

The State of South Carolina
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW
COURT

HONORABLE S. PHILLIP LENKI, ADMINISTRATIVE
LAW JUDGE

DOCKET NO. 23-ALJ-15-0022-AP

ROBERT F. SPIGNER, DUSSE
Appellant

v.
SOUTH CAROLINA DEPT. OF PROBATION, PAROLE, AND CORRECTIONS
RESPONDENTS.

BRIEF OF APPELLANT

RECEIVED

FEB 13 2024

SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES -	3
STATEMENT OF ISSUE ON APPEAL -	4
STATEMENT OF CASE -	5 - 6
ARGUMENT -	7 - 9
SPECIFICATION OF ARGUMENT -	10
CONCLUSION -	11

Table of Authorities

BARTON V. S.C. DEPT. OF PROBATION, PAROLE, PARDON SERVICES. 745 SE2d 110	- 10, 11
BROWN V. BILD INC. 535 SE2d 445	- 7
HAMM V. S.C. PUBLIC SERVICE COMM. 309 S.C. 295	= 7
SNELL V. PARLETTE 273 S.C. 317	- 6
S.C. CODE ANN. 55-612	- 5, 8, 9, 10
S.C. CODE ANN. 24-21-640	- 8, 9, 10
ADMINISTRATIVE LAW COURT RULE 58	- 8, 9

Statement of Issue on Appeal

Did the Administrative Law Judge
ERR when he failed to consider the
Reliable, Substantive Evidence on the
Whole Record?

Statement of The Case

Appellant was arrested in february of 1971
for Murder that occurred in December of 1970.
In September of 1971 Appellant was sentenced to
life with Parole eligibility, After Service of 10
years, S.C. Code ANN. 55-612. In August of 2000
Appellant violated the terms of his Parole,
Conditions 2, 3, 4, 7, and 11 SEE R 29

Appellant has since been before the Parole
Board 12 times, the latest denial on 6/31/23,
Final decision on 7/11/23, Appeal filed with
the Administrative Law Court on 7/31/23, Final
Order from A.L.C. on Jan. 3, 2024, denying
Appeal Notice of Appeal filed with the
S.C. Court of Appeals on Jan 16, 2024.

Standard of Review

The Court of Appeals may reverse, affirm or modify the judgment, decree or order appeal in whole or in part as to any or all of the parties, and the judgment shall be remitted to the court below to be enforced according to the law.

The Court may review evidence not to determine preponderance of evidence, but to determine whether there is any evidence that reasonably supports factual findings by the A.L.C. Judge. *Snell v. Pankette* (S.C. 1979) 273 S.C. 317, 256 S.E.2d 410.

Argument

Did the Administrative Law Judge ER when he failed to follow the Rule of the Court, by not considering reliable, substantive evidence on the whole record?

A decision by an administrative Agency may be modified or reversed if the findings and conclusions of the Agency are affected by error of law or clearly erroneous, in view of the reliable probative and substantial evidence on the record. *Brown v. BFL Inc.* 535 S.E.2d 445. It's decision must be based on documented factual findings within the record. *Hamm v. S.C. Public Service Comm.* 309 S.C. 295, 442 S.E.2d 118

Appellant presents reliable probative and substantive evidence on the record R— clearly stating "that when a person violates his parole, it is mandatory that the enforcement phase be used" R24-28

The Respondent produced no document that says the enforcement phase is the same as the statute in effect now, comparing S.C. Code Ann. 55-612 to S.C. Code Ann. 24-21-640 see R22. The Administrative Law Court Rule 58B "The Respondent must produce the documents relied upon in making their decision on this issue as well as all other document relating to this claim.

It is an error for the Administrative Law

Judge to make a decision without the benefit of this rule, A.L.C. Rule 58B. No where in their response do the respondents acknowledge the enforcement phase or explain the details as she tried to compare 55-612-to 24-21-640. Without reliable probative evidence it is an error for the A.L.C. Judge to accept the argument from the respondent

All policies specific relied upon by the Agency must be included in the record.

Appellant produced reliable specific policy to show that the enforcement phase is mandatory. The respondent produced nothing to show that the policy is not.

Specification of Argument

The A. L. C. Judge has overlooked the fact that this Claim is about the Criteria for Parole Violators. The Respondent Companies Statutes (55-612, 24-21-640) that are in effect for people who are going up for Parole. In 1970 the Mandatory Policy for Parole Violators in South Carolina was the Enforcement Phase. The Law requires that the Parole Board use the Criteria for Parole Violators that was in effect, if the Violator Original Sentence is from 1970. SEE BARTON V. SOUTH CAROLINA DEPT. OF PROBATION, PAROLE AND PARDON SERVICES. 745 S.E.2d 110

CONCLUSION

The Respondent are not following the Law. To have a right to require the Parole Board to use the Correct Criteria. Appellant was arrested on August 16, 2000 on Arrest Parole Warrant issued in March of 2000 R 28. An has been in Prison continuously since for technical Parole Violations. Failure by the Administrative Law Court Judge to consider the whole record is error.

The Statute that was in effect is the Statute that must be used. See *Thelma Barton v. S.C.D.P. P.P.S.* 745 S.E.2d 110. The fact this Statute applies the Court should have considered the Exhibits presented.

State of South Carolina

IN THE COURT OF APPEALS

Appeal From Administrative Law Court

Hon. S. Phillip Leuski, Administrative Law Judge

Appellate Case No. 2024-000093

Designation of Matter to be Included in

The Record on Appeal.

Appellant proposes the following be included

IN THE RECORD ON APPEAL.

1. Order of A.L.C. Judge. Jan. 3, 2024
2. Brief of Appellant
3. Exhibit #1 Cover Page
4. Exhibit #2 YEAR SPAN
5. Exhibit #3 Chapter II
6. Exhibit #4 Supervision
7. Exhibit #5 Supervision Continued.

8 Exhibit #6 PANOLE ARREST WARRANT.

I Certify that this designation contains
NO MATTER which is irrelevant to this Appeal.

Dated: