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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
South Carolina Department of Probation, Parole and Pardon Services

Crystal M. Rookard, ALJ
Case No. 23-ALJ-15-0021-AP

Appellate Case No. 2024-000110

Bernard Bagley, #175851

Appellant,

v.

South Carolina Department
of Probation, Parole and
Pardon Services,

Respondent.

FINAL BRIEF OF APPELLANT

Bernard Bagley
#175851/MB64b/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

Pro Se

Other Counsel Of Record:

SCDPPPS Office of General Counsel
Matthew C. Buchanan, Esquire
P.O. Box 207
Columbia, SC 29202
Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. DID THE DEPARTMENT ERR IN FAILING TO PRESENT A REPORT TO THE PAROLE BOARD AS TO APPELLANT'S MENTAL CONDITION AND HIS ABILITY TO ADJUST TO LIFE OUTSIDE THE PRISON FROM A DULY QUALIFIED PSYCHIATRIST OR PSYCHOLOGIST AS REQUIRED IN RELEVANT PART, BY §24-21-610 OF THE S.C. CODE (SUPP. 2022)?
2. DID THE PAROLE BOARD FAILED TO CONSIDER A REPORT AS TO APPELLANT'S MENTAL CONDITION AND HIS ABILITY TO ADJUST TO LIFE OUTSIDE THE PRISON IN REACHING A DECISION TO GRANT OR DENY PAROLE WHEN HE HAS SERVED A TOTAL OF TEN (10) CONSECUTIVE YEARS OR MORE IN PRISON AS REQUIRED IN RELEVANT PART, BY §24-21-610 OF THE S.C. CODE (SUPP. 2022)?
3. DID THE PAROLE BOARD FAILED TO REVIEW A REPORT AS TO APPELLANT'S MENTAL CONDITION AND HIS ABILITY TO ADJUST TO LIFE OUTSIDE THE PRISON FOR A DETERMINATION TO GRANT OR DENY PAROLE IS MOOT?
4. WHETHER A REPORT OF APPELLANT'S MENTAL CONDITION AND HIS ABILITY TO ADJUST TO LIFE OUTSIDE THE PRISON FOR A PAROLE DETERMINATION IS AN ISSUE CAPABLE OF REPETITION, YET EVADING REVIEW, WHEREBY, PAROLE BOARD WILL HAVE REVIEWED HIS CASE FOR PAROLE DETERMINATION WITHOUT A REPORT PRESENTED OF HIS MENTAL CONDITION AND HIS ABILITY TO ADJUST TO LIFE OUTSIDE THE PRISON ISSUE CAN BE REVIEWED?

STATEMENT OF THE CASE

Bernard Bagley, the Appellant, appeals an order dated December 28, 2023, of the Administrative Law Court (ALC) affirming an order of the Parole Board dated June 21, 2023, of the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS/Department) denying him parole and failure to act within its lawful authority and to comply with the laws of §24-21-610, and §24-21-50, of S.C. Codes (Supp. 2022):

This case now come before the Court of Appeals pursuant to the appeal of Bernard Bagley, an individual incarcerated within the South Carolina Department of Corrections (SCDC). Appellant has appeared before the Board approximately seven (7) times, and each time the Board denied him parole without a report presented as to his mental condition and ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist in reaching a decision to grant or deny parole, especially when the Board asks him questions about his mental health status. The Appellant has served a total of 33 consecutive years and more in prison, and as required a report as to his mental condition and his ability to ad-

just to life outside the prison in reaching a decision to grant or deny parole. Appellant challenges the Board's (1) substantial evidence does not support the ALC's finding that whether a report of Appellant's mental condition and his ability to adjust to life outside the prison for a parole determination is an issue capable of repetition, yet evading review, whereby the Parole Board will have reviewed his case for parole determination without a report presented of his mental condition and his ability to adjust to life outside the prison issue can be reviewed, and (2) whether the Parole Board failed to consider a report as to Appellant's mental condition and his ability to adjust to life outside the prison in reaching a decision to grant or deny parole when he has served a total of ten (10) years or more in prison as required in relevant part, by §24-21-610, of the S.C. Code (Supp. 2022), along with two (2) additional issues.

Appellant served Notice of Appeal on Respondent January 17, 2024.

FACTS

The Parole Board's transcript and audio disc regarding Appellant's June 21, 2023, parole hearing will reveal questions about his mental condition status, in which Bagley is just a layman and only discuss the diagnosis made by SCDC Mental Health personnel of Post-Traumatic Stress Disorder (PTSD) as serving in law enforcement and from an injury sustained after a training exercise during military service.

Bagley was not permitted argument nor permitted to present a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist in accordance of §24-21-50, and §24-21-610, of the S.C. Codes (Supp. 2022). Appellant has served 33 consecutive years and more imprisonment within SCDC. The Board did not receive a report as to the same for parole determination for leave of absence from prison, during which Appellant will still remain in legal custody until expiration of sentence under the Department's jurisdiction.

