION REPORTS CLAIMED THAT THERE WAS PROBABLE CAUSE OF A GRAND THEFT IN FLA., THAT PAROLEE MISSED REPORTS, AND MOVED WITHOUT PERMISSION. NONE OF THIS WAS FACTUAL.

PAROLEE HAS SUBMITTED: NOTICE FROM THE FLORIDA STATES ATTORNEY THAT THERE WAS NO PROBABLE CAUSE OF A CRIME IN FLA. AND TO CLEAR THE RECORD AND RELEASE HIM, SIGN-IN SHEETS FROM THE REPORTS CLAIMED TO HAVE BEEN MISSED, AN AFFIDAVIT OF CONTINUING RESIDENCE IN THE APPROVED ADDRESS, AND EVEN EXCERPTS FROM THE FLA. PAROLE AGENTS OWN COMPUTER ENTRIES CONTRADICTING THE REPORTS HE SENT TO S.C. PROVIDED TO PAROLEE BY THE FLA. PAROLE AGENTS SUPERVISOR.

ON 3-11-2023, AFTER THE 3RD 'GOOD FAITH' EFFORT AT AN AGENCY RESOLUTION, PAROLEE SOUGHT JUDICIAL REVIEW OF HIS CONSTITUTIONAL CLAIMS OF DUE PROCESS VIOLATIONS IN THE ADMINISTRATIVE LAW COURT. THE PAROLEE INCLUDED A MOTION TO COMPEL THE AGENCY TO ISSUE A WRITTEN FINAL ORDER OF REVOCATION, BECAUSE HE'D YET TO RECEIVE SUCH FROM THE AGENCY TO BEGIN THE TOLLING OF THE TIMELINE TO APPEAL. ALTERNATIVELY, PAROLEE PLED THE COURT TO CONSIDER THE ISSUES WITHOUT THE WRITTEN FINAL ORDER, SINCE THE PAROLEE COULD NOT GET IT FROM THE AGENCY.

STATEMENT OF CASE (CONT.)

ON 3-30-2023 HON. JUDGE ROBERT L REIBOLD ALJ WAS ASSIGNED TO THE CASE. APPELLANT WROTE JUDGE REIBOLD ON 4-5-23 AND EXPLAINED THE ISSUE WITH THE FINAL ORDER NOT BEING RECEIVED AND ON 4-21-23 SUBMITTED A "PETITION FOR EQUITABLE TOLLING." THE ALC NEITHER ISSUED AN ORDER TO COMPEL AGENCY TO ISSUE A WRITTEN FINAL ORDER, NOR ENTERTAINED THE ISSUES RAISED WITHOUT HAVING RECEIVED THIS ORDER. RESPONDANT STATED THEY DID NOT HAVE A COPY FOR INCLUSION.

ON 4-3-23 THE RESPONDANT SUBMITTED A MOTION TO DISMISS CLAIMING PAROLEE SIGNED FOR AND RECEIVED THE FINAL ORDER ON AUG 30, 17, AND THEREBY THE APPEAL WAS 'UNTIMELY'. BUT PAROLEE ONLY SIGNED FOR AND RECEIVED A COPY OF THE ARREST WARRANT AND INCORPORATED AFFIDAVIT, BUT HAS YET TO RECEIVE THE FINAL ORDER.

PAROLEE RESPONDED TO MOTION TO DISMISS ON 4-10-23 EXPLAINING THE ERRORS IN THEIR POSITION AND PROPOSED HIS POSITION. ON 5-2-23 THE ALC GRANTED THE RESPONDANT'S MOTION TO DISMISS. AND STATED IN HIS ORDER "CERTAINLY NO PARTY HAS SUBMITTED A COPY OF ANY REVOCATION ORDER FROM 2017," AND "IF IT'S AS APPELLANT CLAIMS, AND HE DIDN'T RECEIVE THE FINAL ORDER OF REVOCATION, THEN THE TIMELINE WOULD NOT HAVE BEGUN TO TOLL TO APPEAL THE REVOCATION AND NO APPEAL HAS COMMENCED." (THIS IS CAUSE FOR A CLAIM.)

NEITHER THE AGENCY NOR THE ALC ADDRESSED OR RULED UPON THE DUE PROCESS VIOLATIONS RAISED, EVEN THOUGH THE COURTS ARE SUPPOSED TO ENFORCE THE RULES OF (ICAOs) UNDER S.C. 1976 24-21-1170(B) THESE CLAIMS ARE STILL UNRESOLVED, THEREFORE APPELLANT IS SEEKING A COMPREHENSIVE REVIEW OF HIS CLAIMS DETAILED IN THE "PRE-HEARING BRIEF" SUBMITTED TO THE ALC ON 3-11-23 AND INCLUDED IN THE RECORD, ALSO RE-STATED IN THIS "INITIAL BRIEF OF APPELLANT" § "STATEMENT OF ISSUES" AND ARGUMENTS OF SUCH, FOR THE COURTS REVIEW.

APPELLANT NOW SUBMITS TO THE COURT OF APPEALS HIS CASE FOR REVIEW. THE AGENCY'S WHOLESALE DEPARTURE FROM THE (ICAOs) RULES COMPROMISED THE ENTIRE "RETAKING" AND REVOCATION PROCESS THAT WAS INACTED TO PROTECT DUE PROCESS RIGHTS AND TO PROVIDE A UNIFORM PROCEDURE FOR ALL OF THE COMPACTING STATES TO FOLLOW.

THE AGENCY'S OVERLOOKING OF MATERIAL FACTS IN THE RECORD, STATUTES, AND THE (ICAOs) RULES AND REGULATIONS, REQUIRED A DIFFERENT PROCEDURE AND DECISION FROM THAT RENDERED BY THE AGENCY. PAROLEE HAD NO EVIDENCE PRESENTED TO HIM TO DEFEND AGAINST, NO ACCUSER TO CONFRONT, AND NO ADVERSE WITNESSES PRESENTED TO CROSS-EXAMINE. (U.S. CONST. AMENDS. IV § XIV)

ISSUE 1. DID THE AGENCY DEPART FROM THE REQUIREMENTS AND MANDATORY LANGUAGE CONTAINED IN THE INTERSTATE COMPACT REGARDING THE PAROLEE'S "RETAKING" AND REVOCATION OF HIS PAROLE STATUS?

STANDARD OF REVIEW AND AUTHORITIES

- A.) I.C.A.O.S.-R. 4.109 AND 5.108(A-G)
- B.) 75 ALR 6TH 181 "CONSTRUCTION AND APPLICATION OF THE ICAOS § 2.5, 2.6, 2.7, § 21, 22, 23.
- C.) RAMIREZ v. SUPERIOR CT. 15 CAL. APP. 5TH 643
- D.) MORRISSEY v. BREWER 408 U.S. 471
- E.) GAGNON v. SCARPELLI 411 U.S. 778
- F.) CAL. v. CRUMP 180 N.J. SUPER. 27; 433 A.2d 791, 793
- G.) FISHER v. CRIST 182 MONT. 124; 594 P.2d. 1140, 1142
- H.) BEARDEN v. S.C. 443 F.2d. 1090
- I.) HECK v. HUMPHREYS 512 U.S. 486-87; 114 S.C.T. 2364
- J.) RIDDLE v. STATE 282 S.E.2d 863 S.C. 277
- K.) U.S. v. VARGAS-AMAYA 389 F.3d 901,904 (9TH CIR. 2004)
- L.) WITHROW v. LARKIN 421 U.S. 35
- M.) U.S. CONST. AMENDMENTS 1, 4, 5, 8, § 14
- N.) S.C. CODE 1976 24-21-1130(a); 24-21-1220 (A)(a); 24-21-1230 (B)(a) 44-53-410
- O.) WOLFF v. McDONNELL 418 U.S. 539, 558
- P.) 26 S.C. JURISPRUDENCE - PROBATION, PAROLE, AND PARDON § 22
- Q.) MYERS v. PENN. BOARD OF PAROLE 97 Pa. COMMONWLTW. 574, 510 A.2d. 387 (1986)
- R.) STANDLEE v. RHAY 403 F.SUPP. 1247

ARGUMENTS

APPELLANT WILL SHOW THAT THE ACTIONS AND PROCEEDINGS OF THE S.C. DEPT. OF PPP. CONSTITUTED A WHOLESAL DEPARTURE FROM THE REQUIREMENTS MANDATED, ESTABLISHED, AND CLEARLY LAID OUT IN THE (ICAOS) COMPACT TO WHICH S.C., FLORIDA, AND AND THE PAROLEE KNOWINGLY AND VOLUNTARILY ENTERED INTO AGREEMENT UNDER. JUST BECAUSE A PARTY SIGNING A COMPACT EITHER ISNT FAMILIAR WITH ITS CONTENTS, OR SIMPLY CHOOSES NOT TO ABIDE BY THEM SHOULD NOT EXCUSE THEM FROM THEIR OBLIGATION TO FOLLOW THEM.

IT WOULD BE BOTH UNJUST AND UNFAIR NOT TO HOLD THE REPRESENTATIVES OF THE COMPACTING STATES TO THE REQUIREMENTS OF THE SAME COMPACT AGREEMENT THAT THEY ARE ACCUSING THE PAROLEE OF BREACHING. BUT WHEN A HEARING BODY HAS BOTH THE INVESTIGATIVE AND ADJUDICATIVE FUNCTIONS, A FAIR UNBIASED OUTCOME CAN NOT BE EXPECTED. IN WITHROW V. LARKIN 421 U.S. 35, "BOTH INVESTIGATIVE AND ADJUDICATING POWERS PERFORMED BY THE SAME AGENCY COULD INFER BIAS INTERFERING WITH DUE PROCESS."

THE FOLLOWING LIST OF ICAOS PROCEDURES THAT SHOULD HAVE TOOK PLACE, AND WHAT S.C. DEPT. OF PPP. ACTUALLY DID CONTRARY TO THAT PROTOCOL AND HOW IT VIOLATED THE PAROLEE'S RIGHTS.

ISSUE 1. CONTINUED (AGENCY DEPARTURE FROM COMPACT)

APPELLANT WAS PROPERLY IN FLORIDA ON SUPERVISION TRANSFERRED FROM S.C. UNDER THE PROVISIONS OF THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION OR (ICAOs, HEREINAFTER), TWO YEARS INTO THAT SUPERVISION, THE FLORIDA PAROLE AGENT SUBMITTED ERRONEOUS OFFENDER VIOLATION REPORTS TO S.C., AND BASED ON THESE ALLEGATIONS, S.C. ISSUED A "PAROLE VIOLATION WARRANT" AND HAD PAROLEE EXTRADITED BACK TO S.C. AND REVOKED HIS PAROLE, IN CONTRADICTION WITH (ICAOs) RULES AND REGULATIONS.

