

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge
Trial Case No.: 08-ALJ-15-00042

MAR 28 2012

VAUGHN SMITH #70090,

S.C. Supreme Court

PETITIONER,

vs.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PARDON AND PAROLE SERVICES,

RESPONDENT.

APPENDIX

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TERESEA A. KNOX
Deputy Director for Legal Services

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P.O. Box 50666
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SOUTH CAROLINA DEPARTMENT OF
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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Vaughn Smith, Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services, Respondent.

Appeal From The Administrative Law Court
John D. McLeod, Administrative Law Court Judge

Unpublished Opinion No. 2011-UP-516
Heard November 2, 2011 – Filed November 29, 2011

VACATED AND REMANDED

Tommy A. Thomas, of Irmo, for Appellant.

Teresa A. Knox, J. Benjamin Aplin, and
Tommy Evans, Jr., all of Columbia, for
Respondent.

PER CURIAM: Vaughn Smith appeals the administrative law court's order remanding his administrative appeal to the parole board for additional proceedings. We vacate pursuant to Rule 220(b)(1), SCACR, and the following authorities: S.C. Code Ann. § 1-23-600(D) (Supp. 2010) (providing the administrative law court "shall not hear . . . an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services"); Compton v. S.C. Dep't of Prob., Parole & Pardon Servs., 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009) (per curiam) (holding a parole board order denying parole and stating the board considered all statutory and Department criteria is sufficient to avoid deeming an inmate effectively ineligible for parole). We vacate the administrative law court's order and remand with instructions to dismiss the appeal pursuant to section 1-23-600(D).

VACATED AND REMANDED.

FEW, C.J., and THOMAS and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable John D. McLeod, Administrative Law Judge
Trial Court Case No.: 08-ALJ-15-00042

Vaughn Smith #70090,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

MOTION FOR REHEARING

That after oral argument on November 2, 2011, the Court has filed its order vacating and remanding the above captioned case. This order was filed on November 29, 2011.

The Appellant would respectfully request that the Court grant this Motion for Rehearing based upon the following:

The Court vacates and remands the Appellant's Appeal on the basis that the Administrative Law Court "shall not hear...an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services" and that a "parole board order denying parole and stating the board considered all statutory and Department criteria is sufficient to avoid deeming an inmate effectively ineligible for parole."

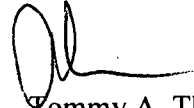
The Appellate contends that the State in his situation has created a liberty interest in his being granted parole and that the actions of the state have effectively rendered the appellate ineligible for parole.

Appellate argued that the circumstances surrounding his parole eligibility and the granting of parole have changed so drastically since his conviction, that these changes as set forth below effectively deny him parole eligibility and are an ex pose facto violations.

- a) § 55-612 Circumstances warranting parole. "No such prisoner shall be parole until it shall appear, to the satisfaction of the Board, that the prisoner has shown a disposition to reform... (underline added) ROA pg. 35. This language has been changed in §24-21-640 to say "no such prisoner may be paroled" (Underline added) until it appears to the satisfaction of the Board, that the prison has shown a disposition to reform..."
- b) The 1986 Omnibus Crime Bill has changed the criteria for parole since the Applicant's sentence.
 - i) Changed four (4) votes majority to a five (5) vote two thirds majority §24-21-645
 - ii) Changed parole eligibility to every two years §24-21-650
 - iii) Established written specific criteria §24-21-640, which were non-existent at the time of the Appellant's conviction.
- c) Confidentially clause makes it impossible for the Applicant to obtain information about his parole case which in turn prevents him from structuring his rehabilitation to satisfy concerns of the Board. (ROA pg. 45).

WHEREFORE, the Appellant respectfully requests a rehearing.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Tommy A. Thomas', written over the printed name.

Tommy A. Thomas
Attorney for Appellate
P.O. Box 88
Irmo, SC 29063

December 13 2011

The South Carolina Court of Appeals

Vaughn Smith,

Appellant,

v.

South Carolina Department of
Probation, Parole and Pardon Services,

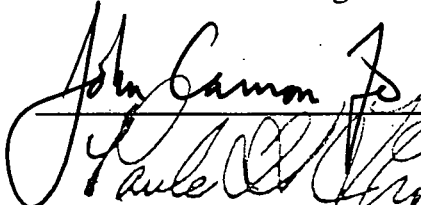
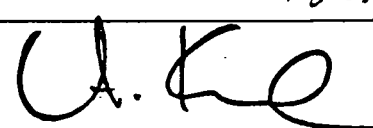
Respondent.

The Honorable John McLeod
Richland County
Trial Court Case No. 2008-AL-15-00042

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: Appellant has filed a "Motion for Rehearing," which the Court construes as a petition for rehearing filed pursuant to Rule 221(a), SCACR. After a careful consideration of the petition, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc: Tommy Arthur Thomas
Teresa A. Knox

FILED
January 27, 2012

18541

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable John D. McLeod, Administrative Law Judge
Trial Court Case No.: 08-ALJ-15-00042

Vaughn Smith #70090

Appellant, **RECEIVED**
MAR 28 2012

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

S.C. Supreme Court

Respondent.

SUPPLEMENTAL
RECORD ON APPEAL

TERESA A. KNOX
Deputy Director for Legal Services

J. BENJAMIN APLIN
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TOMMY EVANS, JR.
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that the interests of society will not be impaired thereby, and, that suitable employment has been secured for him. The Board shall establish written, specific criteria for the granting of parole and provisional parole. This criteria shall reflect all of the aspects of this section. The criteria must be made available to all prisoners at the time of their incarceration and the general public. The paroled prisoner shall, as often as may be required, render a written report to the Board giving that information as may be required by the Board which must be confirmed by the person in whose employment the prisoner may be at the time. The Board shall not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60. Provided that where more than one included offense shall be committed within a one-day period or pursuant to one continuous course of conduct, such multiple offenses shall be treated for purposes of this section as one offense."

Order authorizing parole

Section 24-21-645 of the 1976 Code, as amended by Act 110 of 1977, is amended to read:

"Section 24-21-645. The Board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case, ninety days prior to the effective date of the parole; provided that at least two-thirds of the members of the Board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. A provisional parole order shall include the terms and conditions, if any,

to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole. Upon satisfactory completion of the provisional period, the Executive Director or one lawfully acting for him, shall issue an order, which, if accepted by the prisoner, shall provide for his release from custody.

Provided, that upon a negative determination of parole, prisoners in confinement for a violent crime as defined in [REDACTED] have their parole order [REDACTED] the purpose of a determination of parole."

Further

SECTION 32. Section 24-21-650 of the 1976 Code, as last amended by Act 110 of 1977, is further amended to read:

"Section 24-21-650. The Board shall issue an order authorizing the parole which must be signed by [REDACTED] with terms and conditions, if any; [REDACTED] that at least two-thirds of the members of the Board must sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. Thereupon the supervisor of parole, or one lawfully acting for him, shall issue a parole order, which, if accepted by the prisoner, shall provide for his release from custody.

Provided, that upon a negative determination of parole, prisoners in confinement [REDACTED] as defined in Section 16-1-60 must have their parole order [REDACTED] for the purpose of a determination of parole."

Exhibit Page (12) B

State of South Carolina

Department of Probation, Parole, and Pardon Services



CARROLL A. CAMPBELL, JR.
Governor

MICHAEL J. CAVANAUGH
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9369

September 24, 1993

The Honorable Bob Inglis
Member of Congress
Federal Building
201 Magnolia Street - Suite 108
Spartanburg, SC 29301

Dear Representative Inglis:

I want to thank you for your recent letter regarding the inquiry from Father Eugene Leonard about the status of Vaughn Smith, who is currently incarcerated in the South Carolina Department of Corrections. Father Leonard and Mr. Smith should be most grateful of your interest and support.