Appellant can not be parole until the Board receive such report as to make parole eligibility contingent on completing it, thus, creating a liberty interest, and failure to receive a report could shock the conscience for purpose of substantive due process analysis. Exclusion from a finding of a report results in permanent parole ineligibility by meaningful determination to grant or deny parole violate a state-created liberty interest under §24-21-610, of S.C. Code (Supp. 2022).

In addition, the issue is repetition and evading review. The Appellant is not asking the court(s) to grant him parole, but rather, a new parole hearing within 90 days of the filing of the Final Brief.

ARGUMENTS

1. THE DEPARTMENT ERR IN FAILING TO PRESENT A REPORT TO THE PAROLE BOARD AS TO APPELLANT'S MENTAL CONDITION AND HIS ABILITY TO ADJUST TO LIFE OUTSIDE THE PRISON FROM A DULY QUALIFIED PSYCHIATRIST OR PSYCHOLOGIST AS REQUIRED IN RELEVANT PART, BY §24-21-610 OF THE S.C. CODE (SUPP. 2022).

Section 24-21-610, reads in relevant part, "...No prisoner may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist."

Appellant avers that State law §24-21-610 requires the Department to provide a report as to the mental condition and his ability to adjust to life outside the prison because "no prisoner who has served a total of 10 consecutive years or more in prison may be paroled until the Board has first received such report."

Because the ALC failed to make this finding, its order is affected by an error of law, the Appellant argues, whereby, "no prisoner who has served a total of 10 consecutive years or more in prison may be paroled...." (emphasis added).

The report of an inmate's mental condition and ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist is required in reaching a decision to grant or deny parole because no prisoner who has served a total of 10 consecutive years or more in prison may be paroled until the Board has first received such report. Bagley has served a total of 33 consecutive years and more; however, the Board have not received yet a report as required under §24-21-610, nor have he been permitted to argue in accordance to §24-21-50, of the S.C. Code the same to grant or deny parole for the Board in reaching its decision.

Section 24-21-50, Hearings, arguments and appearances by counsel or individuals.

The board shall grant hearings and permit arguments and appearances by counsel or any individual before it at any such hearing while considering a case for parole, pardon, or any other form of clemency provided for under law. No inmate has a right of confrontation at the hearing.

The Board will not parole the Appellant until it first received a report as to the contents in the report to make parole eligibility contingent on completing it, thus, creates a liberty interest, and failure to provide the report for determination in reaching a decision to grant or deny parole could shock the conscience for purpose of substantive due process analysis. Exclusion from a finding of Bagley's results in parole ineligibility he contends, and violate a state-created liberty interest. The Court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). SEE: Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001), "An appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review."

2. THE PAROLE BOARD FAILED TO CONSIDER A REPORT AS TO APPELLANT'S MENTAL CONDITION AND HIS ABILITY TO ADJUST TO LIFE OUTSIDE THE PRISON IN REACHING A DECISION TO GRANT OR DENY PAROLE WHEN HE HAS SERVED A TOTAL OF TEN (10) CONSECUTIVE YEARS OR MORE IN PRISON AS REQUIRED IN RELEVANT PART, BY §24-21-610 OF THE S.C. CODE (SUPP. 2022).

Appellant avers that the Court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Sloan 370 S.C. at 469, 636 S.E.2d 607 (2006). SEE: City of Sumter Police Dept. v. One (1) Blue Mazda Truck(VIN No. JM2UF1132NO294812), 330 S.C. 371, 498 S.E.2d 894 (1998). The ALC failed to make this finding, its order is affected by an error of law, the Appellant contends.

In addition, Bagley avers the Court should take jurisdiction, despite mootness, because most issue raised is capable of repetition and evading review. SEE: Hayes v. State, 413 S.C. 553, 558, 777 S.E.2d 6,9 (Ct.App. 2015), "taking jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review." ALSO SEE: Nelson v. Ozmint, 390 S.C. 432, 434-35, 702 S.E.2d 369, 370 (2010), "We find this issue is one that is capable of repetition, yet will usually evade review because most inmates will have served the year required by SCDC's interpretation of the statute before the lawfulness of the interpretation can be reviewed."

3. THE PAROLE BOARD FAILED TO REVIEW A REPORT AS TO APPELLANT'S MENTAL CONDITION AND HIS ABILITY TO ADJUST TO LIFE OUTSIDE THE PRISON FOR A DETERMINATION TO GRANT OR DENY PAROLE IS MOOT.

