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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.

REPLY BRIEF

Bernard Bagley
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pro se

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The Appellant incorporate herein verbatim the Appellant's Brief to support the Reply Brief, and vice versa.

The Respondent states in its brief, page 2, ¶2, that the psychological report is not one of the requisite factors of parole consideration. The Appellant avers that Form 1212, Criteria for Parole Consideration states they differ. Factors 1, 7, 10, and 16 are intertwined with S.C. Code §24-21-610. SEE: ROA, p. 3, and p. 6, of Appellant's Brief. S.C. Code §24-21-50, Hearings, arguments and appearances by counsel or individuals; however, Appellant is not able to aver at any such hearing if a report is not available regarding his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist for the Board to have in its decision-making process and determination whether to grant or deny parole in accordance to §24-21-640, S.C. Code Ann.

Appellant asserts that failure of the Board not receiving a report to his mental condition and ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist is a clear irregularity in the procedure of the Board's process.

Appellant concurs that "parole is a privilege, not a right." And, that no such prisoner may be paroled until it appears to the satisfaction of the board to grant an inmate parole. For this reason, a prisoner when he has served a total of ten (10) consecutive years or more in prison require a report to his mental condition and ability to adjust to life outside the prison from an expert witness, i.e. duly qualified psychiatrist or psychologist.

Appellant asserts that the Board's procedure abrogates his parole eligibility by failing to consider the relevant factor regarding suitability for parole under §24-21-640, S.C. Code, and §24-21-610, of S.C. Code, duly qualified psychiatrist or psychologist.

Appellant asserts that the Respondent opposes any prisoner that has served a total of 10 consecutive years or more in prison a report to his mental condition and ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist for the sake of law §24-21-640, to assist the board in its decision-making procedure and determination procedure whether to grant or deny parole, which is a requisite required factor for a prisoner that has served a total of 10 consecutive years or more in prison that the Board receive a psychological report pursuant to §24-21-610 may be paroled. There is nothing in the statute language regarding :

provisionally paroled nor to the final parole order is signed, effecting release. Although, Respondent argues that there is practical consideration why this interpretation of §24-21-610, by the Board should be upheld is the reason why the Court clearly states "give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." SEE: Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006). The General Assembly Intent states that "no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report...." The Respondent, with all do respect, puts the cart before the horse with construction words such as "provisionally" "prior to release to parole" and "condition."

The Appellant concurs that §24-21-10(F)(1), is an additional assessment tool for the Board to use in nexus to a report from a duly qualified psychiatrist or psychologist; however, there is no duly qualified psychiatrist or psychologist that administer the actuarial risk and needs assessment to prisoners, nor review the same. Appellant avers that the Respondent speaks out about the cost of the psychological reports, but failed to speak out for the costs of SCD's medical cost for Bagley or other similar situated prisoners. Nevertheless, the Respondent failed to make a reasonable accommodation regarding the psychological evaluation and report, such as, the evaluation and report can expand for at least four (4) years, before another would be administer. Again, the report is a relevant factor a prisoner who has served a total of 10 consecutive years or more in prison may be paroled. Not provisional parole by the Board. Section 24-21-610 does not state "a provisional parole nor the terms and conditions for parole," to be met by the prisoner during the provisional period. If §24-21-610 stated "no prisoner who has served a total of 10 consecutive years or more may be provisional parole or during provisional parole be paroled until the Board has first received a report....., this issue would not exist for the Board nor the Courts.

The issue is is repetitious and evading review because Bagley will have served the 2 years required by SCDPPPS interpretation of the statute before the lawfulness of the interpretation can be reviewed. SEE: Nelson v. Ozmint, 390 S.C. 432, 434-35, 702 S.E.2d 369, 370 (2010).

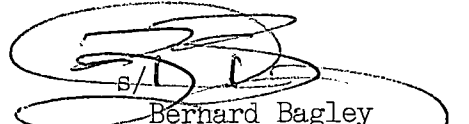
As stated herein, §24-21-10(F)(1) does not be provided by a duly qualified psychologist or psychiatrist, and the analysis can not be the same that would address the mental condition and ability to adjust to life outside the prison like a psychological report in accordance to §24-21-610.

Whether the Board did not vote for Appellant to be paroled, the psychological report is required that he may be paroled as a relevant requisite factor for his parole eligibility under §24-21-610. SCDPPPS Criteria for Parole Consideration Form 1212 mandates the Board deliberate upon reasonable probability regarding the risk the inmate poses to the community; his adjustment outside the prison; mental and emotional condition; overall parole plan; life outside the prison; and other factors considered relevant for such prisoner may be paroled, i.e. until it appears to the satisfaction of the board in accordance to §24-21-640, and until the Board has first received a psychological report in accordance to §24-21-610, specifically, in the Appellant's case.

CONCLUSION

Whether or not the Appellant appealed a routine denial of parole, There is an additional procedure the Board should clearly follow under §24-21-610 for inmates who have served 10 or more consecutive years without resort to subtle or forced construction to limit or expand the statute's operation in its plain and ordinary meaning. Furthermore, the statute does not state "when the Board votes to grant parole, after which the report will be obtained and submitted to the Board for review." Appellant request that the Court declare the law in this matter, and grant a new parole hearing for the board to first receive a psychological evaluation report to determine whether they, the members may grant or deny parole.

Respectfully submitted,


s/
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May 13, 2024