Mr. Smith was convicted of five counts of Kidnapping and one count of Murder, for which he received five Life sentences to run consecutively on October 24, 1973. In addition, he was also convicted of Unlawful Weapon for which he received a one year consecutive sentence. The individual, for which he was convicted of Murder, was a Kershaw County Sheriff's Deputy. All of the convictions were in Kershaw County, with the exception of the Escape which occurred in Richland County.

Mr. Smith's prior criminal history includes convictions for Shoplifting and Vehicle Theft in Georgia and Armed Robbery in Richland County.

Mr. Smith has served approximately twenty years of his sentence, having appeared before the Parole Board on six occasions all of which have resulted in parole denial. His next Parole Hearing will be on or around March 10, 1995.

EXHIBIT PAGE (13)A

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable John D. McLeod, Administrative Law Judge
Trial Court Case No.: 08-ALJ-15-00042

Vaughn Smith #70090,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

RECORD ON APPEAL

TERESA A. KNOX
Deputy Director for Legal Services

J. BENJAMIN APLIN
Assistant Chief Legal Counsel

TOMMY EVANS, JR.
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STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 08-ALJ-15-00042

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

VAUGHN SMITH, #70090 APPELLANT

v.

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

FILED

DEC 15 2008

RECORD ON APPEAL

SC ADMIN. LAW COURT

Teresa A. Knox
Deputy Director for Legal Services

J. Benjamin Aplin
Assistant Chief Legal Counsel

Tommy Evans, Jr.
Legal Counsel

South Carolina Department of Probation,
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

RECEIVED
OCT 22 2008
DIRECTOR'S OFF

Vaughn G. Smith #70090

Appellant,

VS.

SOUTH CAROLINA DEPARTMENT OF PROBATION
PAROLE AND PARDON SERVICES

Respondent.

NOTICE OF APPEAL

Docket No. 00-ALJ-04-____-AP

Notice is hereby given that Vaughn G. Smith #70090 does hereby
appeal the final decision of the S.C. Dept. of Probation Parole & Pardon dated Sept. 25, 2008
and received on OCT. 1 - 2008, a copy of which is attached. A general statement of the
grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): I INTEND TO PROVE WITH DOCUMENTED
FACTS - THAT THE S.C. P.P. SERVICES, HAS CHANGED THEIR POLICIES AND CRITERIA FOR
PAROLE SO MUCH DURING THE PAST 35 YEARS - THEY HAVE TURNED MY PROBABLY
SENTENCE INTO A NON-PARDONABLE SENTENCE - VIOLATING MY - (1) DUE PROCESS -
(2) EQUAL PROTECTION UNDER LAW 14TH AMENDMENT - (3) U.S. CONSTITUTION - EX
POST FACTO LAW - BY WHICH IN PART - THEY ELIMINATED IMPORTANT MANDATED
PROCEDURAL GUIDELINES - OUTLINED IN THE S.C. CODE OF LAWS - SECTION 24-21-64
OF 1952 AND 1962 AS WELL AS WITHIN THE S.C. INMATE GUIDE BOOK OF 1973
PERIOD GOVERNING MY CRITERIA FOR PAROLE ELIGIBILITY. BECAUSE THE S.C. PAROLE EXAMINE
AS ALSO ELIMINATED CRUCIAL (MANDATED BY LAW) INVESTIGATIVE PROCEDURES THAT
WOULD ALLOW ME TO PRESENT EVIDENCE IN MY BEHALF AND CORRECT FALSE INFORMATION
BEING REVIEWED BY THE BOARD - AS OUTLINED IN SECTION 6.2 INMATE GUIDE 70'S AND
FOURTH HAS DENIED ME THE RIGHT AND THE ELIGIBILITY OF A CAREFUL AND THOROUGH CONSIDERATION

Vaughn G. Smith #70090

Appellant's Name

TIGER RIVER CORRECTIONAL INSTITUTION

Mailing Address

UPPER YARD - CORN - 8 - ROOM - 610

200 PRISON ROAD

ENDREWE, SOUTH CAROLINA, 29335

City, State, Zip Code

Telephone Number

N/A

Vaughn G. Smith #70090

Signed

OCT. 14 - 2008

Dated:

(See reverse side for instructions)

000003

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

MARK SANFORD
Governor



SAMUEL B. GLOVER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440

September 25, 2008

Mr. Vaughn G. Smith, # 70090
Tyger River Correctional Institution
200 Prison Rd.
Enoree, SC 29335

Dear Mr. Smith:

I am writing this letter on behalf of the S.C. Board of Probation, Parole and Pardon.

The Parole Board heard your request for a rehearing on September 24, 2008. After thorough consideration, and after having reexamined the parole file, the Parole Board decided that the reasons stated in your request did not affect the decision of the Parole Board, and would not affect the decision of the Parole Board if they were to rehear your case. Your request for a rehearing was denied by the Parole Board. The Board's decision is final.

Sincerely,

Gwendolyn A. Bright

Gwendolyn A. Bright
Director of Parole Board Support Services

000004

AFFIDAVIT

NOTICE OF APPEAL

TO: MR. SAMUEL B. GLOVER, DIRECTOR OF THE SOUTH CAROLINA
DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES.

FROM: INMATE MR. VAUGHN G. SMITH # 70090
TYGER RIVER CORRECTIONAL INST, UPPER YARD
DORM-8-ROOM 210 200 PRISON ROAD ENOREE,
SOUTH CAROLINA. 29335

SUBJECT: NOTICE OF APPEAL---CONCERNING HEARING DATE AUGUST-13-
2008 at Perry Corr. Inst.

DATE: AUGUST 26 2008

Dear Sir,

I VAUGHN G. SMITH #70090, do hereby respectfully
SUBMIT my NOTICE OF APPEAL to the S.C. Dept. of Probation, PAROLE
and PARDON SERVICES: concerning the Agency,s rejection of my
parole consideration--Dated August -13-2008; to which I have
recieved the formal written notice August-20-2008.

It basically states that the S.C. Parole Board after
considering all of the criteria listed within SECTION 24-21-640
and the departments policy; I was denied parole for the following
reason:

00(1) 00000005

NATURE AND SERIOUSNESS OF CURRENT OFFENSE
INDICATION OF VIOLENCE IN THIS OR PREVIOUS OFFENSE
USE OF DEADLY WEAPON IN THIS OR PREVIOUS OFFENSE
PRIOR CRIMINAL RECORD INDICATES POOR COMMUNITY ADJUSTMENT

I am baseing my Appeal on the facts and documented evidence that the manner of IDEOLOGY and decades of CUMULATIVE changes and AMENDMENTS within the S.C. CODE OF LAWS and the S.C. PAROLE BOARDS procedual guidelines and polices that exsist today within its statues----DID NOT exsist in the LITERAL LEGAL LAUGUAG~~E~~ AND BEHAVIOR of the criteria of SECTION 24-21-640 of 1962 with added reference to ARTICLE 4 CODE :§ 55-611 thru § 55-612 (1952)

Thus it is alleged that the AGENCY,s drastic changes in Parole eligibility procedures concerning my case (first) violates the 14-AMENDEMENT OF THE U.S. CONSTITUTION--SECTION (1) (EQUAL PROTECTION OF THE LAWS) and (secoundly) THE U.S. CONSTITUTION,S BAN ON EX POST FACTO LAWS: as well as (thirdly) violating S.C. STATE LAW: which it was manditory for the S.C. PAROLE AGENCY to inform me of all criteria information (at the time of my incarceration--1973): THAT WOULD GOVERN all aspects of my considerations for parole in EQUAL CONJUNCTION with all S.C. prisoners of that same time period..... NOT TO BE EFFECTED BY THE MAJOR CHANGES IN CODES OF AMENDED LAWS AND POLICIES THATCAME ABOUT YEARS AFTER MY CONVICTION.....SEVERAL MAJOR CHANGES IN LAWS HAVE DIRECTLY EFFECTED THE PRINCIPALS OF IDEOLOGY AND PAROLE PERCENTAGES AND STIPULATIONS..