Appellant asserts that there is no substantial evidence to support the Board's nor the ALC's finding that whether the Parole Board failed to receive or received a report as to Bagley's mental condition and ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist for its determination in reaching a decision to grant or deny him parole when §24-21-610 clearly states "no prisoner who has served a total of 10 consecutive years or more in prison may be paroled until the Board has first received a report..." Bagley further asserts, that there is no way for the Board to meaningful to consider his eligibility for parole nor consider the same when the Board does not comply with the statute §24-21-610 in an effort to grant him parole, because Bagley has served a total of 33 consecutive years and more in prison, and according to the statute "no prisoner who has served a total of 10 consecutive years or more in prison may be paroled until the Board has first received a report...." That particular interpretation in the statute makes parole eligibility contingent on completing it for the Board's determination in reaching its decision to grant or deny parole, and failure to have such report for its determination and reaching its decision is shocking the conscience for purpose of substantive due process analysis. Exclusion from a finding of Appellant's results in parole ineligibility that violates a state-created liberty interest. Bagley also asserts that under the Equal Protection Clause his name character, disposition, attitude, and integrity is at stake and the Board has imposed a

stigma and barrier upon him due to its failure to receive a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist in an effort to be granted parole or just for parole purposes. Additionally, Appellant does not have the privilege or right under §24-21-50 to argue for consideration during the parole hearings, regardless routine or not.

SEE: U.S. Constitution 14th Amendment, and S.C. Constitution Article 1, §3:

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

ALSO SEE: Sloan 370 S.C. at 469, 636 S.E.2d 607 (2006), "The Court should give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation."

Hayes 413 S.C. at 558, 777 S.E.2d 6,9 (Ct.App. 2015), "taking jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review."

Nelson 390 S.C. at 434-35, 702 S.E.2d 370 (2010), "We find this issue is one that is capable of repetition, yet will usually evade review because most inmates will have served the year required by SCDC's interpretation of the statute before the lawfulness of the interpretation can be reviewed."

4. A REPORT OF APPELLANT'S MENTAL CONDITION AND HIS ABILITY TO ADJUST TO LIFE OUTSIDE THE PRISON FOR A PAROLE DETERMINATION IS AN ISSUE CAPABLE OF REPETITION, YET EVADING REVIEW, WHEREBY, PAROLE BOARD WILL HAVE REVIEWED HIS CASE FOR PAROLE DETERMINATION WITHOUT A REPORT PRESENTED OF HIS MENTAL CONDITION AND HIS ABILITY TO ADJUST TO LIFE OUTSIDE THE PRISON ISSUE CAN BE RELEVANT.

Section 24-21-50, of the S.C. Code, provide for the Appellant to argument(s) during the parole hearing while considering a case; however, Appellant is deprived such argument regarding his mental condition and ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist when there is no report available for determination in reaching a decision whether to grant or deny parole.

S.C. Code Ann. §1-23-610(B), The Court of Appeals may reverse or modify the decision of the Administrative Law Court (ALC) only if the appellant's substantive rights have been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law. The ALC affirmed the denial of parole by the Parole Board and considered Bagley's due process rights were not denied when the Department did not present a report to the Board regarding his mental condition as required by §24-21-610, of the S.C. Code (2022), and because it was a routine denial.

Appellant asserts regardless, whether routine or not he should be permitted an argument in accordance to §24-21-50 during the parole hearing for parole deter-

mination to consider a report as to his mental condition and ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist because he has served 33 consecutive years and more in prison because he cannot be parole until a report is received by the Board for determination in reaching its decision to grant or deny parole under §24-21-610.

Appellant further argues that the Board is required to permit those eligible for parole argument during the parole hearing in considering a case. None of the members of the Board received such report concerning Bagley's suitability for parole in accordance to §24-21-610. Additionally, Bagley argues he is entitled to argue his suitability for parole, but since his parole file was incomplete without a report to inspect or argue the ALC's findings are in error. SEE: §1-23-610(d)(e)(f), S.C. Code Ann, and SCDPPPS Form 1212, Criteria for Parole Consideration.


The Appellant is entitled to argue his suitability for parole but when his file is incomplete of such report, "it is logically and legally absurd." SEE: Kelsey v. SCDPPPS, 441 S.C. 373, 893 S.E.2d 588 (2023), and §24-21-50.

CONCLUSION

WHEREFORE, Appellant asks the Court to grant this appeal and reverse and remand for a new parole hearing that requires the Board to comply with the law because Bagley is entitled to argue his suitability for parole contingent on completing it for the purpose of substantive due process analysis.

For the foregoing reasons, Appellant asks for a new parole hearing.

Respectfully submitted,


Bernard Bagley
#175851/MB64b/KDR.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

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CERTIFICATE (PRO SE) COUNSEL

The undersigned, pro se, certifies that this Final Brief complies with Rule 211(b), SCACR.

April 15, 2024

s/

Bernard Bagley
#175851/MB64b/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se