UNDER THE (ICAOs), WHEN AN ALLEGATION OF A VIOLATION ARISES, A "RETAKING" SHOULD BE INITIATED. THIS PROCESS IS WELL ESTABLISHED, UNIFORM, AND LAID OUT IN (ICAOs) R. 5.108 A-G § 4.109 THE (ICAOs) RULES ARE CONSIDERED AS STATUTORY UNDER S.C. 1976 § 24-21-1130(a), AND SUPERSEDE EITHER OF THE COMPACTING STATES CUSTOMS § 24-21-1220(A)(2), AND ARE BINDING ON THE COMPACTING STATES. § 24-21-1220(B)(2). (S.C. CODE 1976 ART. 12 § 75 ALR 6TH 181 § 2.57, 22, AND 23)

UPON EXTRADITION BACK TO S.C., THE AGENCY ATTEMPTED TO SATISFY THE REQUIREMENTS OF (ICAOs) BY HOLDING A "PRELIMINARY" PROBABLE CAUSE HEARING ON THE ALREADY ISSUED WARRANT AND ALREADY EXECUTED EXTRADITION, SKIPPING THE ENTIRE (ICAOs) "RETAKING" PROCESS IN THE RECEIVING STATE IN FLORIDA AS IS REQUIRED BY (ICAOs) R. 5.108 A-G § 4.109 AND (§ 22 OF 75 ALR 6TH 181 BOTTOM PARAGRAPH "CUMULATIVE SUPPLEMENT" CASES EXPLAIN S.)

AT THIS "PRELIMINARY" HEARING, THE ADMINISTRATOR INSTRUCTED THE PAROLEE TO TELL HIS DEFENSES TO THE PAROLE BOARD WHEN HE GOES BACK IN FRONT OF THEM, INSTEAD OF RIGHT THEN AND THERE TO ESTABLISH PROBABLE CAUSE, DISTINGUISH ALLEGATION FROM FACT, AND TO PRESERVE THE ISSUES RAISED, ON THESE INSTRUCTIONS, PAROLEE PRESENTED HIS DEFENSES TO THE S.C. PAROLE BOARD EVERY TIME HE'S GONE BEFORE THEM WITHOUT AN ANSWER, DETERMINATION, OR INVESTIGATION INTO THE CLAIMS OF INNOCENCE OR DOCUMENTS SUBMITTED.

PAROLEE WAS NOT PRESENTED WITH ANY EVIDENCE AGAINST HIM TO DEFEND AGAINST, NO OPPORTUNITY TO CONFRONT HIS ACCUSER, NO CROSS EXAMINATION OF ADVERSE WITNESSES, NO INSTRUCTION OF RIGHT TO HAVE OR HIRE AN ATTORNEY, NO FAIR, NEUTRAL, UNBIASED HEARING... ALL OF THESE CONSTITUTIONAL VIOLATIONS OCCURRED, ALL BECAUSE S.C. CHOSE TO FOREGO THE VERY MECHANISM PUT IN PLACE BY THE (ICAOs) COMPACT TO PROTECT THESE DUE PROCESS RIGHTS. THESE ARE NOT HARMLESS ERRORS, QUITE TO THE CONTRARY, THEY'VE CAUSED MUCH HARM AND EVEN WORSE, THEY WERE INTENTIONALLY DONE AND NO ATTEMPT HAS BEEN MADE TO EVEN ACKNOWLEDGE, MUCH LESS RECTIFY THEM.

ISSUE 1. CONTINUED (AGENCY DEPARTURE FROM COMPACT)

PRESUMABLY REASONED THE COURTS, THE REASON THE PROBABLE CAUSE HEARING IS TO BE HELD IN THE RECEIVING STATE, BEFORE EXTRADITION IS TO PROTECT DUE PROCESS BY ALLOWING THE PAROLEE TO CONFRONT THE RECEIVING STATE'S OFFICER WHO CHARGED THE VIOLATION WITH FULL ACCESS TO THE INFORMATION TO DEFEND AGAINST THE CHARGE, WHILE THE SOURCES ARE AVAILABLE AND THE INFORMATION IS FRESH. IT ALSO MAKES THE COMPACT WORKABLE BY AVOIDING THE EXPENSE OF THE PAROLE AGENTS, OFFICERS, OR WITNESSES HAVING TO TRAVEL TO THE SENDING STATE TO TESTIFY. ONLY IF AND AFTER PROBABLE CAUSE IS FOUND THEN PAROLEE IS TO BE RETURNED TO THE SENDING STATE. WOULD ALL OF THESE PROCEDURES BE CREATED IF THE PAROLEE DIDN'T HAVE DUE PROCESS RIGHTS TO BE PROTECTED?

PAROLEE DID NOT KNOWINGLY OR VOLUNTARILY WAIVE HIS PRELIMINARY OR PROBABLE CAUSE HEARING AND HAS CONSISTENTLY DENIED THE ALLEGED VIOLATIONS AGAINST HIM. THE PAROLEE ALSO QUESTIONS THE VALIDITY OF A WARRANT ISSUED BY THE SENDING STATE BASED SOLELY ON A SUMMARY OF THE FLORIDA PAROLE AGENTS UNFOUNDED ALLEGATIONS, CONTAINED IN HIS TELETYPES. IN "MYERS" V. PENN. BOARD OF PAROLE 97 Pa. Commwlth. 574, 510 A.2d. 387 (1986)

STATE MUST SHOW 'GOOD CAUSE' WHY EVIDENCE SHOULD BE ADMISSIBLE WITHOUT THE WITNESS PRESENT TO TESTIFY TO ITS VALIDITY.

S.C.'S PAROLE AGENT VICTORIA JAKE SWORE 3RD PARTY TO THE VALIDITY OF THESE ALLEGATIONS WITHOUT ANY INVESTIGATION, FACT FINDING, OR OPPORTUNITY OF THE PAROLEE TO CONTEST THE SO CALLED FACTS WITHOUT THE REQUIRED PRELIMINARY PROBABLE CAUSE HEARING IN THE RECEIVING STATE (FLORIDA) U.S. V. VARGAS-AMAYA 389 F.3d. 901 "WARRANT MUST BE BASED ON SWORN FACTS TO BE USED AS A BASIS FOR REVOCATION."

NEITHER MRS. JAKE, THE S.C. PAROLE BOARD, NOR THE COURTS HAD ANY WAY OF EXTRICATING FACTS FROM ALLEGATIONS. BUT A WARRANT, EXTRADITION, AND REVOCATION WAS EFFECTUATED ON THESE ALLEGATIONS BOTH UNFOUNDED AND UNTRUE. S.C.'S ACTIONS SUBJECTED PAROLEE TO THE NEGATIVE CONSEQUENCES OF THE ALLEGATIONS OF THE RECEIVING STATES PAROLE AGENT AS IF THEY WERE ACTUAL VIOLATIONS COMMITTED. WHEN REVOCATION OF PAROLE IS ONE OF THOSE NEGATIVE CONSEQUENCES, THEN DUE PROCESS IS COMMANDED TO ASCERTAIN WHAT IS ALLEGATION AND WHAT IS FACTUAL. "BEARDEN" V. S.C. 443 F.2d. 1090 (CITED BELOW)

S.C.'S DEPARTURE FROM THE (ICAO'S) PROCEDURES AND RULES VIOLATED THE PAROLEE'S DUE PROCESS RIGHTS. "BEARDEN" STATES: "THE FACT THAT THE BOARD PERFORMS A PREDICTIVE AND PROGNOSTIC FUNCTION DOES NOT DEPRECIATE THE IMPORTANCE OF ACCURATE FACTUAL EXPOSITION AND EVALUATION."

ISSUE 1. CONTINUED (AGENCY DEPARTURE FROM COMPACT)

THE EVIDENT PURPOSE BEHIND (ICAO) RULE 5.108 IS NOT JURISDICTIONAL BECAUSE EQUITY DOES NOT HAVE A JURISDICTION, BUT INSTEAD INTENDED TO PROTECT A PAROLEE'S DUE PROCESS RIGHTS AND RULE 5.108 IS EVIDENTLY A PART OF THE (ICAO) BECAUSE OF THE SUPREME COURT'S HOLDINGS IN "RAMIREZ", "GAGNON", AND "MORRISSEY" WHICH HELD:

A DEFENDANT IS ENTITLED TO DUE PROCESS RIGHTS WHEN FACING A REVOCATION OF PROBATION OR PAROLE. AMONG THOSE RIGHTS, IS THE RIGHT, NOT ONLY TO A FINAL REVOCATION HEARING, BUT ALSO A PRELIMINARY HEARING. BY REQUIRING THE PRELIMINARY PROBABLE CAUSE HEARING IN THE RECEIVING STATE BEFORE THE RETURN OF THE PAROLEE TO THE SENDING STATE, EMBODIES THE RULINGS OF "RAMIREZ", "GAGNON", AND "MORRISSEY".

"RAMIREZ" V. SUPERIOR CT. 15 CAL. APP. 5TH 643

"MORRISSEY" V. BREWER 408 U.S. 471

"GAGNON" V. SCARPELLI 411 U.S. 778

ADDITIONALLY, "MORRISSEY" SPECIFIED THAT THE PRELIMINARY HEARING SHOULD BE CONDUCTED AT OR REASONABLY NEAR THE PLACE OF THE ALLEGED VIOLATIONS OR ARREST AND AS PROMPTLY AS CONVENIENT, WHILE THE INFORMATION IS STILL FRESH, AND THE SOURCES ARE STILL AVAILABLE, IN ORDER TO DETERMINE IF THERE IS PROBABLE CAUSE TO BELIEVE A DEFENDANT VIOLATED PAROLE.

