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SC Court of Appeals

State of South Carolina

IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT

Hon. S. Phillip LENSKI, Administrative Law Judge.

CASE NO. 2024-000093

ROBERT SPIGNER, 065300 Appellant

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE,
AND PARDON SERVICES Respondent

RECORD ON APPEAL

ROBERT F. SPIGNER, 065300, Appellant
Allendale Corr. Inst
1057 REVOLUTIONARY TRAIL
FAIRFAX, S.C. 29287

Matthew Buchanan
General Counsel, Attorney for Respondent
South Carolina Department of Probation, Parole, Pardon
Services
P.O. Box 207
Columbia, S.C. 29202.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert Spigner, #65500,)
)
Appellant,)
)
v.)
)
South Carolina Department of Probation,)
Parole and Pardon Services,)
)
Respondent.)
_____)

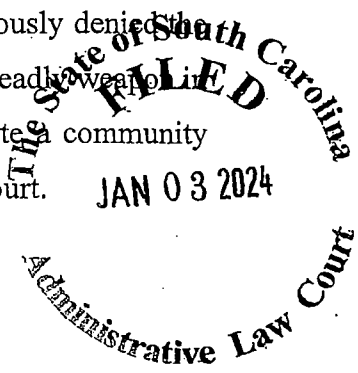
Docket No. 23-ALJ-15-0022-AP

FINAL ORDER

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed on July 21, 2023, by Robert Spigner (Appellant), an inmate in the custody of the South Carolina Department of Corrections (SCDC). On June 21, 2023, the South Carolina Department of Probation, Parole and Pardon Services (Department or Respondent) notified the Appellant of the South Carolina Parole Board's (Board) unanimous decision to deny the Appellant parole. The Appellant challenges the Board's denial of parole on the basis that the criteria that was in effect at the time of his parole violation in 1971 controls his parole and that the Board's use of incorrect criteria renders him ineligible to be a part of the parole program. After careful consideration of the parties' briefs, the Department's determination is affirmed.

BACKGROUND

On September 8, 1971, the Appellant was sentenced to life in prison for murder, with the possibility of parole after service of ten (10) years. In 1981 upon his initial appearance, the Appellant was granted parole. However, in September of 2000, the Appellant's parole was revoked for absconding supervision, admitting to the use of cocaine and crack cocaine, failure to maintain employment and testing positive for marijuana. Since the Appellant's parole revocation, the Appellant has been before the Parole Board ten (10) times each resulting in the denial of parole. At the Appellant's most recent appearance on June 21, 2023, the Board unanimously denied the Appellant parole due to the nature and seriousness of the current offense, use of deadly weapons in this or previous offense and for the Appellant's failure to successfully complete a community supervision program. On July 21, 2023, the Appellant filed an appeal with the court.



ISSUE ON APPEAL

Whether the Parole Board not using the parole criteria in effect in 1971, renders the Appellant ineligible for parole?

STANDARD OF REVIEW

The court’s jurisdiction to review this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz* and *Furtick*. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals); see also *Furtick v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). As explained by the *Al-Shabazz* Court, “procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment’s protection of liberty and property.” *Wicker v. S.C. Dep’t of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted).

Since parole is a privilege, not a right, the routine denial of parole does not constitute such a liberty interest. See *Cooper v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 495-96, 661 S.E.2d 106, 109-10 (2008) (citation omitted). If, however, the Board “deviates from or renders its decision without consideration of the appropriate [statutory] criteria, . . . it essentially abrogates an inmate’s right to parole eligibility and, thus, infringes on a state-created liberty interest.” *Id.* at 499, 661 S.E.2d at 111. Thus, this court may review decisions from the Department for violations of statutory procedure or procedural due process only but may not review the Board’s substantive decision to deny an appellant parole.