Hencefourth, The present day S.C. PAROLE BOARD MEMBERS NEWER USE OF STIPULATIONS AND LEGAL AMENDMENTS have taken my (ORIGINAL) SHALL BE CONSIDERABLE PAROLABLE SENTENCE) and changed

IT INTO A PRESIDING FUNCTIONAL NON-PAROLABLE CONSIDERED SENTENCE.

I contend that this new process has clearly denied me the ability to recieve a FAIR, CAREFULL, AND MOST IMPORTANTLY A THOROUGH CONSIDERATION FOR PAROLE...

THEREFOR I respectfully request in my appeal that a NEW HEARING BE RESCHEDULED as in accordance with S.C.PROCEDUAL APPEAL GUIDELINES as well as respectfully ask the S.C. PAROLE SERVICES AND PAROLE BOARD MEMBERS ---to restore all elements of the procedural guidelines mandated by LAW as directed by SECTION 24-21-640 of the 1962 CODE OF S.C. STATE LAW....

This request would also encompass the actual prevail- ing JUDICAL MANNERISM OR IDEOLOGY ADMINISTERED AND RECORDED WITH REGARD TO THAT PERIOD IN TIME....

THIS AFFIDAVIT AND DECLARATION FOR APPEAL IS BASED UPON PERSONAL KNOWLEDGE AND STATUE OF LAW AND DEEMED TRUE AND CORRECT UNLESS MR. SAMUEAL B. GLOVER, DIRECTOR OF THE S.C. DEPT.. OF PROBATION, PAROLE AND PARDON SERVICES-DEEMS MY POSITION IN ERROR....

NOTORY SWORN BEFORE ME

THIS DAY.. 28th OF

AUGUST 2008.

[Signature]
Notary Public of SC

My Commission Expires: 1-26-2009

SINCERELY

[Signature]

VAUGHN G. SMITH #70090
APPELLANT PRO-Se
TYGER RIVER CORRECTIONAL INST.
UPPER YARD-DORM-8-ROOM-210
200 Prison rd. ENOREE S.C.
29335

(3)

000007

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

MARK SANFORD
Governor



SAMUEL B. GLOVER
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
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www.dppps.sc.gov

August 13, 2008

Mr. Vaughn Smith #00070090
Tyger River
200 Prison Road
Enoree, SC 293359309

RE: NOTICE OF REJECTION

Dear Mr. Smith:

It is my responsibility to inform you of the action of the South Carolina Board of Pardons and Paroles. After considering all of the criteria listed within Section 24-21-640 and the Department policy, parole is denied due to the reason(s) listed below.

You will be notified 30 days prior to your next scheduled parole reconsideration date.

Reason(s) for Rejection:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Prior Criminal Record Indicates Poor Community Adjustment

Sincerely,

Gwendolyn A. Bright
Director of Parole Board Support Services

000008

8/13/2008

South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration

SC Board of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, SC 29250

Inmate Name <i>Vaughn Smith</i>	SCDC # <i>70070</i>
------------------------------------	------------------------

Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainees or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature <i>X Vaughn Smith</i>	Date <i>7/8/08</i>	Witness <i>SA R. Sullivan</i>	Date <i>4-8-08</i>
---	-----------------------	----------------------------------	-----------------------

WITNESSES

The State of South Carolina,

County of _____

COURT OF GENERAL SESSIONS

Term, 19____

THE STATE

VS.

Count #2
INDICTMENT FOR MURDER

VERDICT

Solicitor

Foreman

Foreman of Grand Jury

000010

The State of South Carolina, }

B. 9.—INDICTMENT FOR MURDER WITH CONCEALED
WEAPON CLAUSE

THE STATE COMMERCIAL PRINTING CO.

County of _____

At a Court of General Sessions, begun and holden in and for the County of _____

_____ in the State of South Carolina at

_____ Court House in the County and State

aforesaid, on the _____ Monday of _____

in the year of our Lord one thousand nine hundred and _____

DO FURTHER

AND The Jurors of and for the County aforesaid, in the State aforesaid, upon their oath, /Present:

That Vaughn Gregory Smith,

on the _____ 2nd _____ day of _____ July _____

in the year of our Lord one thousand nine hundred and _____ seventy-three _____ with force

and arms, at _____ Kershaw County Court House _____ in the County of

Kershaw _____ and State of South Carolina, in and upon one

James Eugene Orr, a duly constituted and acting member of the Kershaw

County Sheriff's Department,

feloniously, wilfully and of his malice aforethought, did make an assault, and that the said _____

Vaughn Gregory Smith

900011

of the value of One Hundred Ninety (\$190.00) Dollars of the proper Sales, With a place of business in the State and County aforesaid goods and chattels of James Bragg, doing business as Reliable Mobile/ from the person and against the will of the said James Bragg

in the highway aforesaid, then and there feloniously and violently did steal, take and carry away against the form of the Statute in such case made and provided and against the peace and dignity of the State.

Count One

The sentence of the Court is that the prisoner Walter Gregory Smith be held to labor upon the public works of Kershaw County for a period of 25 years or be confined at hard labor in the State penitentiary for a like period.

10/24/73

J. B. Ness
Presiding Judge

Count Two

The sentence of the Court is that the prisoner Walter Gregory Smith be held to labor upon the public works of Kershaw County for a period of life term or be confined at hard labor in the State penitentiary for a like period.

10/24/73

J. B. Ness
Presiding Judge

Count Three

The sentence of the Court is that the prisoner Walter Gregory Smith be held to labor upon the public works of Kershaw County for a period of One year or be confined at hard labor in the State penitentiary for a like period.

10/24/73

J. B. Ness
Presiding Judge

Count Four

The sentence of the Court is that the prisoner Walter Gregory Smith be held to labor upon the public works of Kershaw County for a period of life term or be confined at hard labor in the State penitentiary for a like period.

1, 2, 3

10/24/73

J. B. Ness
Presiding Judge

John W. Ford, Jr. Solicitor.

000012

Count Five

The sentence of the Court is that the prisoner
August Gregory Smith be held to
labor upon the public works of Kershaw County for
a period of life sentence or be
confined at hard labor in the State penitentiary for
a like period, concurrent

10/24/23

J. B. Ness
Presiding Judge

Count Six

The sentence of the Court is that the prisoner
August Gregory Smith be held to
labor upon the public works of Kershaw County for
a period of life sentence or be
confined at hard labor in the State penitentiary for
a like period, concurrent

10/24/23

J. B. Ness
Presiding Judge

Count Seven

The sentence of the Court is that the prisoner
August Gregory Smith be held to
labor upon the public works of Kershaw County for
a period of life time or be
confined at hard labor in the State penitentiary for
a like period, concurrent

10/24/23

J. B. Ness
Presiding Judge

Count Eight

The sentence of the Court is that the prisoner
August Gregory Smith be held to
labor upon the public works of Kershaw County for
a period of life time or be
confined at hard labor in the State penitentiary for
a like period, concurrent

10/24/23

J. B. Ness
Presiding Judge

Witnesses

James Bragg

Reliable Mobile Sales

Roger Latham

Deputy Sheriff

Carolyn Virginia Wiley

Connie Wiley

Carolyn Wiley

Crissy Wiley

Claudia Wiley

✓ L. L. DeBarnes, Sheriff

Verdict

Foreman

The State of South Carolina

County of KERSHAW

COURT OF GENERAL SESSIONS

OCTOBER

Term, 19 ⁷³

THE STATE

VS.