WHERE APPROPRIATE CONVENTIONAL SUBSTITUTES FOR LIVE TESTIMONY INCLUDING: AFFIDAVITS, DEPOSITIONS, AND DOCUMENTARY EVIDENCE MAY BE USED IN PAROLE REVOCATION PROCEEDINGS, HEARINGS SHOULD BE FLEXIBLE ENOUGH FOR CONSIDERATION OF SUCH EVIDENCE. THE PAROLEE HAS SUBMITTED MORE EVIDENCE TO HIS INNOCENCE THAN ANYTHING THE STATE HAS, WHICH IS ZERO. PAROLEE CONTENDS THAT THIS SUPPOSITION SHOULD APPLY TO THE DEFENSE OF A REVOCATION AT A HEARING AS WELL AS THE SEEKING OF A REVOCATION.

WHAT IS REQUIRED BY DUE PROCESS FOR A PAROLE REVOCATION HEARING IS AN INFORMAL HEARING STRUCTURED TO ASSURE THAT A FINDING OF PAROLE VIOLATION WILL BE BASED ON VERIFIED FACTS AND THAT THE EXERCISE OF DISCRETION WILL BE INFORMED BY ACCURATE KNOWLEDGE OF THE PAROLEE'S BEHAVIOR. STATE OF CALIFORNIA V. CRUMP 180 N.J. SUPER. 27; AND ALSO IN FISHER V. CRIST 182 MONT. 124 THE COURTS HAVE EXPRESSED THE REQUIREMENT OF A PRELIMINARY PROBABLE CAUSE HEARING IN THE RECEIVING STATE BEFORE THE "RETRAKING" IS EXECUTED.

ISSUE 1. CONTINUED (AGENCY DEPARTURE FROM COMPACT)

75 A.L.R. 6TH ~ 181 (ORIG. PUBL. 2012)

§ 2.5, 2.6, 2.7, 21, 22, AND 23

"THE CONSTRUCTION AND APPLICATION OF THE INTER-STATE COMPACT FOR ADULT OFFENDER SUPERVISION"

OR (I.C.A.O.S.) RULES 4.109(a-c), 5.108(A-G)

§ 2.5 "THE RULES OF (ICAOs) HAVE THE FORCE AND EFFECT OF STATUTORY LAW AND ARE BINDING ON THE COMPACTING STATES" S.C. CODE 1976 § 24-21-1130(a) & 24-21-1220(b)(2)

§ 2.6 "LAWS OF THE COMPACTING STATES CONFLICTING WITH THE COMPACT ARE SUPERSEDED BY THE COMPACT REGULATIONS TO THE EXTENT OF THE CONFLICT" S.C. CODE 1976 § 24-21-1220

(A)(2)

§ 2.7 "MEMBER STATES ARE OBLIGATED TO COMPLY TO A UNIFORM SYSTEM APPLICABLE TO ALL CASES AND PERSONS SUBJECT TO THE TERMS AND CONDITIONS OF THE COMPACT" R. 5.108(A-G)

§ 21 "VIOLATION BY RECEIVING STATE IS TO CONTAIN: R. 4.109 OFFENDER'S NAME, LOCATION AND I.D. #S, DATE AND DESCRIPTION OF THE OFFENSES FORMING THE BASIS OF THE VIOLATION, AND THE STATUS AND DISPOSITION OF THE OFFENSE"

(THE LAST PART OF § 21, "THE STATUS AND DISPOSITION OF THE OFFENSE" WAS CONVENIENTLY LEFT OUT BY THE FLORIDA PAROLE AGENT IN HIS REPORTS TO SC AS THEY WERE DISMISSED BY THE FL. STATES ATTORNEY AND ORDERED THE PAROLEE RELEASED AND THE RECORD CLEARED. S.C. FURTHER COMPOUNDED THIS OMISSION BY CHANGING THE NAME OF THE DISMISSED CHARGE FROM GRAND THEFT TO GRAND LARCENY BECAUSE S.C. DOESN'T HAVE A "GRAND THEFT" ON THEIR BOOKS BUT WANTED TO PLACE PAROLEE IN DOUBLE JEOPARDY BY SAYING THAT THERE WAS PROBABLE CAUSE PAROLEE COMMITTED THIS CRIME EVEN THOUGH THE FL. STATES ATTORNEY HAD ALREADY DETERMINED THAT THERE WASN'T. (RESPONDANT'S MOTION TO DISMISS Pg. 2 LN. 1 & FL. STATES ATTORNEY'S NO INFORMATION NOTICE.) THIS IS ALSO BARRED BY S.C. CODE 1976 § 44-53-410.) STANDLEE V. RHAY 403 F. SUPP 1247

§ 22 "RECEIVING STATE MUST CONDUCT THE PROBABLE CAUSE HEARING IN ACCORDANCE WITH (ICAOs) RULE 5.108(A-G) AND DUE PROCESS REQUIREMENTS" "AN OFFENDER SUBJECT TO 'RETAKE' THAT MAY RESULT IN REVOCATION UNDER (ICAOs) IS ENTITLED TO A PROBABLE CAUSE HEARING CONDUCTED IN ACCORDANCE WITH (ICAOs) RULES (IN RECEIVING STATE) BEFORE BEING RETURNED TO SENDING STATE" RAMIREZ V. SUPERIOR Ct. 15 CAL. APP. 5TH 643; MORRISSEY V. BREWER 408 U.S. 471; GIGNON V. SCARPELLI 411 U.S. 778; STATE OF CAL. V. CRUMP 180 N.J. SUPER. 87; 433 A.2d. 791, 793

ISSUE 1. CONTINUED (AGENCY DEPARTURE FROM COMPACT)

75 ALR 6TH 181 §§ 2.5, 2.6, 2.7, 21, 22, AND 23.

"THE CONSTRUCTION AND APPLICATION OF THE INTER-
- STATE COMPACT FOR ADULT OFFENDER SUPERVISION"
OR (ICAOS) RULES 5.108A-G & 4.109A-C

§ 22

"RAMIREZ" v. SUPERIOR CT. 15 CAL. APP. 5TH 643

THE COURT OF APPEALS JUSTICE HALLER HELD:

- 1.) PROBATIONER WAS "OFFENDER SUBJECT TO RETAKING THAT MAY RESULT IN REVOCATION" UNDER (ICAOS) AND THUS HE WAS ENTITLED TO A PROBABLE CAUSE HEARING.
- 2.) THE PROCEEDINGS CONSTITUTED A WHOLESALE DEPARTURE FROM THE REQUIREMENTS OF A PROBABLE CAUSE HEARING UNDER (ICAOS) IN VIOLATION OF DUE PROCESS.
- 3.) (SENDING STATE) AUTHORITIES REQUESTED PROBATIONER'S RETURN UNDER (ICAOS) AND THUS (ICAOS) AND NOT EXTRADITION STATUTES APPLY.

(S.C. CITED A BREACH OF THE (ICAOS) AGREEMENT IN THEIR "PAROLE VIOLATION WARRANT," BUT ABANDONED THE (ICAOS) PROTOCOL FOR A "RETAKING," THUS VIOLATING DUE PROCESS.)

§ 23

"NO WAIVER OF PROBABLE CAUSE HEARING CAN BE ACCEPTED UNLESS ACCOMPANIED BY AN ADMISSION BY THE OFFENDER TO ONE OR MORE SIGNIFICANT VIOLATIONS OF THE TERMS OF SUPERVISION." R. 5.108

"FISHER" v. CRIST 182 MONT. 124, 594 P.2d. 1140, 1142

"NO DEMAND FOR A HEARING IN THE RECEIVING STATE DOESN'T CONSTITUTE A WAIVER OF THAT HEARING," THE OFFENDER WAS INFORMED OF THE ALLEGED VIOLATIONS AND CONTESTED THEM, THEREFORE, THEY SHOULD HAVE BEEN THE SUBJECT OF A PROBABLE CAUSE HEARING IN THE RECEIVING STATE SO THEY COULD REFUTE THE ALLEGATIONS AND PRESENT WITNESSES IN HIS DEFENSE." (PAROLE RE-INSTATED)

"HECK" v. HUMPHREYS 114 S. CT. 2364; 512 U.S. 486, 487

CITED: PROCEDURAL DEFICIENCIES WHICH NECESSARILY IMPLIED THE INVALIDITY OF THE JUDGEMENT.

"RIDDLE" v. STATE 282 S.E. 2d 863 S.C. 277

"WOLFF" v. McDONNELL 418 U.S. 539, 558

ISSUE 2. DID THE AGENCY'S DEPARTURES FROM THE ICAOS COMPACT VIOLATE PAROLEE'S DUE PROCESS RIGHTS?

WHILE EACH OF THE COMPACTING STATES, INDIVIDUALLY MAY HAVE THEIR OWN CUSTOMARY WAYS OF DOING THINGS, SOME MORE, SOME LESS THAN WHAT IS CONSTITUTIONALLY REQUIRED, WHEN A PAROLEE IS ON SUPERVISION UNDER THE (ICAOS), THE STATES HAVE AGREED TO ABIDE BY THOSE GUIDELINES INSTEAD OF RELYING ON CUSTOM SO AS TO HAVE A WORKABLE UNIFORM COMPACT UNDER STANDABLE TO ALL INVOLVED. STATES DO NOT GIVE UP THEIR JURISDICTION OR SOVEREIGNTY TO THE COMPACT, ONLY THEIR CUSTOMARY WAYS OF DOING THINGS.

S.C. PROCEEDED IN THIS CASE UNDER ITS CUSTOMARY EXTRADITION, VIOLATION, AND REVOCATION PROCEDURES, AND SINCE THIS WAS AN OUT-OF-STATE (ICAOS) CASE, S.C.'S CUSTOMARY WAY OF DOING THINGS, SKIPPED OR REVERSED THE ORDER OF CERTAIN (ICAOS) PROCEDURES AND IN DOING SO, VIOLATED THE DUE PROCESS RIGHTS, THOSE STEPS, OR ORDER OF THOSE STEPS, WERE PUT IN PLACE TO PROTECT.

STANDARD OF REVIEW AND AUTHORITIES

- A.) U.S. CONSTITUTION AMENDMENTS 4 & 14
- B.) ICAOS RULES 4.109 & 5.108 (A-C)
- C.) "GREENHOLTZ" v. NEBRASKA 442 U.S. 1, 23
- D.) "HEWITT" v. HELMS 459 U.S. 472
- E.) "HINTON" v. S.C.D.P.P.S. 357 S.C. 327 S.C. App. Ct.
- F.) "MEACHUM" v. FANO 96 S.Ct. 2532
- G.) "MORRISSEY" v. BREWER 408 U.S. 471
- H.) PEOPLE ex. rel. "COMBS" v. LAVALLE 29 AD.2d 131
- I.) PEOPLE ex. rel. "MEMECHINO" v. WARDEN 27 N.Y. 2d 376, 379

"HEWITT" v. HELMS 459 U.S. 472

FOR A DUE PROCESS VIOLATION CLAIM CITING A REGULATION DEVIATED FROM, CAUSING A LOSS OF A LIBERTY INTEREST, A REGULATION MUST CONTAIN "EXPLICITLY MANDATORY LANGUAGE" THAT IF THE REQUIRED SUBSTANSIVE PREDICATES ARE PRESENT, THEN A PARTICULAR OUTCOME MUST FOLLOW. (WL n.4) OPINIONS OF JUSTICES: STEVENS, BRENNAN, MARSHALL, AND BLACKMUN ON "MANDATORY LANGUAGE" OF STATUTES.

THE (ICAOS) THAT THE PAROLEE WAS UNDER IS STATUTORY AND CONTAINS "MANDATORY LANGUAGE" OUTLINING THE PROCESS TO BE FOLLOWED IN A "RETAKING" TO PROTECT THE LIBERTY INTEREST AND DUE PROCESS RIGHTS OF THE PAROLEE AND WAS IGNORED BY S.C., A PARTY TO THAT AGREEMENT.

ISSUE 2. DID THE AGENCY'S DEPARTURES FROM THE (ICAOS) COMPACT VIOLATE PAROLEES' DUE PROCESS RIGHTS?

"MORRISSEY" v. BREWER 408 U.S. 471

"THE PAROLEES IN THIS CASE WERE AT LIBERTY AND AS SUCH, COULD BE GAINFULLY EMPLOYED AND WERE FREE TO BE WITH FAMILY AND FRIENDS AND TO FORM THE OTHER ENDURING ATTACHMENTS OF "NORMAL LIFE" (CONDITIONAL LIBERTY). "MORRISSEY" ENTAILS DEPRIVATION OF A LIBERTY ONE HAS AND IS A DECISION INVOLVING INITIALLY A WHOLLY RETROSPECTIVE FACTUAL QUESTION AS TO WHETHER THE PAROLEE VIOLATED HIS PAROLE. THE CHIEF JUSTICE IN "MORRISSEY" RECOGNIZED THAT FAIR TREATMENT IN A PAROLE REVOCATION WILL ENHANCE THE CHANCE OF REHABILITATION BY AVOIDING REACTIONS TO ARBITRARINESS."

"IMPLICIT IN THE SYSTEM'S CONCERN WITH PAROLE VIOLATIONS IS THE NOTION THAT, THE PAROLEE IS ENTITLED TO RETAIN HIS LIBERTY AS LONG AS HE SUBSTANTIALLY ABIDES BY THE CONDITIONS OF HIS PAROLE."

"HINTON" v. S.C.D.P.P.P.S. 357 S.C. 327 S.C. App. Ct.

"IT WAS FOUND UNACCEPTABLE THAT THE PAROLE BOARD SHOULD LOOK TO THE SO CALLED "FACTS" (OF THE RECEIVING STATE'S CLAIMS) TO MAKE ITS DETERMINATION, FOR THE "FACTS" ARE ALMOST ALWAYS DISPUTED, AND NEITHER THIS COURT, NOR THE PAROLE BOARD HAS ANY WAY OF EXTRICATING WHICH PARTICULAR "FACTS" WERE TRUE OR NOT. THE PAROLE BOARD SHOULD NOT UNDERTAKE SUCH A DETERMINATION IN WHAT WOULD AMOUNT TO AN EGREGIOUS DUE PROCESS VIOLATION." (WLD. 20)

"MEACHUM" v. FANO 96 S.Ct. 2532 WITH JUSTICE MARSHALL CITING "GREENHOLTZ" v. NEBRASKA 442 U.S. 123

"IT DEMEANS THE CONCEPT OF LIBERTY ITSELF TO ASCRIBE NOTHING MORE THAN A PROTECTION OF AN INTEREST THAT THE STATE HAS CREATED...," FOR IF THE INMATE'S PROTECTED LIBERTY INTERESTS ARE NO GREATER THAN THE STATE CHOOSES TO ALLOW, HE IS REALLY LITTLE MORE THAN THE SLAVE DESCRIBED IN THE 19TH CENTURY CASES. AN INMATE RETAINS AN UNALIENABLE INTEREST IN LIBERTY AT THE VERY MINIMUM, THE RIGHT TO BE TREATED WITH DIGNITY WHICH THE CONSTITUTION MAY NEVER IGNORE."

JUSTICE MARSHALL CITING "GREENHOLTZ"; "THERE IS A CRITICAL DIFFERENCE BETWEEN DENIAL OF A PRISONER'S REQUEST FOR INITIAL RELEASE ON PAROLE, AND THE REVOCATION OF (AN ALREADY PAROLED) PAROLEE'S CONDITIONAL LIBERTY." (10. AT 9-11 99 S.Ct. 2104) JUSTICE MARSHALL SUMMED UP LIBERTY INTEREST IN "GREENHOLTZ" AS FOLLOWS... (CONTINUED)

ISSUE 2. DID THE AGENCY'S DEPARTURES FROM THE (ICAO) COMPACT VIOLATE PAROLEE'S DUE PROCESS RIGHTS?

"MEACHUM" v. FAN 96 S. Ct. 2532 (CONTINUED) WITH JUSTICE MARSHALL ON LIBERTY INTEREST FROM "GREENHOLTZ" 442 U.S. 1, 23

... "IT IS SELF-EVIDENT THAT ALL INDIVIDUALS POSSESS A LIBERTY INTEREST IN BEING FREE FROM PHYSICAL RESTRAINT"; ... "IF A MAN WERE A CREATURE OF THE STATE, THE ANALYSIS WOULD BE CORRECT, BUT NEITHER THE BILL OF RIGHTS, NOR THE LAWS OF SOVEREIGN STATES CREATE THE LIBERTY WHICH THE DUE PROCESS CLAUSE PROTECTS. THE RELEVANT CONSTITUTIONAL PROVISIONS ARE LIMITATIONS ON THE POWER OF THE SOVEREIGN TO INFRINGE ON THE LIBERTY OF THE CITIZEN WHO MUST LIVE IN ORDERED SOCIETY. OF COURSE LAW IS ESSENTIAL TO THE EXERCISE AND ENJOYMENT OF INDIVIDUAL LIBERTY IN A COMPLEX SOCIETY, BUT, IT IS NOT THE SOURCE OF LIBERTY, AND SURELY NOT THE EXCLUSIVE SOURCE."

PEOPLE ex. rel. "MEMECHINO" v. WARDEN 27 N.Y. 2d. 376, 379

"THE PAROLEE IS NOT THE ONLY ONE WHO HAS A STAKE IN HIS CONDITIONAL LIBERTY, SOCIETY HAS A STAKE IN WHATEVER MAY BE THE CHANCE OF RESTORING HIM TO NORMAL AND USEFUL LIFE WITHIN THE LAW..." SOCIETY THUS HAS AN INTEREST IN NOT HAVING PAROLE REVOKED BECAUSE OF ERRONEOUS INFO OR BECAUSE OF AN ERRONEOUS EVALUATION OF THE NEED TO REVOKE PAROLE, GIVEN THE BREACH OF CONDITIONS. THE DISCRETIONARY ASPECT OF WHETHER TO REVOKE OR NOT, NEED NOT BE REACHED, UNLESS THERE IS FIRST AN APPROPRIATE DETERMINATION THAT THE INDIVIDUAL HAS IN FACT BREACHED THE CONDITIONS OF PAROLE?"

PEOPLE ex. rel. "COMBS" v. LAVALLE 29 AD. 2d 131

HON. J. BASTOW: "WHEN ALL OF THE LEGAL NICETIES ARE LAID ASIDE, A PROCEEDING TO REVOKE PAROLE INVOLVES THE RIGHT OF AN INDIVIDUAL TO CONTINUE AT LIBERTY, OR TO BE IMPRISONED." IT INVOLVES A DEPRIVATION OF LIBERTY JUST AS MUCH AS DID THE ORIGINAL CRIMINAL ACTION AND FALLS WITHIN THE PROTECTION OF THE DUE PROCESS CLAUSE.

S.C.D. P.P.P.S PROCEEDING IN THEIR CUSTOMARY WAYS OF DOING THINGS, AND THEIR DEPARTURE FROM THE (ICAO) RULES, WHETHER KNOWINGLY, ARBITRARILY, INTENTIONALLY, OR OTHERWISE, MATTERS NOT WHEN ONE SIGNS AN AGREEMENT TO A COMPACT. IT IS INCUMBENT ON THE REPRESENTATIVES OF EACH OF THE COMPACTING STATES TO KNOW AND FOLLOW THE PROCEDURES SET FORTH FOR CERTAIN PROCESSES UNDER THAT COMPACT. ESPECIALLY WHEN THE PROCEDURES DIFFERS SOMEWHAT TO WHAT WOULD NORMALLY BE ACCEPTABLE OR SUFFICIENT IN EITHER INDIVIDUAL STATE.

ISSUE 3. DID THE AGENCY'S PROCEEDINGS MEET THE MINIMUM DUE PROCESS REQUIREMENTS OF THE 4TH AND 14TH AMENDMENTS AND THE ICAOS?

PAROLEE'S REVOCATION PROCEEDINGS IN NO WAY COMPLIED WITH THE MINIMUM DUE PROCESS REQUIREMENTS OF EITHER THE (ICAOS) REGULATIONS OR THE U.S. CONSTITUTIONAL AMENDMENTS. THE CIRCUMSTANCES OF PAROLEE'S CASE WAS EITHER EXACTLY LIKE THE FOLLOWING CASES, OR MUCH WORSE AND RELIEF WAS GRANTED IN EACH OF THEM DUE TO THE PAROLEE'S DUE PROCESS RIGHTS BEING VIOLATED, ON ONLY ONE OR TWO POINTS WHILE PAROLEE'S CASE CONTAINS MULTIPLE VIOLATIONS.