In reviewing such matters, the court sits in its appellate capacity. See *id.* at 497, 661 S.E.2d at 110 (citation omitted); *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754 (citation omitted). Under the Administrative Procedures Act, the court’s review in appellate matters is confined to the record. S.C. Code Ann. § 1-23-380(4). The court may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). Substantial rights of the appellant are prejudiced when the agency’s findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

As stated *supra*, parole is not a right, but a privilege. *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 104 (2008) (citing *Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 n.4 (2003)). The discretion to grant parole lies solely with the Board. *Id.* at 649, 659 S.E.2d at 104-05 (citing *State v. McKay*, 300 S.C. 113, 115, 386 S.E.2d 623, 623-24 (1989)). If, in denying parole, the Board follows proper procedure, then its decision will constitute a routine denial of parole and summary dismissal of the case would be appropriate. *See Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; *see also Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). The proper procedure for the Board to follow includes considering the factors outlined in Section 24-21-640 of the South Carolina Code, as well as those listed in the Department's parole form. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; *Compton*, 385 S.C. at 479, 685 S.E.2d at 177; *see also* S.C. Code Ann. § 24-21-640 (Supp. 2019) (setting forth the statutory factors warranting parole). Additionally, the Board must utilize an actuarial risk and needs assessment tool, known as COMPAS, in making its parole determinations. *See* S.C. Code Ann. § 24-21-10(F) (Supp. 2019).

If the Board fails to follow proper procedure, giving due consideration to the specified factors, an appellant is denied his liberty interest in parole eligibility. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. If, however, the Board adheres to procedure and considers all the requisite factors, the appellant's liberty interest is protected, and the Board has the discretion to deny parole based on any of the factors found in Section 24-21-640 or its own criteria. *See id.* at 499, 661 S.E.2d at 111-12. Here, the Board's order plainly reflects that it considered all the appropriate factors – including those set forth in Section 24-21-640, the Department's own criteria for parole consideration, and an actuarial risk and needs assessment – before making its decision to deny the Appellant parole. Thus, as a routine denial of parole, the court's ability to further review this matter is limited:

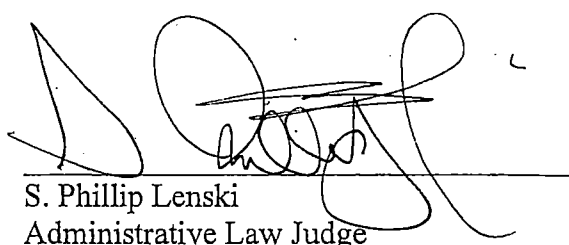
[T]he [] Board may avoid [reversal of its parole determinations] if it clearly states in its order denying parole that it considered the factors outlined in [S]ection 24-21-640 and the fifteen factors published in its parole form. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

Cooper, 377 S.C. at 500, 661 S.E.2d at 112; see Compton, 385 S.C. at 479, 685 S.E.2d at 177. Consequently, because the record reflects that the Board routinely denied the Appellant parole after complying with the necessary procedure, the court may not interfere with the Department's determination.

ORDER

THEREFORE, for the foregoing reasons, the Department's decision is hereby **AFFIRMED**.

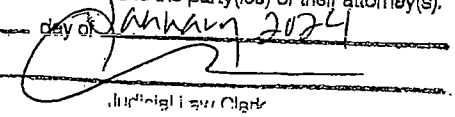
AND IT IS SO ORDERED.


S. Phillip Lenski
Administrative Law Judge

January 3, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States Mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 3 day of January 2024

Judicial Law Clerk

State of South Carolina
Administrative LAW COURT

Robert F. Spigner, 065300

Docket No. 23P0022

PETITIONER
v.

HONORABLE JUDGE LENSKI

SOUTH CAROLINA DEPT. OF P.P.S.

RESPONDENT

STATEMENT OF THE CASE

Petitioner, was arrested in February of 1971, for Murder that occurred in December of 1970. In September of 1971 Petitioner was sentenced to Life with Parole Eligibility after service of 10 years. S.C. Code Ann. 55-612. In August of 2000 Petitioner violated the terms of his Parole. Conditions 2, 3, 4, 7 and 11. See Attached Exhibit "6"

PETITIONER HAS SINCE BEEN BEFORE THE PAROLE BOARD 12 TIMES, THE LATEST DENIAL ON 6/21/23, FINAL DECISION ON 7/11/23 FILED WITH THE A.L.G. ON 7/31/23.