VAUGHN GREGORY SMITH

INDICTMENT FOR

ARMED ROBBERY, MURDER, UNLAW-
FULLY CARRYING A PISTOL AND
KIDNAPPING (FIVE COUNTS)

JOHN W. FOARD, JR.

True Bill SOLICITOR

J. L. Cooper, Jr.
Foreman of Grand Jury

McCAW PRINTERS, 2510 DEWEY ST., COLUMBIA, S. C. 29205

Verdicts
Count One - Armed Robbery.
GUILTY

Count Two - Murder.
GUILTY

Count Three - Unlawful Wagon
GUILTY
+ L. L. DeBarnes and eight - Kidnaping

000014

Witnesses

Craft - CCI ✓

77-GS-2403
The State of South Carolina
County of RICHLAND
45986
COURT OF GENERAL SESSIONS
22 SEPTEMBER Term, 1977

THE STATE

vs.

SEP. 09 1977

VAUGHN G. SMITH

M/B
DOB - 10-15-51
SS. 014-42-9622

INDICTMENT FOR

ESCAPE

True Bill

Julius L. Crocker
Foreman of Grand Jury

Foreman

W77-2736

McCAW PRINTERS, 2610 DEVINE ST., COLUMBIA, S. C. 29205.

The Prisoner, Vaughn G. Smith
is put to the bar and arraigned and upon arraignment pleads Guilty as charged.
ATTEST:

Clerk of Court

SEP 6 1977

The sentence of the Court is that the
Prisoner, Vaughn G. Smith
be confined in the custody of the Board of Corrections of the State of South Carolina for
a term of Five years.
The Board of Corrections shall designate the place of confinement where this sentence shall be served.

Consecutive to all other sentences

James L. Samuel
Presiding Judge
Columbia, S. C.

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 08-ALJ-15-00042

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

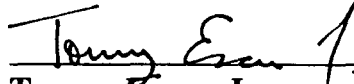
VAUGHN SMITH, #70090 APPELLANT

v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.



Tommy Evans, Jr.,
Legal Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9283

December 9, 2008

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Vaughn G. Smith #70090
Appellant

VS

SOUTH CAROLINA, Dept. of
Probation, Parole, and Pardon
Services

Respondent

Docket No. 08-ALJ-15-00042-AP

GRIEVANCE No. TYRCI

FILED

DEC 31 2008

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

THE APPELLANT HEREBY SUBMITS AND CERTIFIES, THAT HE SENT BY CERTIFIED U.S. MAIL; AN ORIGINAL (70) PAGE BRIEF AND AN ATTACHED (23) PAGE EXHIBIT, TO THE HONORABLE JUDGE MCLEOD - ADMINISTRATIVE LAW COURT - 1205 PENNINGTON STREET, SUITE 224, COLUMBIA, S.C. 29201 AND A COPY OF SAME BRIEF AND ATTACHED EXHIBITS; TO THE DEPUTY DIRECTOR OF LEGAL SERVICES - DPPS, P.O. Box 50666, COLUMBIA, S.C. 29250; BY CERTIFIED U.S. MAIL.

SWORN BEFORE ME ON

THIS 29th DAY OF DEC. 2008

Heather Thomas

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES ON THE 1-26-2009.

Vaughn G. Smith
VAUGHN G. SMITH #70090

TYGER RIVER CORRECTIONAL INST.
UPPER YARD - DORM - B - RM - 210
200 PRISON ROAD
ENOKEE, S.C. 29335

THE ORIGINAL COPY - SENT TO

THE HONORABLE JUDGE MCLEOD
ADMIN LAW COURT 1205 PENNINGTON ST. SUITE 224
COLUMBIA S.C. 29201

000017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Vaughn G. Smith #70090

APPELLANT

VS

SOUTH CAROLINA DEPT. OF
PROBATION, PAROLE, AND PARDON
SERVICES.

RESPONDENT

DOCKET NO. 08-ALJ-15-00042-AT

GRIEVANCE NO. TYRCI

FILED

DEC 31 2008

SC ADMIN. LAW COURT

THE PRO-SE APPELLANT RESPECTFULLY APPEALS THE ACTIONS OF
THE SOUTH CAROLINA DEPT. OF PROBATION, PAROLE, AND PARDON
SERVICES -- HEREBY REFERRED TO AS THE (AGENCY)...

STATEMENT OF ISSUES (1)

DID THE AGENCY IN ANY WAY CREATE A STATE LIBERTY
INTEREST THAT IMPLIED THE EXPECTANCY FOR THE APPELLANT
TO BE GRANTED PAROLE..

ISSUE (2)

DID THE AGENCY INCUR UPON THE APPELLANT, A PROGRESSIVE
SERIES OF LEGISLATIVE PENAL CODE AMENDMENTS, THAT SUBSTANTIALLY
ADDED DISADVANTAGING FACTORS TO HIS CONSIDERATIONAL CHANCES
OF MAKING PAROLE, THAT CONSTITUTES A VIOLATION OF THE EX POST
FACTO CLAUSE.

ISSUE (3)

DID THE AGENCY VIOLATE ANY OF ITS OWN MANDATED STATUTORY GUIDELINES THAT DENIED THE APPELLANT A CAREFUL LEGITIMATE CONSIDERATION FOR PAROLE; RENDERING IT INELIGIBLE AND CAUSING A 14TH AMENDMENT VIOLATION OF DUE PROCESS AND EQUAL PROTECTION...

STATEMENT OF CASE

THE APPELLANT - VAUGHN G. SMITH #70090 - WAS CONVICTED - OCTOBER 24 - 1973 OF ARMED ROBBERY - MURDER - AND KIDNAPPING - ALONG WITH AN UNLAWFUL WEAPONS CHARGE; THAT CAME TO A TOTAL COMBINED SENTENCE OF 2 CONSECUTIVE LIFE SENTENCES WITH 4 CONCURRENT PLUS 26 YEARS.. THE APPELLANT'S FIRST PAROLE HEARING AND REJECTION WAS HELD MARCH - 7 - 1984; AND QUICKLY WENT FROM YEARLY TO BI-YEARLY REVIEWS (SEE EXHIBITS PAGES 1-THRU 7)

AFTER APPELLANT RECEIVED HIS LAST - NOTICE OF REJECTION - DATED (AUGUST - 13 - 08) HE FILED AN AFFIDAVIT FOR NOTICE OF APPEAL DATED (AUGUST - 26 - 08); CITING, THAT THE AGENCY HAS BEEN USING THE WRONG SET OF PROVISIONS AND CRITERIA CODES IN ACCORDANCE WITH THE APPELLANT'S CONVICTION DATE OF OCTOBER - 24 - 1973...

THE AGENCY DENIED THE APPELLANT'S REQUEST FOR REHEARING (SEPTEMBER - 25 - 08); TO WHICH THE APPELLANT FORWARDED HIS APPEAL TO THE ADMINISTRATIVE LAW COURT - DATED OCTOBER - 14 - 08... APPELLANT RECEIVED AN ASSIGNMENT DATE NOVEMBER - 5 - 2008...