STANDARD OF REVIEW AND AUTHORITIES

- A.) U.S. CONSTITUTIONAL AMENDMENTS IV, V, AND XIV
- B.) S.C. CODE 1976 § 44-53-410
- C.) ICAOS RULES 4.109 & 5.108(A-G)
- D.) "BIRZON" v. KING 469 F.2d. 1241, 1244-45 (2nd Cir. 1972)
- E.) "GERSTEIN" v. PUGH 420 U.S. 103
- F.) "GHOLSTON" v. JONES 848 F.2d. 1156
- G.) "KIRKLAND" v. PRESTON 385 F.2d. 670
- H.) "LAWRENCE" v. SMITH 451 F. Supp. 179
- I.) "MORRISSEY" v. BREWER 408 U.S. 471
- J.) "MYERS" v. PENN. BOARD OF PAROLE 97 Pa. COMMONW. 574, 510 A.2d. 387 (1986)
- K.) PEOPLE v. "DORAN" 401 MICH. 235
- L.) "PICKENS" v. MOORE 806 F. Supp. 2d. 1070
- M.) "RIDDLE" v. STATE 282 S.E. 2d. 863; 277 S.C. 110
- N.) STATE v. "HILL" 359 S.C. 301
- O.) "STANDLEE" v. RHAY 403 F. Supp. 1247
- P.) U.S. ex. rel. "CARSON" v. TAYLOR 540 F.2d. 1156, 1161
- Q.) U.S. ex. rel. "SIMS" v. SIELAFF 563 F.2d. 821, 823 n.4 (1977)
- R.) "WILLIAMS" v. QUARTERMAN 307 FED. Appx. 790
- S.) "WOLF" v. COLORADO 338 U.S. 25, 27-28; 69 S.Ct. 1359, 1361; 93 L.Ed. 1722

THE CURRENT CASE IS EVEN MORE DERELICT THAN THE ABOVE CASES IN THAT THERE WERE NUMEROUS DUE PROCESS VIOLATIONS IN THIS CASE INCLUDING A PROBABLE CAUSE HEARING IN THE WRONG STATE WITH A S.C. PAROLE AGENT THAT KNEW NOTHING OF THE CASE OR PAROLEE FROM FLORIDA AND SWORE 3RD PARTY TO THE SO-CALLED "FACTS" DEDUCED AND INFERRED ONLY FROM A SUMMARY OF THE FLORIDA PAROLE AGENT'S REPORTS.

THERE WAS NO WAY PAROLEE COULD CONFRONT HIS ACUSER OR CROSS-EXAMINE THE S.C. PAROLE AGENT, FOR SHE KNEW NOTHING OF THE "FACTS" OF THE CASE OTHER THAN WHAT WAS SUMMARIZED FROM THE FL. PAROLE OFFICER'S ALLEGATIONS, TAKEN AS "FACTS" WITHOUT ANY INVESTIGATION, FACT FINDING, OR OBJECTIVITY INVOLVED. AND THIS IS IN DIRECT OPPOSITION TO THE DUE PROCESS CLAUSE, AND REQUIRES A De Novo HEARING OR REINSTATEMENT OF SUPERVISION.

ISSUE 3. DID THE AGENCY'S PROCEEDINGS MEET THE MINIMUM DUE PROCESS REQUIREMENTS OF THE 4TH AND 14TH AMENDMENTS AND THE ICAOS? (CONTINUED)

"MORRISSEY" V. BREWER 408 U.S. 471

ON THE SUBJECT OF THE 'SUMMARY OF DOCUMENTS' HELD THAT BECAUSE OF THE RISK OF DISTORTION OR SUBTLE CHANGES TO MEANING, A PAROLE OFFICER'S SUMMARY CONTAINING EVIDENCE OR INFORMATION THAT MAY BE DISPUTED BY THE PAROLEE, DOES NOT CONSTITUTE AN ADEQUATE SUBSTITUTE FOR THE DOCUMENT ITSELF, PARTICULARLY SINCE, AS THE SUPREME COURT RECOGNIZED IN "MORRISSEY", THE PAROLE OFFICER WHO IS OFTEN RESPONSIBLE FOR REQUESTING THE PAROLE VIOLATION REPORT AND CONVENING THE REVOCATION HEARING, CAN NOT ALWAYS BE EXPECTED TO APPROACH HIS TASK WITH "COMPLETE OBJECTIVITY" (Id. AT 1161-62)

COURTS HAVE REFUSED TO INFER A WAIVER OF 'RIGHT TO CROSS-EXAMINE' WHERE PAROLEE DID NOT REQUEST THAT THE WITNESS BE PRESENT FOR QUESTIONING AND WHERE THE HEARING OFFICER DID NOT SUGGEST THAT THE WITNESS COULD BE MADE AVAILABLE, ESPECIALLY WHERE THE PAROLEE WAS NOT REPRESENTED BY COUNSEL. S.C. HAD NO 'GOOD CAUSE' TO WITHHOLD DOCUMENTS OR DENY THE RIGHT OF CONFRONTATION AND CROSS-EXAMINATION. OTHER THAN "JUMPING THE GUN" AND BOTH ISSUING A WARRANT AND EXECUTING AN EXTRA-DITION THAT HAD PAROLEE REMOVED FROM THE PLACE AND PEOPLE HE WAS SUPPOSED TO BE ABLE TO CROSS-EXAMINE, AT A HEARING IN THE RECEIVING STATE OF FLORIDA. THOSE S.C. ACTIONS WERE THE 'CAUSE' THE PAROLEE WAS DENIED DUE PROCESS RIGHTS, BUT NOT "GOOD CAUSE" IN THE LEGAL CONTEXT OF REASONS TO DENY THOSE RIGHTS.

THE "MORRISSEY" COURT RULED THAT DUE PROCESS REQUIRES THE PAROLEE TO BE GIVEN ACCESS PRIOR TO THE HEARING, TO THE ACTUAL DOCUMENTS WHICH WOULD BE USED AGAINST PAROLEE, "IN ORDER TO SAFEGARD AGAINST THE BOARD'S SUBSTITUTION OF RUMOR, EXAGGERATION OR FAULTY CHARACTERIZATIONS OF THE PAROLEE'S CONDUCT FOR FACTS."

"MORRISSEY'S" STANDARD OF DUE PROCESS

(Id. AT 1161-62)

- 1.) WRITTEN NOTICE OF THE CLAIMED VIOLATIONS OF PAROLE;
- 2.) DISCLOSURE TO THE PAROLEE OF EVIDENCE AGAINST HIM;
- 3.) OPPORTUNITY TO BE HEARD AND TO PRESENT WITNESSES AND EVIDENCE;
- 4.) THE RIGHT TO CONFRONT AND CROSS EXAMINE ADVERSE WITNESSES;
- 5.) A NEUTRAL AND DETACHED HEARING BODY;
- 6.) A WRITTEN STATEMENT BY FAULTFINDER AS TO EVIDENCE RELIED ON FOR REVOCATION.

PAROLEE'S CASE IN NO WAY MEETS THESE STANDARDS. PAROLEE CONTENDS THAT ONE OF THE ABOVE SIX DON'T EVEN COME CLOSE. ALL OF THESE ARE CRUCIAL TO PAROLEE'S DEFENSE AND (ICAOS) MANDATES THAT PAROLEE BE PRESENTED WITH ALL NON-PRIVILEGED AND NON-CONFIDENTIAL EVIDENCE AGAINST PAROLEE TO BE ABLE TO EFFECTUATE A PROPER DEFENSE.

ISSUE 3. DID THE AGENCY'S PROCEEDINGS MEET THE MINIMUM DUE PROCESS REQUIREMENTS OF THE 4TH AND 14TH AMENDMENTS AND THE ICAOS? (CONT.)

"GHOLSTON" v. JONES 848 F.2d.1156

SEN. CIRCUIT JUDGE TUTTLE HELD: "REVOCATION BASED SOLELY ON UNSWORN PAROLE VIOLATION REPORTS BY PAROLE OFFICER FINDING THAT PAROLEE HAD VIOLATED LAW PROHIBITING CRIMINAL MISCHIEF, DENIED PAROLEE DUE PROCESS RIGHT TO CONFRONT ADVERSE WITNESSES." (UNDERLYING CRIMINAL CHARGE AGAINST PAROLEE IN THE CURRENT CASE WAS DISMISSED FOR LACK OF EVIDENCE TO TAKE TO THE GRAND JURY, SAME AS IN "GHOLSTON.")

(ICAOS) RULE 4.109(b) INCLUDES WHAT MUST BE INCLUDED IN THE RECEIVING STATE'S VIOLATION REPORT. INCLUDED IN THAT LIST IS: "THE STATUS AND DISPOSITION OF OFFENSE". IF THE FLORIDA PAROLE AGENT SUBMITTED A COMPLETE REPORT UNDER THE COMPACT RULES, IT WOULD HAVE LET S.C. KNOW THAT THE CHARGE WAS ADJUDICATED BY THE FL. STATES ATTORNEY AS HAVING NO MERIT AND ISSUED A NOTICE TO CLEAR THE RECORD AND TO RELEASE THE PAROLEE. "MYERS" v. PENN. BOARD OF PAROLE 97 Pa. Commonwealth. 574, 510 A.2d. 387 (1986) "IN ORDER FOR REPORT AND TELETYPES TO BE ADMISSIBLE, THE BOARD WAS REQUIRED TO MAKE A 'GOOD CAUSE' FINDING AS TO WHY THEY SHOULD BE ADMITTED WITHOUT WITNESS PRESENT TO TESTIFY TO THEIR VALIDITY AND RELIABILITY."

S.C.'S PAROLE AGENT VICTORIA JAKE SWORE 3RD PARTY TO TO THE ABOVE MENTIONED VALIDITY OF A FLORIDA PAROLE AGENT'S REPORT THAT "THERE WAS PROBABLE CAUSE THAT OFFENDER COMMITTED THE CRIME OF GRAND THEFT" NOW EITHER THE FL. PAROLE AGENT ARBITRARILY AND CAPRICIOUSLY LEFT OUT THE "STATUS AND DISPOSITION OF OFFENSE" IN HIS REPORTS TO S.C. OR... SENT FALSE INFO TO S.C. THAT THERE WAS PROBABLE CAUSE OF THAT OFFENSE, THAT HIS STATES ATTORNEY ALREADY SAID THERE WASNT,... OR A THIRD EXPLANATION, THAT MRS. VICTORIA JAKE, S.C.'S PAROLE AGENT, MADE THIS JUMP ALL ON HER OWN FROM THE SUMMARY OF THE FLORIDA PAROLE AGENT'S REPORTS, NO MATTER WHICH OF THOSE THREE, IF NOT ALL OF THEM HAPPENED, IT WAS UNFOUNDED, ILLEGAL, AND PERHAPS DOUBLE JEOPARDY BECAUSE FLORIDA ALREADY RULED ON AND DISMISSED A CHARGE. S.C. CAME RIGHT BEHIND AND CLAIMS THERE WAS "PROBABLE CAUSE" THIS SECOND RULING OF THIS CHARGE WAS A PUNITIVE MEASURE THAT HAD REAL NEGATIVE CONSEQUENCES. S.C. CODE 1976 S. 44-53-410 BARS THIS TYPE OF BEHAVIOR AS WELL AS "THE DOUBLE JEOPARDY CLAUSE OF THE V AMEN."