JURISDICTION AND STANDARD OF REVIEW

AN INDIVIDUAL HAS A RIGHT TO A.L.G. REVIEW OF A FINAL DECISION OF THE DEPARTMENT ONLY WHEN THAT DECISION AFFECTS A LIBERTY INTEREST FOR WHICH DUE PROCESS IS REQUIRED, SEE *FORTIJK V. S.C.D.P.P.S.*, 576 S.E2D 146. ONE CLAIMS THAT THE PAROLE BOARD FAILED TO CONSIDER THE APPROPRIATE CRITERIA SO AS TO BE TENTATIVE TO AN ABROGATION OF PAROLE ELIGIBILITY, SEE *COOPER V. S.C.D.P.P.S.*, 661 S.E2D 106. THE PROVISIONS OF THE S.C. ADMINISTRATIVE PROCEDURES ACT (A.P.A.) GOVERN AN APPEAL FROM A DECISION OF THE DEPARTMENT THAT AN INMATE IS NOT ELIGIBLE FOR PAROLE.

ISSUE ON APPEAL

Does the S.C. Parole Board render Petitioner ineligible for Parole by using the incorrect criteria in deciding whether to continue Petitioner on Parole?

Petitioner pled guilty in Richmond County Court-house on Sept. 9, 1971. A guilty plea is a legal binding contract. Under that contract I was told that I would be eligible for Parole after service of 10 years. The Law and the Policies that were in effect in 1970 are the Law and Policies that Govern my Parole, (55-612). Under these Statutory Policies "When a Person Violates the Conditions of his Parole it is Mandatory that the Enforcement Phase" be implemented". See Attached Exhibits 1-6.

Failure by the Parole Board to use Statutory Criteria is tantamount to an abrogation of Parole Eligibility. The Action by the Parole Board is a clear violation of Petitioner's Procedural and Substantive Due Process Rights, as required under *Furick v. S.C.D.P.P.S.* 576 S.E.2d 146. Further, "Saving Clause" in 1993 Act No. 1848 266 Effective Jan 1, 1994 which set forth all preceding pending and All Rights and liabilities existing, Acquired or incurred at the time this Act takes effect are saved. To have a State Created Liberty interest in requiring the Parole Board to adhere to Statutory Criteria in rendering its decision.

This Court will take Judicial Notice that Petitioner is serving time for a Technical Violation of his Parole, and to date he has served 23 years. Petitioner violated

Conditions 2, 3, 4, and 7 of the terms of his Parole.
 SEE Exhibit "6". Attached is the Statutory Policy
 that was in effect in 1970. SEE Exhibits Attached
 "1-6" (Exhibit(1) Stamp of the S.C. Dept Archive and
 History, Exhibit(2) the year span, Exhibit(3) the Chapter,
 Exhibit(4) Topic Supervision, Exhibit(5) Supervision, Exhibit(6)
 Parole Arrest Warrant. These Exhibits Clearly Show
 what Statutory Policy was in effect in 1970 and
 what the Parole Board is required to do when a
 person violates the terms of his Parole. Failure by
 the Parole Board Amount to a denial of Petitioner
 to be Eligible to participate in the Parole Program.

CONCLUSION

THE LAW THAT WAS IN EFFECT IN 1970 WHEN THE OFFENSE HAPPENED STATES "WHEN SOMEONE VIOLATES THE TERMS OF HIS PAROLE IT IS MANDATORY THAT WE USE THE ENFORCEMENT PHASES". THIS IS STATUTORY, FAILURE TO USE THIS LAW EFFECTIVELY NULLIFIED STATE LAW. THE S.C. PAROLE BOARD OPERATES ABOVE THE LAW, CONSISTENTLY IGNORING THE CORRECT CRITERIA, EFFECTLY DENYING THE PETITIONER ELIGIBILITY FOR PAROLE. THE S.C. PAROLE BOARD APPARATUS IS SO DYSFUNCTIONAL AND UNFAIR THAT IT IS DOING MORE HARM THAN GOOD. PLEASE SEE EXHIBITS 1-6 ATTACHED.