STATEMENT OF ISSUES (1)

THE AGENCY IS DEEMED RESPONSIBLE FOR CREATING (A STATE - LIBERTY INTEREST) FOR THE APPELLANT WHEN HE ENTERED THE S.C. DEPT. OF CORRECTIONS IN 1973, FOR THE FOLLOWING REASONS ...

FROM 1952-TO-1975; SOUTH CAROLINA HAD A SET-MANDATED (CIRCUMSTANCES FOR WARRANTING PAROLE) CODE OF REQUIREMENTS.. (SEE EXHIBITS - PAGE 8 AND 9); §55-611-THRU-612 ARTICLE 4.. CODE OF 1952 AND §24-21-640 CODE OF 1962 ... COMPREHENSIVELY, WRITTEN WITHIN THE PARAGRAPHS OF REQUIREMENTS (55-612 AND 24-21-640) ARE 5-OR-6 ISSUES OF CONSIDERATIONS TO BE EVALUATED, WHERE-AS 4 OF THEM WEIGH HEAVILY ON THE AGENCY'S PERCEPTION ON THE INMATES (SOCIAL BEHAVIOR) WHILE HE OR SHE IS INCARCERATED... DURING THE YEARS BETWEEN 1952-TO-1975, THERE WAS A WELL PRACTICED STANDARD OF (IDEOLOGY AND PROCEDURAL HABITS), A CUSTOMARY BELIEF THAT 10 YEARS OF CONFINEMENT WITHIN THE DEPT. OF CORRECTIONS OF S.C. WAS CONSIDERED A TREMENDOUSLY RIGOROUS LIVES WORTH OF PUNISHMENT AND VALUED WORSE THEN SOME OTHER STATES WITH ONLY 7 YEAR LIFE SENTENCE PAROLE ELIGIBILITY REQUIREMENTS.

HENCE FOURTH, IT WAS CUSTOMARY WITH (REPETATIVE HABIT) THAT THE AGENCY DID PAROLE - MAJORITY OF ALL FELONS WITH LIFE SENTENCE ELIGIBILITY DATES (AT LEAST ONCE) DURING THEIR ORIGINAL CONVICTION; ON AVERAGE WITHIN 8-TO-10 YEARS ... THE REMAINING PERCENTAGE WOULD ACQUIRE THEIR CHANCE AT PAROLE BETWEEN 10-TO-14 YEARS ... THERE IS ABSOLUTELY NO KNOWN RECORD OF ANY PRISONER SURPASSING 15 YEARS OF CONFINEMENT PRIOR TO THE 1976 PENAL CODE AMENDMENTS THAT WASN'T FIRST GRANTED THE OPPORTUNITY OF PAROLE AT LEAST ONCE ...

TO FURTHER CONTRIBUTE TO THE APPELLANTS' (LIBERTY INTEREST BELIEF); IT WAS ALSO A COMMON REPETATIVE HABIT ADMINISTERED

PAGE (3)

by the agency, during the 1952-to-1975 period, to consistently parole all eligible paroleable inmates within the Dept. of Corrections, at an average yearly rate of 60-to-75 percent... The remaining percentage would customarily make parole on their second parole consideration hearing unless the inmate was a constant disciplinary problem within the institution...

Appellant submits as (Relative Fact), evidence referencing material (see exhibit page-10) A-B, which encompasses some of the (Habits) and (Guidelines), the agency was operating under in 1973... The referencing news article states: 'The Attorney General's Opinion of 1968; That in-so-much as a life sentence is considered the same as a sentence for more than 30 years under § 55-61(2); The aggregation of additional life sentences would not effect the time a prisoner's record should be considered for parole purposes, because the sum total of both sentences equals (one) general sentence of more than 30 years... Therefore, the agency, under the laws and provisions provided them at that time; also routinely paroled life sentence recipients with added consecutive and concurrent terms, at the same basic rate as other life sentence recipients... Appellant alleges with reason, that a constant repetitive habit constitutes a - basic created standard - that gives the appellant the (legal-right) to expect the same equal-like treatment and consideration for parole as the other life sentence recipients of that period... in accordance with the 14th Amendment - Equal Protection clause.

ISSUE (2)

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PAGE (4)

000021

ISSUE (2)

IT IS CLEARLY MANDATED AND DEFINED WITHIN SECTION § 16-1-60 (B) OF THE VIOLENT CRIME DEFINITION ACT - (SEE EXHIBIT PAGE 11); WHICH EXPLICITLY STATES; FOR A PERSON TO BE CONSIDERED GUILTY OF A VIOLENT CRIME, THE OFFENSE (HAS) TO TAKE PLACE (AFTER) THE ENACTMENT OF THE 1976 PENAL CODE 16-1-60 (A)

STARTING IN 1976 AND LEADING UP TO THE 1986 OMNIBUS CRIME BILL, MANY RIGOROUS-PENAL CODE STATUTES - WERE ADDED INTO LAW THAT DRASTICALLY CHANGED THE CONDITIONS AND CRITERIA REQUIREMENTS FOR A SET DEFINED GROUP OF VIOLENT OFFENDERS. THESE ENACTMENTS SEVERELY EFFECTED THE AGENCY'S YEARLY AVERAGE -; (CONSISTING OF ALL ELIGIBLE PAROLABLE INMATES), FROM A ANNUAL 60-TO-75 PERCENT PAROLED INMATES, TO A (NEVER-SEEN BEFORE) HISTORICAL LOW OF 10-TO-12 PERCENT ANNUALLY PAROLED...

IN ADDITION TO THE MANY SUBSTANTIAL CHANGES, THE LIFE SENTENCE PAROLE ELIGIBILITY REQUIREMENTS CHANGED FROM 10-TO-30 YEARS WITH MANY NEW SENTENCES HAVING NO PAROLE ELIGIBILITY AT ALL... THESE NEW PROVISIONS WERE DESIGNED TO PURPOSELY CAUSE THE NEW CLASS OF VIOLENT OFFENDERS TO DO MORE TIME PER SENTENCE CONVICTION; AS WELL AS CREATE A FAR MORE DIFFICULT REQUIREMENT CRITERIA BASE FOR PAROLE CONSIDERATION...

APPELLANT ALLEGES THAT ANY CHANGE THAT INCREASES THE AVERAGE TIME ON A SENTENCED SERVED; IS IN FACT INCREASING THE VALUE OF PUNISHMENT SERVED...

THIS WAS THE FULL INTENTIONS OF THE S.C. STATE LEGISLATURE WHEN PUTTING THESE CRIME BILLS TOGETHER BETWEEN 1976 AND 1986..

HOWEVER, WITHIN THE OMNIBUS CRIME BILL - SECTION - 30 § 24-21-640 OF 1986 (SEE EXHIBIT PAGE-12) A-B); THERE IS A MANDATORY PROCEDURAL GUIDELINE WRITTEN WITHIN THE

PARAGRAPH (PAGE-12-B) OF EXHIBIT, COMPREHENSIVELY SAYING, THAT THE AGENCY (SHALL) ESTABLISH A WRITTEN SPECIFIC CRITERIA WHICH (MUST) BE MADE AVAILABLE TO THE APPELLANT AT THE TIME OF HIS INCARCERATION... THEREFORE, IT IS BY LEGAL DEFINITION THAT THE AGENCY HAS AN ABSOLUTE MANDATORY OBLIGATION TO WARRANT THE APPELLANT'S CIRCUMSTANCES FOR PAROLE UNDER ALL PROVISIONS OF LAW, GUIDELINES AND REPETITIVE HABITS CONSISTANT AND SET-FOURTH DURING HIS 1973 DATE OF INCARCERATION.