ISSUE 3. DID THE AGENCY'S PROCEEDINGS MEET THE MINIMUM DUE PROCESS REQUIREMENTS OF THE 4TH AND 14TH AMENDMENTS AND THE ICAOS? (CONTIN.)

"STANDLEE" v. RHAY 403 F. SUPP. 1247 (SUPERVISION REINSTATED)

"PRIOR FINDING OF INNOCENCE IN CRIMINAL PROCEEDING UNDER HIGHER BURDEN OF PROOF COLLATERALLY ESTOPPED PAROLE BOARD WHICH HAD DELIBERATELY ACCEDDED TO CRIMINAL PROSECUTION FROM REACHING INCONSISTENT ADJUDICATION OF FACT UNDER LESS BURDEN OF PROOF APPLICABLE TO PAROLE REVOCATION PROCEEDINGS."

"GERSTEIN" v. PUGH 420 U.S. 103

"A FAIR AND RELIABLE DETERMINATION OF PROBABLE CAUSE AS A CONDITION FOR ANY SIGNIFICANT PRE-TRIAL RESTRAINT OF LIBERTY AND THIS DETERMINATION MUST BE MADE BY A JUDICIAL OFFICER EITHER BEFORE OR SHORTLY AFTER ARREST."

ON THE SUBJECT OF THE DUE PROCESS VIOLATIONS SURROUNDING THE EXTRADITION, PAROLEE CONTENDS THAT THIS SHOULD HAVE BEEN A 'RETAKING' UNDER (ICAOS) AND NOT AN 'EXTRADITION' UNDER STATE NORMS, BUT EITHER WAY THE COURT VIEWS IT, THERE'S STILL DUE PROCESS PROTECTIONS IN PLACE FOR EITHER PROCESS. IN "WOLF" v. COLORADO 338 U.S. 25, 27-28; 69 S.Ct. 1359, 1361; 93 L.Ed. 1782

APPLIES THE 4TH AMENDMENT EXTRADITION CLAUSE TO THE STATES THROUGH THE 14TH AMENDMENT, STATE PROCEEDINGS MUST CONFORM TO THE SAME 4TH AMEND. STANDARDS THAT APPLY TO FEDERAL ONES. "WOLF" APPLIES THE 4TH WITH UNDIMINISHED FORCE TO THE INTRUSION THAT OCCURS IN THE PROCESS OF EXTRADITION. IV - "... BUT UPON PROBABLE CAUSE SUPPORTED BY OATH OR AFFIRMATION?" PAROLEE CONTENDS THAT THE OATH ITSELF CAN NOT BE THE PROBABLE CAUSE BUT TO SUPPORT AN ESTABLISHED "ACTUAL" PROBABLE CAUSE BASED UPON FACTS AND NOT JUST UNFOUNDED ALLEGATIONS.

"PICKENS" v. MOORE 806 F. SUPP. 2d. 1070

"THE USE OF UNSWORN DOCUMENTS, NOT DISCLOSED TO THE PAROLEE, MAY VIOLATE THE CONFRONTATION CLAUSE, ESPECIALLY WHEN THE PAROLE OFFICER KNOWINGLY MADE FALSE STATEMENTS IN HIS OFFENDER VIOLATION REPORTS." HOW COULD THE S.C. PAROLE AGENT VERIFY OR SWEAR TO THE VALIDITY OF THE FL. PAROLE AGENT'S ALLEGATIONS WHEN SHE KNEW NOTHING OF THE CASE EXCEPT WHAT SHE DEDUCED FROM A SUMMARY OF ALLEGATIONS, HOW COULD THE PAROLEE CROSS-EXAMINE HER?

ISSUE 3. DID THE AGENCY'S PROCEEDINGS MEET THE MINIMUM DUE PROCESS REQUIREMENTS OF THE 4TH AND 14TH AMENDMENTS AND THE ICAOS? (CONT.)

"RIDDLE" v. STATE 282 S.E.2d 863; 277 S.C. 110

CASE WAS REMANDED FOR A DE NOVO REVOCATION HEARING BECAUSE THE REVOCATION PROCEEDINGS WERE SO SUMMARY THAT THE RECORD WAS INSUFFICIENT FOR THE APPELLATE COURT REVIEW.

PEOPLE v. DORAN 401 MICH. 235

KIRKLAND v. PRESTON 385 F.2d 670

"ABSENT A GRAND JURY INDICTMENT OR JUDICIAL DETERMINATION OF PROBABLE CAUSE, THE AFFIDAVIT ACCOMPANYING THE WARRANT SHOULD CONTAIN MORE THAN CONCLUSORY STATEMENTS. AFFIDAVIT SHOULD BE IN SUCH A FORM AS WOULD SUPPORT A FINDING OF PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT UNDER THE 4TH AMENDMENT."

ICAOS RULE 5.108(d),(a,3)

- d.) THE OFFENDER SHALL BE ENTITLED TO THE FOLLOWING RIGHTS AT A PROBABLE CAUSE HEARING:
- 2.) DISCLOSURE OF ALL NON-PRIVELEDGED AND NON-CONFIDENTIAL EVIDENCE REGARDING THE ALLEGED VIOLATIONS.
 - 3.) OPPORTUNITY TO BE HEARD IN PERSON AND TO PRESENT WITNESSES AND DOCUMENTARY EVIDENCE RELEVANT TO THE ALLEGED VIOLATIONS.

ALL OF THESE DEPARTURES FROM THE ICAOS CONTINUE TO DEPRIVE PAROLEE HIS CONDITIONAL LIBERTY IN THAT THE PROCEDURE THAT PROCURED HIS REVOCATION WAS FLAWED AND IS STILL NEGATIVELY INFLUENCING THE "SUBSEQUENT ROUTINE DENIALS" OF PAROLE THAT ARE NON-REVIEWABLE AND BEYOND QUESTIONING. PAROLEE FEELS HIS PAROLE SHOULDN'T HAVE BEEN REVOKED TO BEGIN WITH.

IF THIS ISSUE WITH THE FL. PAROLE AGENT'S FALSE ALLEGATIONS WAS RESOLVED, THE PAROLE BOARD WOULD ONLY BE LEFT WITH THE "BOILER PLATE" EXCUSES FOR REJECTION THAT HAVE BEEN ADJUDICATED AS INSUFFICIENT STANDING ALONE, ON BASIS OF THE NATURE AND SERIOUSNESS OF THE OFFENSE.

ISSUE 4. IS THE AGENCY'S DECISION "CAPABLE OF REPETITION, YET EVADING REVIEW," BECAUSE OF THE AGENCY'S FAILURE OR REFUSAL TO ISSUE THE WRITTEN FINAL ORDER OR REFUSAL TO ACKNOWLEDGE THE PAROLEE'S DEFENSES?

THERE ARE 2 POINTS TO SATISFY IN THIS DOCTRINE:
1.) THE CHALLENGED ACTION WAS IN ITS DURATION, TOO SHORT TO BE FULLY LITIGATED PRIOR TO ITS CESSATION OR EXPIRATION AND, 2.) THERE IS A REASONABLE EXPECTATION THAT THE SAME COMPLAINING PARTY WOULD BE SUBJECTED TO THE SAME ACTION AGAIN.

PAROLEE IS ATTEMPTING TO SHOW A CORRELATION BETWEEN THE EXCEPTION TO MOOTNESS DOCTRINE AND HIS SITUATION OF A LEGAL "LIMBO" HE'S IN DUE TO THE AGENCY NOT YET ISSUING A WRITTEN FINAL ORDER OF REVOCATION (WHAT HE'S TRYING TO CHALLENGE) V. THE NON-REVIEWABLE "ROUTINE DENIALS" OF PAROLE (THE REPEATING ACTION). WITHOUT THIS ORDER, PAROLEE CAN NOT APPEAL THE DECISION.

AS TO POINT ONE, THE CHALLENGED ACTION IS BEYOND "TOO SHORT" A TIME TO BE FULLY LITIGATED BECAUSE THE TOLLING OF THE TIMELINE TO APPEAL CAN'T BEGIN TO TOLL UNTIL A WRITTEN FINAL ORDER FROM THE AGENCY IS RECEIVED. SO, FOR THE PURPOSE OF THIS DOCTRINE, IS A NON-EXISTANT TIME PERIOD "TOO SHORT" TO LITIGATE BEFORE THE REVOCATION PROCEEDINGS TURN INTO THE 'NON-REVIEWABLE' ROUTINE DENIALS?

TO POINT TWO, THERE'S NOT ONLY "REASONABLE EXPECTATION" OF THE SAME ACTION REPEATING, IT'S ACTUALLY ALREADY HAPPENED IN THE FORM OF 3 "ROUTINE DENIALS" OF PAROLE.

PEOPLE'S FED. SAV. & LOAN ASSOC. V. GRAHAM 291 S.C. 178; 352 S.E. 2d. 511 "RIGHT TO APPEAL WAS NOT PREJUDICED BY NOT HAVING BEEN SERVED THE DECREE, SINCE THE TIME TO APPEAL WOULD NOT BEGIN TO RUN UNTIL SUCH TIME AS THEY WERE GIVEN NOTICE THAT THE DECREE HAD BEEN RENDERED."

THE S.C. PAROLE BOARD SHOULD NOT BE ABLE TO BAR REVIEW OR DENY DUE PROCESS RIGHTS, BY SIMPLY REFUSING TO ISSUE A WRITTEN FINAL REVOCATION ORDER, OR JUST IGNORRING OR NOT RESPONDING TO NUMEROUS SUBMISSIONS OF DOCUMENTS AND EXCULPATORY EVIDENCE, IGNORRING SEVERAL LETTERS AND PLEAS FOR ANYONE TO LOOK INTO THESE CLAIMS OF EVIDENCE. A MEMBER OF THE BOARD EVEN WENT AS FAR AS TO PICK UP A RANDOM PIECE OF PAPER OFF OF THE TABLE, WAVING IT, SAYING "YEAH WE GOT IT," REFERRING TO MY 8+ PAGE SUBMISSION, DURING A PAROLE HEARING.