Failure by the Board to use the correct
Criteria deprives me of the weakness that
needs to be addressed to be continued
on parole.

State of South Carolina

Administrative Law Court

ROBERT F. SPIGNER, 065500
Petitioner

CASE NO. 23P0022

v.

Certificate of Service

South Carolina Dept. of P.P.S.

Petitioner, declares under the penalty of perjury that he mailed a copy of his original brief to the parties listed below by placing them in the U.S. Mail addressed as below.

Respectfully

Honorable Judge LenSKI
1205 Pendleton St, Suite 224
Columbia, SC. 29201

Director of Legal Services
S.C.D.P.P.S.
P.O. Box 50666
Columbia, S.C. 29250

ROBERT F. SPIGNER, 065500
Attendale Core Bldg.
1057 Revolutionary Trail
FAIRFAX, S.C. 29827

Dated: 7/31/23

cc: file.

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JODI GALLMAN
Acting Director

293 GREYSTONE BLVD
POST OFFICE BOX 207
COLUMBIA, SOUTH CAROLINA 29202
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

December 14, 2023

The Honorable Phillip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

RE: Robert Spigner, #065500 v. S.C. Department of Probation, Parole and Pardon Services

Dear Judge Lenski:

Please find enclosed for filing the *Brief* dated December 14, 2023, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Matthew Buchanan
Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures

cc: Robert Spigner, #065500

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

ROBERT SPIGNER, #065500 APPELLANT

v.

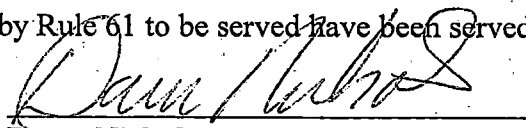
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Brief*, dated December 14, 2023, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 14th day of December, 2023, addressed to:

Robert Spigner, #065500
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, S.C. 29827

I further certify that all parties required by Rule 61 to be served have been served.



Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202

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STATE OF SOUTH CAROLINA
In the Administrative Law Court
Docket Number 23-ALJ-15-0022

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

ROBERT SPIGNER, #065500, APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

BRIEF OF RESPONDENT

**Matthew Buchanan
General Counsel**

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220**

ATTORNEY FOR RESPONDENT

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APPELLANT’S STATEMENT OF THE ISSUE ON APPEAL

- I. “Does the S.C. Parole Board render Petitioner ineligible for parole by using the incorrect criteria in deciding whether to continue Petitioner on parole?”

STATEMENT OF THE CASE

On December 23, 1970, the Richland County Sheriff's Department received a call that a checker cab was found parked half-way between Sunglow and Conders Road in Columbia, South Carolina. After the authorities responded they found Victim slumped over the steering wheel, shot in the right temple and her throat cut. Deputies contacted the Checker Cab dispatcher, learning that Victim's last pickup were two males from the airport wishing to be taken to Farrow Road. Deputies then spoke to the individuals at the airport, but the interviews brought no leads so the case grew cold.

On February 17, 1971, investigators caught a break when a witness came forward who said that on the incident date, he gave Appellant and his co-defendant a ride to the airport. He was told to pick them up later on Catalina Court. When he returned, both defendants ran to his vehicle, and he noticed Appellant was in possession of a reddish purse. They informed the witness they had just robbed and shot a cab driver. After this new information Appellant was brought in for questioning. After being advised of his rights, he informed the authorities that he in fact did committed the robbery; however, he said the co-defendant actually shot Victim.

On September 8, 1971, Appellant appeared before the Honorable Wade Weatherford for the charge of murder. Upon completion of this appearance Judge Weatherford sentenced the Appellant to a term of incarceration for the remainder of his natural life.

At the time of the offense South Carolina law allowed for parole eligibility upon the service of ten years. Appellant was granted parole upon his initial appearance in 1981. Appellant's parole was later revoked in September of 2000 due to his admitting the use of cocaine, absconding supervision, failure to maintain employment, and testing positive for marijuana.