HENCE FOURTH, THAT WOULD STRICTLY PROHIBIT THE AGENCY FROM USING ANY FORM OF NEW DISADVANTAGING AMENDED LAWS, PROVISIONS, AND ADDED CRITERIA REQUIREMENTS THAT WERE ENACTED INTO LAW AFTER 1973!!!

HOWEVER, THE AGENCY HAS SERIOUSLY FAILED TO ADHERE TO THE FORE-STATED S.C. STATE AND U.S. CONSTITUTIONAL - EX POST FACTO CLAUSE PROTECTED ISSUES, BY COMMITTING THE FOLLOWING SUBSTANTIALLY DISADVANTAGING AND INCREASED PUNISHMENT ALTERING VIOLATIONS OF LAW.

THE APPELLANT SUBMITS SOLID CONFIRMING EVIDENCE WITHIN DOCUMENT, (SEE EXHIBIT PAGE 13) A-B) NEWLY DISCOVERED AFTER THE AUGUST-13-2008 PAROLE HEARING, THAT UNEQUIVOCALLY SHOWS THAT THE 1993 - AGENCY DIRECTOR - MR. MICHAEL CAUNNWAUGH, IS GIVING AN OFFICIAL STATUTES REPORT TO THE HONORABLE STATE REPRESENTATIVE - MR. BOB INGLIS, DATED SEPT. 24-1993.

WITHIN (EXHIBIT PAGE-13) B); THE AGENCY DIRECTOR EXPLICITLY STATES: (BECAUSE OF HIS CLASSIFICATION AS A VIOLENT OFFENDER)...

THIS ERRONEOUS STATEMENT SERIOUSLY INDICATES THAT FOR NO-LESS THEN (15) LONG YEARS, THE AGENCY HAS ACTIVELY ENGAGED IN THE PROCESS OF ADDING PENALTIES AND

PROCEDURAL CHANGES THAT COMPLETELY ALTERED THE APPELLANT'S (ORIGINAL SENTENCE CLASSIFICATION) FROM A (FELONY CONVICTION) TO A (Violent OFFENDERS CONVICTION) - by WRONGFULLY UTILIZING THE 1976 Violent CRIME ACT.... This RE-CLASS ALSO SEVERELY PROGRESSED THE APPELLANT'S PAROLE CRITERIA REQUIREMENTS FROM THE ORIGINAL BASIC (6) AS DEFINED IN (EXHIBIT PAGES-8- AND 9); TO A PROGRESSED STATE OF 15 CRITERIA REQUIREMENTS! (SEE EXHIBITS PAGES 14 AND 15).. THERE IS ALSO SEVERAL AGENCY SCRIPTED STIPULATIONS STEMMING FROM THE OMBIBUS CRIME BILL OF 1986; SPECIFICALLY DEFINED FOR Violent OFFENDERS.

ANOTHER Ex POST FACTO, CASE IN POINT; IT HAS BEEN RESENTLY DISCOVERED AFTER THE APPELLANT'S Aug.-13-68 PAROLE HEARING, THAT A MR. BENNY DEBRUHL WAS ALLOWED TO PARTICIPATE WITHIN THE EVALUATION PROCESS AND VERBALLY SUBMIT A NEGATIVE DISADVANTAGING SERIES OF COMMENTS, SECRETLY AND UNKNOWN TO THE APPELLANT DURING THE ACTUAL DAY OF THE HEARING..

THEREFORE IT IS ALLEGED THAT THE APPELLANT WAS DEWIEED THE (DUE PROCESS RIGHT AND ABILITY) TO DEFEND AGAINST THE VERY POSSIBLE INACCURATE INFORMATION GIVEN TO THE AGENCY IN (SECRET) FOR PAROLE CONSIDERATION - BECAUSE - MR. DEBRUHL IS NOT A JUDGE OR THE SOLICITOR WHO PARTICIPATED WITHIN THE APPELLANT'S TRIAL.. WHICH MAKES HIS ACTIONS ALLEGED ILLEGAL AND IN VIOLATION OF ARTICLE 4. § 55-611 - FIRST PARAGRAPH (SEE - EXHIBIT PAGE 8); COMPREHENSIVELY, THIS CODE CLEARLY DEFINES THAT ONLY 2 PEOPLE CAN BE CONTACTED BY THE AGENCY AND HAVE SOME LEGAL ACCESS TO THE CONSIDERATION PROCESS AT THE APPELLANT'S PAROLE HEARING..

IT HAS RESENTLY COME TO THE FULL AWARENESS OF THE
PAGE (7)

APPELLANT THAT THE AGENCY HAS WRONGLY ENGAGED IN AN ESTIMATED 20 YEARS USE OF THE PROVISIONS SET-FOURTH IN THE 1981 ACT NO. 100 § 4. (SEE EXHIBIT PAGE 16), ...

THIS ACT WAS DESIGNED TO CREATE EXTREME DISADVANTAGING CONSEQUENCES TO THOSE CONVICTED OF A VIOLENT CRIME; WHEN APPEARING BEFORE THE AGENCY FOR PAROLE CONSIDERATION IN CONNECTION WITH SECTION 16-1-60(A)... ITS AN INDISPUTABLE FACT (REVIEWING IN HINDSIGHT) THAT THE AGENCY HAS FOR NUMEROUS YEARS ENGAGED IN CONTACTING LAW ENFORCEMENT OFFICIALS AND VICTIMS (WHERE AS THE SURVIVING VICTIMS HAVE PETITIONED FOR MY RELEASE - YET LAW ENFORCEMENT OPPOSES... HOWEVER USING THE PROVISIONS WITHIN ACT 100 § 4. DIRECTLY VIOLATES SECTION § 16-1-60(B) OF THE CRIME DEFINITION ACT - 1976 AND U.S. CONST. ART I, § 10; AND S.C. CONST. ART I, § 4. OF THE EX POST FACTO CLAUSES.

FURTHER CONCERNING MR. DEBRUHL'S VIOLATION; BECAUSE HE IS NEITHER A VICTIM OR A IMMEDIATE FAMILY OR RELATIVE OF ONE; NOR IS HE AN OFFICER OF THE COURT; A MANDATORY REQUIREMENT WRITTEN WITHIN ACT 100 § 4. OF 1981, THE AGENCY HAS INCURRED UPON THE APPELLANT A DOUBLE FAULT BECAUSE MR. DEBRUHL DOESN'T LEGALLY QUALIFY WITHIN EITHER 55-611 OR ACT 100 § 4, ...

ISSUE(3)

IT IS ALLEGED TO BE THE MOST IMPORTANT FUNCTION OF THE AGENCY, TO PROVIDE A CAREFUL AND THOROUGH EVALUATION OF ALL THE FACTS WHEN CONSIDERING ANYONE FOR PAROLE, AND MORE-SO WHEN

PAGE(2) 000025

Filing AN (OFFICIAL STATUES REPORT), TO A S.C. STATE ELECTED REPRESENTATIVE... THE APPELLANT SUBMITS EXPLICIT EVIDENCE DISCOVERED WITHIN THE AGENCY DIRECTOR'S STATUES REPORT. (SEE EXHIBIT-13) A); WHERE-AS THE AGENCY'S INFORMATION INFLECTS TREMENDOUS HARM UPON THE APPELLANT BECAUSE OF THE MAGNITUDE OF THE ERROR.