ISSUE 5. DID THE ABSENCE OF COUNSEL OR THE HEARING JUSTICE'S FAILURE TO INFORM PAROLEE OF HIS RIGHT TO HIRE OR HAVE COUNSEL PRESENT, VIOLATE HIS DUE PROCESS RIGHTS?

STANDARD OF REVIEW AND AUTHORITIES

- A.) "BEARDEN" v. S.C. 443 F.2d. 1090
- B.) COMMONWEALTH v. "TINSON" 433 Pa. 328
- C.) "GOLDBERG" v. KELLY 397 U.S. 254, 270
- D.) "HEWITT" v. N.C. 4th Cir. 415 F.2d. 1316, 1322-23
- E.) "JONES" v. RIVERS 338 F.2d. 862 4th Cir. (1962)
- F.) "MEMPA" v. RHAY 88 S.Ct. 254; 87 S.Ct. 849
- G.) PEOPLE ex. rel. "COMBS" v. LAVALLE 29 AD.2d. 131
- H.) PEOPLE ex. rel. "MEMECHINO" v. WARDEN 27 N.Y. 2d. 376
- I.) PEOPLE v. HAMILTON 26 AD.2d. 134
- J.) PEOPLE v. REYNOLDS 25 AD. 2d. 487
- K.) "POWELL" v. ALABAMA 287 U.S. 45, 68-69

THE COURTS HAVE BEEN BACK AND FORTH OVER WHETHER OR NOT A PAROLEE IS ENTITLED TO COUNSEL AT PAROLE PROCEEDINGS, AND HAVE COME TO THE CONSENSUS, IT SEEMS, TO DECIDE ON A CASE BY CASE BASIS. IF EVER A CASE EXISTED THAT MEETS THE STANDARDS OF NEEDING COUNSEL, PAROLEE CONTENDS THAT THIS CASE DOES. FOR ONE, PAROLEE IS AN INDIGENT LAYMAN AND OVERWHELMED BY A COMPLEX MESH OF LAWS, STATUTES, AND INTERSTATE COOPERATION BETWEEN TWO DIFFERENT STATES, ICAOS REGULATIONS, FED. COMPACT RULES, ... SOMETIMES THE COURTS EVEN EXPRESS DIFFICULTY IN DECIPHERING CONTRADICTING STATUTES, SO ONE CAN IMAGINE A LAYMAN'S TASK OF TRYING TO DEFEND HIMSELF AND FIGHT FOR HIS LIFE AGAINST THE POWERS THAT BE.

ANOTHER VERY IMPORTANT POINT IS THAT THIS REVOCATION MAY VERY WELL LEAD TO IMPRISONMENT FOR THE REST OF HIS LIFE. CAN THERE BE, IN SUCH A CASE, ANY REASONABLE DOUBT AS TO THE VALUE OF COUNSEL IN DEVELOPING AND PROBING A FACTUAL AND LEGAL SITUATION WHICH WILL DETERMINE ON WHICH SIDE OF THE PRISON WALLS PAROLEE WILL BE RESIDING.

PEOPLE ex. rel. "MEMECHINO" v. WARDEN 27 N.Y. 2d. 376

"CERTAINLY A PAROLE BOARD MAY NOT BE PERMITTED, SIMPLY BECAUSE IT IS AN ADMIN. BODY RATHER THAN A JUDICIAL TRIBUNAL, TO BASE ITS DETERMINATION, HAVING SO SERIOUS AN IMPACT ON THE LIVES OF THE INDIVIDUALS THAT APPEAR BEFORE IT, ON A POSSIBLY MISTAKEN VIEW OF THE FACTS OWING TO THE PAROLEE'S INABILITY TO MAKE A PROPER FACTUAL PRESENTATION. IN THIS CASE FOR INSTANCE, COUNSEL WOULD HAVE BEEN ABLE TO NOT ONLY...

ISSUE 5. DID THE ABSENCE OF COUNSEL OR THE HEARING JUSTICE'S FAILURE TO INFORM PAROLEE OF HIS RIGHT TO HIRE OR HAVE COUNSEL PRESENT VIOLATE HIS DUE PROCESS RIGHTS?

PEOPLE ex. rel. "MEMECHINO" v. WARDEN 27 N.Y. 2d. 376 (CONT.)

"ANALYSE AND QUESTION THE ACCURACY OF THE PAROLE SUPERVISOR'S REPORT, BUT ALSO WOULD HAVE BEEN AVAILABLE TO EDUCATE AND MARSHALL THE FACTS NECESSARY TO REFUTE THE TECHNICAL ALLEGATIONS AGAINST HIM AND EFFECTUATE AN ADEQUATE DEFENSE."

"POWELL" v. ALABAMA 287 U.S. 45, 68, 69

"THE RIGHT TO BE HEARD WOULD BE OF LITTLE AVAIL IF IT DID NOT COMPREHEND THE RIGHT TO BE HEARD BY COUNSEL." EVEN THE INTELLIGENT AND EDUCATED LAYMAN HAS SMALL AND SOMETIMES NO SKILL IN THE SCIENCE OF LAW. HE LACKS BOTH THE SKILL AND KNOWLEDGE TO ADEQUATELY PREPARE HIS DEFENSE EVEN THOUGH HE HAVE A PERFECT ONE. HE REQUIRES THE GUIDING HAND OF COUNSEL AT EVERY STEP IN THE PROCEEDINGS AGAINST HIM. WITHOUT IT, THOUGH HE BE NOT GUILTY, HE FACES THE DANGERS OF CONVICTION, (OR, REVOCATION IN PRESENT CASE) BECAUSE HE DOES NOT KNOW HOW TO ESTABLISH HIS INNOCENCE."

COMMONWEALTH v. "TINSON" 433 Pa. 328

"ABSENCE OF COUNSEL TO REPRESENT PAROLEE AT RECOMMITMENT HEARING, WHICH RESULTED IN REVOCATION OF PAROLE AND RETURN OF PAROLEE TO PRISON, DENIED HIM HIS CONSTITUTIONAL RIGHT TO COUNSEL." "WE BELIEVE THAT IT IS IRRELEVANT WHETHER APPELLANT APPEALED FROM THE PAROLE BOARD'S DETERMINATION, FOR IT CAN NOT BE SAID THAT APPELLANT WAIVED HIS CLAIMS BY FAILING TO APPEAL, SINCE HE DID NOT HAVE COUNSEL TO ASSIST HIM."

"HEWITT" v. N.C. 4th CIR. 415 F.2d. 1316, 1322-23

"WHEN A STATE UNDERTAKES TO INSTITUTE PROCEEDINGS FOR THE DISPOSITION OF THOSE ACCUSED OF CRIME, IT MUST DO SO CONSISTENTLY WITH CONSTITUTIONAL PRIVILEGES, EVEN THOUGH THE ACTUAL INSTITUTION OF THE PROCEDURE WAS NOT CONSTITUTIONALLY REQUIRED."

PEOPLE v. "HAMILTON" 26 AD.2d. 134

"IN A REVOCATION HEARING PROCEEDING WHERE THE STATUTE GIVES THE ALLEGED VIOLATOR "AN OPPORTUNITY TO BE HEARD," THE COURTS HAVE HELD, "THE INDIVIDUAL IS ENTITLED TO, NOT ONLY COUNSEL, BUT ALSO TO BE INFORMED OF SUCH RIGHT."

ISSUE 5. DID THE ABSENCE OF COUNSEL OR THE HEARING JUSTICE'S FAILURE TO INFORM PAROLEE OF HIS RIGHT TO HIRE OR HAVE COUNSEL PRESENT, VIOLATE HIS DUE PROCESS RIGHTS?

PEOPLE v. REYNOLDS 25 AD. 2d. 487

"A DEFENDANT IS ENTITLED TO BE FULLY AND CORRECTLY ADVISED OF HIS RIGHT TO COUNSEL."

PEOPLE ex. rel. COMBS v. LAVALLE 29 AD 2d. 131

"WHEN ALL OF THE LEGAL NICETIES ARE LAID ASIDE, A PROCEEDING TO REVOKE PAROLE INVOLVES THE RIGHT OF AN INDIVIDUAL TO CONTINUE AT LIBERTY OR TO BE IMPRISONED." "IT INVOLVES A DEPREVIATION OF LIBERTY JUST AS MUCH AS DID THE ORIGINAL CRIMINAL ACTION AND FALLS WITHIN THE PROTECTION OF THE DUE PROCESS CLAUSE"

JONES v. RIVERS 338 F. 2d. 862 4th CIR.

"APPOINTMENT OF COUNSEL IS REQUIRED WHEN PAROLEE IS INDIGENT AND DENIES VIOLATION ALLEGATIONS."

"MEMPA" v. RHAY 88 S. Ct. 254; 87 S. Ct. 849

"REVOCATION OF PAROLE IS OFTEN BASED ON ALLEGED OFFENSES FOR WHICH THE ACCUSED IS NEVER TRIED." (IN THE PRESENT CASE THE ALLEGED OFFENSE WAS CLEARED BY THE FL. STATES ATTORNEY AND STILL USED AS THE BASIS FOR REVOCATION.)

"BEARDEN" v. S. C. 443 F. 2d. 1090 CIR. JUDGE WINTERCITING:

"MEMPA" v. RHAY 87 S. Ct. 849

"THE RIGHT TO CONTINUED LIBERTY, THE ULTIMATE ISSUE IN A PAROLE REVOCATION HEARING, IS THE SAME SUBSTANTIAL RIGHT. WHEN THAT RIGHT DEPENDS ON DISPUTED QUESTIONS OF FACT, I HAVE NO DIFFICULTY IN CONCLUDING THAT THERE IS ALSO A RIGHT TO COUNSEL, FOR AS SAID BY THE COURTS IN "MEMPA" THE NECESSITY FOR THE AID OF COUNSELING IN MARSHALLING THE FACTS, INTRODUCING EVIDENCE OF MITIGATING CIRCUMSTANCES AND IN GENERAL AIDING AND ASSISTING THE DEFENDANT TO PRESENT HIS CASE IS APPARANT."

"GOLDBERG v. KELLY 397 U.S. 254, 270

"THE RIGHT TO APPEAR, PRESENT EVIDENCE, AND CONFRONT OR CROSS EXAMINE ADVERSE WITNESSES IS A FUNDAMENTAL REQUISITE OF DUE PROCESS OF LAW TO BE HEARD?"

ISSUE 6. DID THE PRELIMINARY HEARING ADMINISTRATOR PROCEED ARBITRARILY AND CAPRICIOUSLY IN THE PROCEEDINGS DENYING THE PAROLEE HIS DUE PROCESS RIGHTS?

AN AGENCY'S ACTIONS ARE "ARBITRARY AND CAPRICIOUS" AND THUS MAY BE SET ASIDE UNDER THE ADMINISTRATIVE PROCEDURES ACT, IF THE AGENCY HAS:

- 1.) RELIED ON FACTORS CONGRESS HAS NOT INTENDED IT TO CONSIDER;
- ✓ 2.) ENTIRELY FAILED TO CONSIDER AN IMPORTANT ASPECT OF THE PROBLEM;
- ✓ 3.) OFFERED AN EXPLANATION FOR ITS DECISION THAT RUNS COUNTER TO EVIDENCE BEFORE THE AGENCY; OR
- 4.) IS SO IMPLAUSIBLE THAT IT COULD NOT BE ASCRIBED TO A DIFFERENCE IN VIEW, OR A PRODUCT OF "AGENCY EXPERTISE."

THE AGENCY OFFERED NO EXPLANATION FOR ITS DECISION BUT THE REASONS GIVEN WERE PROVEN TO BE FALSE BY THE EXCULPATORY EVIDENCE PRESENTED TO THE AGENCY BY THE PAROLEE FROM THE FLORIDA STATES ATTORNEY, SO POINTS 2 AND 3 ABOVE APPLY.

U.S.C.A. 1953, § 77-62-15-16

"THE RIGHT OF PAROLEE TO BE HEARD AT PAROLE REVOCATION HEARING IS INVIOLEATE AS IS RIGHT TO KNOW AND BE SPECIFICALLY INFORMED OF CHARGES AND NATURE OF EVIDENCE AGAINST HIM, AND TO BE FREE FROM PURE CAPRICE ON THE PART OF THE DISCRETIONARY AUTHORITY BEFORE WHOM THE PROCEEDINGS OCCUR."

"WALKER" v. STATE D.O.C. 2018 WL 1977108 (ALASKA 2018)

"A PRISONER DOES NOT FORFIET HIS CLAIM DUE PROCESS RIGHTS WERE VIOLATED BY STATE REVOCATION HEARING ADMINISTRATOR'S REFUSAL TO ALLOW TESTIMONY AND EVIDENCE BY FAILING TO RAISE IT DURING THE ADMINISTRATIVE APPEALS PROCESS. THE REVOCATION HEARING ADMINISTRATOR DID NOT PROVIDE NOTICE THAT FAILURE TO RAISE ISSUES DURING THE ADMINISTRATIVE REVOCATION HEARING RESORTED IN A WAIVER OF ISSUES."

THE PRELIMINARY HEARING ADMINISTRATOR IN THE PRESENT CASE WAS VERY DISMISSIVE AND WOULDN'T ENTERTAIN PAROLEE'S DEFENSES HER ACTIONS WERE NOT INADVERTANT MISTAKES, BUT DELIBERATE. SHE PROCEEDED AS IF THE REVOCATION WAS A FOREGONE CONCLUSION AND THE PROBABLE CAUSE HEARING WAS JUST A FORMALITY THAT SHE HAD TO ENDURE, AND NOT A PLATFORM FOR FACT FINDING BY SOMEONE WHO IS DETACHED AND UNBIASED, MAKING A LIFE ALTERING DETERMINATION, FOR HER DETERMINATION HAD ALREADY BEEN MADE BEFORE THE PAROLEE STEPPED IN THE DOOR.

CONCLUSION

APPELLANT HAS RAISED SEVERAL INSTANCES OF PROCEDURAL DEVIATIONS AND DUE PROCESS VIOLATIONS IN AND DURING HIS EXTRADITION, VIOLATION, AND REVOCATION PROCEEDINGS THAT UNJUSTLY TOOK AWAY HIS CONDITIONAL LIBERTY. HE AT THE VERY LEAST SHOWED CAUSE FOR A CLAIM FOR A JUDICIAL REVIEW OF THIS CASE AND THE CIRCUMSTANCES THAT LED UP TO THE PAROLE REVOCATION.

APPELLANT'S CLAIMS AND ISSUES HAVE YET TO BE THOROUGHLY HEARD, INVESTIGATED, OR RULED UPON. APPELLANT IS NOT BRINGING EMPTY CLAIMS, HE HAS SUBMITTED LEGAL DOCUMENTS FROM THE FLORIDA STATES ATTORNEY EXONERATING HIM OF THE FALSE CHARGE THAT STARTED ALL OF THIS; SIGN-IN SHEETS FROM THE REPORTS HE WAS FALSELY ACCUSED OF MISSING; COMPUTER ENTRY EXCERPTS FROM THE FL. PAROLE AGENTS OWN COMPUTER CONTRADICTING THE REPORTS HE SENT TO S.C. (PROVIDED TO THE PAROLEE BY THAT AGENT'S SUPERVISOR). APPELLANT NEVER MOVED OR ABSCONDED IN THE ENTIRE TWO YEARS ON SUPERVISION, BUT WAS ACCUSED OF SUCH. HOW CAN ONE PROVE THAT THEY DIDN'T MOVE? MY BELONGINGS ARE STILL THERE AND MY MAIL STILL COMING THERE. APPELLANT SUBMITTED AN AFFIDAVIT OF RESIDENCE. POINT IS, APPELLANT DID ABSOLUTELY NONE OF THE ALLEGATIONS IN THE "PAROLE VIOLATION WARRANT" LODGED AGAINST HIM, BUT NO ONE IS LISTENING.

APPELLANT IS A LAYMAN AND MAY NOT KNOW THE PROPER PROCEDURES FOR RELIEF, OR THE CORRECT FORMAT, OR THE RIGHT LEGAL TERMINOLOGY, BUT HE KNOWS THAT WHAT HAPPENED TO HIM WAS WRONG AND HAS READ MANY CASES WHERE THE COURTS STEPPED IN AND RECTIFIED THESE VIOLATED RIGHTS FOR CASES FAR LESS DERELICT THAN THE PRESENT CASE.

PAROLEE IS BY NO MEANS SEEKING TO BE "SET-FREE" BUT TO BE RETURNED, UNDER THE STRICTEST OF SUPERVISION, TO HIS HOME STATE OF FLORIDA, WHICH WAS UNJUSTLY TAKEN FROM HIM.

WHEREFORE APPELLANT SEEKS A COMPLETE COMPREHENSIVE REVIEW OF THE AGENCY'S ACTIONS AND APPELLANT'S CLAIMS AGAINST WHAT WAS REQUIRED BY THE CONSTITUTION AND THE ICAOS REGULATIONS AND HOPEFULLY THE COURTS WILL AGREE THAT REINSTATEMENT OF PAROLEE'S SUPERVISION OR, IN THE LEAST, A De Novo REVOCATION HEARING IS WARRANTED.

The State of South Carolina
In The Court of Appeals

APPELLATE CASE NO. 2023-000847

Appeal From the Administrative Law Court
ON JUDGEMENT OF HON. ROBERT L. REIBOLD

A.L.C. Decision Dated: 5-2-23 Final Order Received: 5-4-23

South Carolina Department of Probation,
Parole, and Pardon Services

Respondant

PO Box 207
Columbia, SC 29202
dppps.sc.gov

v.

Ronald C. Albright #211533

Appellant
(Pro Se)

PO Box 205-SB-38
Ridgeville, SC 29472

MOTION FOR DESIGNATION OF MATTER TO BE INCLUDED IN RECORD

APPELLANT PROPOSES THE FOLLOWING TO BE INCLUDED IN THE RECORD ON APPEAL. THE UNDERSIGNED, RONALD C. ALBRIGHT, CERTIFIES THAT THIS DESIGNATION CONTAINS NO MATTER WHICH IS IRRELEVANT TO THIS CASE AND A COPY OF THIS FILING HAS BEEN SERVED ON ALL PARTIES INVOLVED (PROOF OF SERVICE ENCLOSED.) IN ACCORDANCE WITH: SCACR 208 AND 209 "INITIAL BRIEF" § "DESIGNATION OF MATTER"

- 1.) FINAL ORDER OF REVOCATION OF PAROLE - REQUESTED
- 2.) TRANSCRIPT OF PRELIMINARY/PROBABLE CAUSE HEARING - REQUESTED
- 3.) TRANSCRIPT OF PAROLE REVOCATION HEARING - REQUESTED
- 4.) NOTICE FROM FL. STATES ATTORNEYS (DATED: 12-29-16)
- 5.) EXCERPTS FROM FL. PAROLE AGENTS COMPUTER ENTERIES (12-2-16 THRU 2-8-17)
- 6.) FL. PAROLE REPORT SIGN-IN SHEETS (3) FROM: DEC. 16, JAN 17, AND FEB 17
- 7.) AFFIDAVIT OF RESIDENCE DATED: (10-16-20)
- 8.) PAROLE ARREST WARRANT AND INCORPORATED AFFIDAVIT DATED: (3-8-17)
- 9.) LETTER TO SCDPPPS "PETITION FOR REHEARING" DATED: (3-2-23)
- 10.) RESPONDANT'S MOTION TO DISMISS ALC CONTESTED CASE HEARING (4-3-23)
- 11.) PAROLEE'S RESPONSE TO MOTION TO DISMISS ALC CASE (4-10-23)
- 12.) ALC'S ORDER GRANTING MOTION TO DISMISS ALC CONTESTED CASE HEARING
- 13.) APPELLANT'S PETITION FOR CONTESTED CASE HEARING, BRIEF, AND MOTION TO ALC
- 14.) ANY AFFIDAVITS, TELETYPES, OR OTHER DOCUMENTS OR EVIDENCE RELIED UPON BY RESPONDANTS TO OBTAIN THE PAROLE VIOLATION WARRANT, EXTRADITION, AND REVOCATION OF PAROLEE'S SUPERVISION. - REQUESTED
- 15.) LETTER TO SCDPPPS REQUESTING ALL EVIDENCE.

6-21-2023

DATED

(C.C. ADMINISTRATIVE LAW COURT)
S.C. DEPT. OF PPP SERVICES

Respectfully Submitted,

Ronald C. Albright

Signed-Preparer of Document