RECORDED FROM FOOTNOTES
FEDERAL DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.
S 20100K Prohibition London & Berlin
Policy & Procedures Manual and Directive
Box 1 Statutory Revision
1964

Exhibit # 1

(X)

42

Exhibit # 6

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PAROLE
ARREST WARRANT

Indictment Number 71-GS-40-29301
Warrant Number W-40-00-0293
State Identification No. (SID) E2125

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF COLUMBIA, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that ROBERT SPIGNER, did on the 29 day of MAR 2000,
_____ violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Robert Spigner has violated conditions 2, 3, 4, 7, and 11 of his parole as ordered by the SC Probation, Parole, and Pardon Board per parole certificate dated 7/7/81, and the Order of Continuation dated 5/11/98.

Now, therefore, you are empowered, and directed to arrest the said defendant and bring ROBERT SPIGNER before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at COLUMBIA, S. C. this 29 day of MAR 2000

Victoria Jakes

Signature of Probation and Parole Agent (L.S.)

County of RICHLAND
STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one VICTORIA JAKES, who, first being duly sworn, deposes and says that ROBERT SPIGNER did within this County and State on the 29 day of MAR 2000, _____, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

Robert Spigner has violated conditions 2, 3, 4, 7, and 11 of his parole as ordered by the SC Probation, Parole, and Pardon Board per parole certificate dated 7/7/81, and the Order of Continuation dated 5/11/98.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Robert Spigner has moved to an unknown location without knowledge or consent of his Agent on or about 3/16/00, thus absconding supervision; failed to report as instructed missing monthly reports for 2/99, 3/99, 4/99, 5/99, 6/99, 7/99, and 9/99; has failed to report weekly as instructed missing reports for 3/20/00 and 3/27/00; tested positive for marijuana on 1/10/00; admitted to using powder cocaine weekly on 10/12/98, admitted to using crack cocaine on 8/2/99 and 12/6/99; admitted to using cocaine on 8/2/99 and 8/23/99; has failed to maintain employment; has failed to make available to the Agent the means to visit his home due to absconding, thus failing to carry out all instructions.

Sworn to and Subscribed before me this 29 day of MAR 2000.

Victoria Jakes

Affiant

DM. Wad

Signature of Notary Public (L.S.)

Address: SC Dept. of Probation, Parole, and Pardon Services, Richland County Office
1221 Gregg Street
Columbia, SC 29201

12-17-2009
My Commission Expires

(Form Continues on Back)

WARRANT ENTERED IN SCIENCE
Date entered: 4/6/00
Date served: _____
by (initials) _____

State of South Carolina
 In The Court of Appeals
 Appeal from The Administrative Law Court
 Hon S. Phillip LenSKI Administrative Law Judge
 CASE NO 2024-000093

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SC Court of Appeals

Robert Spigner, 065500 - Appellant

v

South Carolina Dept. of Probation, Parole and
Pardon Services

Certificate of Appellant

I certify that I am the Appellant in
 this claim and that nothing in these documents
 is irrelevant to this matter.

Respectfully

DATE: Feb. 9, 2024

Robert Spigner, 065500
 Attending Clerk East
 1057 Revolutionary Trail
 FAIRFAX, S.C. 29827

State of South Carolina
In The Court of Appeals

RECEIVED

APR 11 2024

SC Court of Appeals

Case No. 2024-000093

Certificate of Service

Robert Spigner, 065500 - Appellant

v

South Carolina Dept. of Probation, Parole
and Pardon Services - Respondent

Appellant Robert Spigner declares under the
penalty that he mailed a copy of his record
on appeal to the parties listed below by placing
them in the U.S. Mail clearly addressed.

Ms. Jerry A. Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

Respectfully,

Robert F. Spigner

cc: File
Dated: Feb. 9, 2024

General Counsel
S.C. Dept of Probation, Parole, Pardon Services
293 Greystone Boulevard
Columbia, SC. 29202