Mrs CAVANAGH STATES; ERRONOUSLY THAT THE APPELLANT HAS 5 CONSECUTIVE LIFE SENTENCES.. (NOT-TRUE) - HE HAS 2 CONSECUTIVE AND THE REST ARE CONCURRENT.. (SEE EXHIBIT PAGE 17) A-B-C)...

BUT MORE EXCLUSIVELY DAMAGING THEN THAT ERROR, WHEN COMPILING INFORMATION FOR PAROLE CONSIDERATION, IS THE AGENCY'S HARBORED BELIEF THAT THE APPELLANT HAS A PRIOR ARMED ROBBERY CONVICTION IN RICHLAND COUNTY OTHER THEN THE ORIGINAL ARMED ROBBERY CONVICTION ATTACHED TO THE CONTINUOUS CONVICTION IN KERSHAW COUNTY... THE AGENCY DIRECTOR IS IN COMPLETE ERROR CONCERNING THIS MATTER AND APPELLANT HEREBY CHALLENGES THE COURT OR THE AGENCY TO PRODUCE A VALID PRIOR ARMED ROBBERY CONVICTION OTHER THEN THE ONE IN KERSHAW!!

APPELLANT ALLEGES THAT THE AGENCY HAS BEEN HARBORING IN SECRET NUMEROUS VIOLATIONS OF LAW AND WRONGLY ASSESSING INCORRECT INFORMATION FOR NO-LESS THEN 15 YEARS, WHERE-AS ITS APPARENT THE AGENCY HAS STOPPED SERIOUSLY PROVIDING THE ATTEMPTS TO CONSIDER THE APPELLANT FOR PAROLE CONSIDERATION... APPELLANT SUBMITS FURTHER EVIDENCE TO BACK THIS FACT-WITH AN AFFIDAVIT FROM HIS WIFE (SEE - EXHIBIT PAGE 18) ... HOW CAN THE AGENCY JUSTIFY HAVING A CAREFUL, LEGITIMATE AND THOROUGH CRITERIA MANDATED CONSIDERATIONAL PROCESS AND NOT ATTEMPT WITHIN (14)

FE Exhibit
955 7
BROU-71

LONG YEARS -- THE ACT OF CONTACTING OR INTERVIEWING ANYONE
IN THE APPELLANT'S FAMILY OR HIS WIFE LIVING IN THEIR
HOME WITHIN THE COMMUNITY?!! How does THE AGENCY
RELATE AND JUSTIFY USING (POOR COMMUNITY ADJUSTMENT)
- NOW - AND NOT BACK DURING THE 1980'S -- AS ONE OF THE REASONS FOR
REJECTING THE APPELLANT'S PAROLE THIS PAST AUGUST-13-2008 AND YET
IGNORE WHATS WITH (EXHIBITS PAGES 19-THRU-22)???

IN FINAL; APPELLANT SUBMITS (EXHIBIT PAGE 23); IN SUPPORT
WITH WHAT IS REASONABLY OBVIOUS THAT THE AGENCY HAS
FAILED TO ADHERE TO MANY OF THEIR OWN STATUTORILY
CREATED GUIDELINES - RENDERING THE APPELLANT'S PAROLE
INELIGIBLE; WHICH VIOLATES HIS 14TH AMENDMENT RIGHT TO
DUE PROCESS AND EQUAL PROTECTION.

CONCLUSION

WHEN ASSESSING THE MAGNITUDE AND LONGEVITY OF THE
AGENCY'S VIOLATIONS INCURRED UPON THE APPELLANT; HE
PRAYS TO THE COURT THAT THEY DEEM IT JUSTIFIED TO ADMINISTER
(A COURT-ORDERED PAROLE RELEASE); UNDER THE PROVISIONS
SET-FOURTH IN §24-21-640 OF 1962 CODE...

APPELLANT FURTHER REQUEST AN ORAL HEARING TO COMPEL
THE AGENCY TO REVEAL THOSE RECORDS BEING EVALUATED; TO CORRECT
THE NUMEROUS ERRORS AND DELETE INFORMATION THAT IS DEEMED
OBTAINED AND USED IN VIOLATION OF THE EX POST FACTO-CLAUSE;

APPELLANT REQUEST AN ORAL TO PRESENT EVIDENCE THAT HE'S
NOT A THREAT TO SOCIETY AND RIGHTEOUSLY MERITS PAROLE OPPORTUNITY...

RESPECTFULLY SUBMITTED

South Carolina Department of Parole and Community Corrections

HON. CHARLES R. SANDERS, JR.
CHAIRMAN
DISTRICT THREE

HON. RUFEL JACKSON
VICE CHAIRMAN
DISTRICT TWO

HON. JOHN E. HUSS, D.D.
DISTRICT ONE

HON. H. L. LACKEY
DISTRICT AT LARGE



J. P. PRATT II
EXECUTIVE DIRECTOR

GRADY A. WALLACE
COMMISSIONER

HON. MARION BEASLEY
VICE CHAIRMAN
DISTRICT FOUR

HON. LEE R. CATHCART
DISTRICT FIVE

HON. WALTER H. LAWSON
DISTRICT SIX

ADDRESS: 2221 DEVINE STREET
P. O. BOX 50656
COLUMBIA, S. C. 29250

March 7, 1984

FILED

DEC 31 2008

SC ADMIN. LAW COURT

Mr. Vaughn G. Smith (70090)
Kirkland Correctional Institution
4344 Broad River Rd.
Columbia, SC 29210

Re: NOTICE OF REJECTION

Dear Mr. Smith:

After thorough consideration of all facts in your case, the Board at its meeting today, has rejected your plea for Parole. In an effort to help you understand the action taken, some significant reasons for the decision are indicated below:

- Nature and seriousness of your offense.
- ~~Unfavorable institutional adjustment.~~
- ~~Indication of violence in this or previous offense.~~
- ~~Use of deadly weapon in this or previous offense.~~

Based on your maximum sentence, you will again be eligible for Parole consideration on March 7, 1985.

Very truly yours,

Grady A. Wallace, Commissioner

Judy A. Boland
(Mrs.) Judy A. Boland
Executive Secretariat

JAB:kd

cc: Mr. David Bartles
Mrs. Stephen Bok, Jr.

Exhibit page (1)
000028

South Carolina Department of Parole and Community Corrections

HON. H. L. LACKEY
CHAIRMAN
MEMBER AT LARGE

HON. LEE R. CATHCART
SECRETARY
DISTRICT FIVE

HON. JOHN E. HUSS, D.D.
DISTRICT ONE

HON. DR. JERRY M. NEAL
DISTRICT THREE



THOMAS J. CLEARY
INTERIM EXECUTIVE DIRECTOR

GRADY A. WALLACE
COMMISSIONER

HON. RHETT JACKSON
VICE CHAIRMAN
DISTRICT TWO

HON. MARION BEASLEY
DISTRICT FOUR

HON. WALTER N. LAWSON
DISTRICT SIX

ADDRESS: 2221 DEVINE STREET
P.O. BOX 50666
COLUMBIA, SC 29250

April 15, 1987

Mr. Vaughn Smith (70090)
Stevenson Correctional Institution
4546 Broad River Rd.
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Smith:

After careful consideration of your record before and after imprisonment, the Parole Board has decided that you do not yet merit a lessening of the rigors of imprisonment. Your parole has therefore been denied.

Reasons for rejection:

Nature and seriousness of current offense.
Indication of violence in this or prior offense.
Use of a deadly weapon in this or previous offense.

Parole will be granted when it shall appear to the satisfaction of the Board that you have shown a disposition to reform; that by your conduct you merit a lessening of the rigors of imprisonment; that the interest of society will not be impaired; that you have secured suitable employment; and in the future you will probably obey the law and lead a correct life.

In light of your current conviction, you will again be eligible for parole consideration on April 15, 1989.

Sincerely,

Grady A. Wallace
Commissioner

GAW/shr

cc: Mr. David Bartles
Mr. Walter M. Smith, Kershaw County

000029 Exhibit PAGE (2)

South Carolina Department of Probation, Parole, and Pardon Services

HON. RHETT JACKSON
CHAIRMAN
DISTRICT TWO

HON. LEE R. CATHCART
SECRETARY
DISTRICT FIVE

HON. WILLIE E. GIVENS, JR., D.D.
DISTRICT ONE

HON. RAYMOND J. ROSSI
MEMBER AT LARGE



MICHAEL J. CAVANAUGH
EXECUTIVE DIRECTOR

GRADY A. WALLACE
COMMISSIONER

HON. DR. JERRY M. NEAL
VICE CHAIRMAN
DISTRICT THREE

HON. MARION BEASLEY
DISTRICT FOUR

HON. J. P. HODGES
DISTRICT SIX

ADDRESS: 2221 DEVINE STREET
P. O. BOX 50668
COLUMBIA, SC 29250

April 26, 1989

Mr. Vaughn Smith (70090)
Stevenson Correctional Institution
4546 Broad River Rd.
Columbia, SC 29210

Re: NOTICE OF REJECTION

Dear Mr. Smith:

After careful consideration of your record before and after imprisonment, the Parole Board has decided that you do not yet merit a lessening of the rigors of imprisonment. Your parole has therefore been denied.

Reasons for rejection:

Nature and seriousness of current offense.
Indication of violence in this or prior offense.
Use of a deadly weapon in this or previous offense.

Parole will be granted when it shall appear to the satisfaction of the Board that you have shown a disposition to reform; that by your conduct you merit a lessening of the rigors of imprisonment; that the interest of society will not be impaired; that you have secured suitable employment; and in the future you will probably obey the law and lead a correct life.

In light of your current conviction, you will again be eligible for parole consideration on April 26, 1991.

Sincerely,
Grady A. Wallace
Grady A. Wallace
Commissioner

GAW/ldh

cc: Mr. David Bartles
Lon Outen, Kershaw County
Frank Barton, Richland County

Exhibit page (3)
000030

State of South Carolina

Department of Probation, Parole, and Pardon Services

HON. J.P. HODGES
Chairman
District Six

HON. MARION BEASLEY
Vice Chairman
Past Chairman, 1985 - 1986
District Four

HON. WILLIE E. GIVENS, JR., D.D.
Secretary
District One

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
(803) 734-9220

MICHAEL J. CAVANAUGH
Commissioner

HON. RAYMOND J. ROSSI
Past Chairman, 1991 - 1992
Member-At-Large

HON. J. RHETT JACKSON
Past Chairman, 1987 - 1988
District Two

HON. J.F. ELLIOTT
District Three

HON. LEE R. CATHCART
District Five

March 10, 1993

Mr. Vaughn G. Smith (70090)
Northside Correctional Center
Route 7, Box 30
Spartanburg, SC 29303

Re: NOTICE OF REJECTION

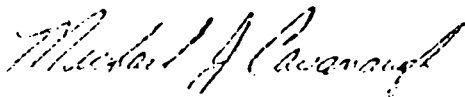
Dear Mr. Smith:

After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.
The reasons for rejection are:

Nature and seriousness of the offense.
Indication of violence in this or previous offense(s).
Use of deadly weapon in this or previous offense(s).
Failure to successfully complete a community supervision program.

In light of your current conviction, you will again be eligible for parole consideration on or about March 10, 1995.

Sincerely,



Michael J. Cavanaugh

MJC:mrh

cc: Mr. David Bartles
Lon Outen, Kershaw County
Michael Nichols, Richland County

Exhibit Page (4)

000031

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

JIM HODGES
Governor



JOAN B. MEACHAM
Director

2221 DEVINE STREET, SUITE 300
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9367
Facsimile: (803) 734-9240
www.state.sc.us/ppp

May 1, 2002

Mr. Vaughn G Smith #00070090
Tyger River
200 Prison Road
Enoree, SC 293359309

Re: NOTICE OF REJECTION

Dear Mr. Smith:

It is my responsibility to inform you of the action of the South Carolina Board of Parole and Pardons relative to your recent parole hearing. After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.

You will be notified 30 days prior to your next scheduled parole reconsideration date.

The reason(s) for rejection are:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Prior Criminal Record Indicates Poor Community Adjustment

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Director of Parole Board Support Services

Exhibit PAGE (5)

000032

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

MARK SANFORD
Governor



SAMUEL B. GLOVER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

July 7, 2004

Mr. Vaughn G Smith #00070090
Tyger River
200 Prison Road
Enoree, SC 293359309

Re: NOTICE OF REJECTION

Dear Mr. Smith:

It is my responsibility to inform you of the action of the South Carolina Board of Parole and Pardons relative to your recent parole hearing. After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.

You will be notified 30 days prior to your next scheduled parole reconsideration date.

The reason(s) for rejection are:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Prior Criminal Record Indicates Poor Community Adjustment

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Director of Parole Board Support Services

Exhibit Page (6)

000033

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

MARK SANFORD
Governor



SAMUEL B. GLOVER
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

August 13, 2008

Mr. Vaughn Smith #00070090
Tyger River
200 Prison Road
Enoree, SC 293359309

RE: NOTICE OF REJECTION

Dear Mr. Smith:

It is my responsibility to inform you of the action of the South Carolina Board of Pardons and Paroles. After considering all of the criteria listed within Section 24-21-640 and the Department policy, parole is denied due to the reason(s) listed below.

You will be notified 30 days prior to your next scheduled parole reconsideration date.

Reason(s) for Rejection:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Prior Criminal Record Indicates Poor Community Adjustment

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Director of Parole Board Support Services

Exhibit Page (7)

000034

8/13/2008

Order of revocation need not be made within probationary period.—This section and § 55-595 do not require that the order of revocation be made within the probationary period. It is only provided that

during this period the warrant shall be issued, which is the pertinent jurisdictional fact. *Lovell v. State*, 223 S. C. 112, 74 S. E. (2d) 570 (1953).

ARTICLE 4.

Parole Generally and Release for Good Conduct.

§ 55-611. When Board may parole prisoner.—In all cases cognizable under this chapter the Probation, Parole and Pardon Board may, upon ten days' written notice to the solicitor and judge who participated in the trial of any prisoner, parole such prisoner convicted of a felony and imprisoned in the State Penitentiary, in any jail or upon the public works of any county:

(1) Who, if sentenced for not more than thirty years, shall have served at least one third of the term for which he was sentenced,

(2) Who, if sentenced to life imprisonment or imprisonment for any period in excess of thirty years, shall have served at least ten years, or

(3) Who, if he is a first offender and is sentenced for an indeterminate term shall have served the minimum for which he was sentenced,

Not deducting in any instance any allowance of time for good behavior. (1952 Code § 55-611; 1942 Code § 1038-10; 1942 (42) 1456; 1949 (46) 311.)

Applied in *Bearden v. Manning*, 238 S. C. 187, 119 S. E. (2d) 670 (1961).

Cited in *State v. Williams*, 221 S. C. 107, 69 S. E. (2d) 371 (1952).

§ 55-611.1. When prisoner entitled to review.—After a prisoner has served one third of his sentence, if such sentence exceed one year, the Board shall review his case, irrespective of whether or not any application has been made therefor, for the purpose of determining whether or not such prisoner is entitled to any of the benefits provided for in this chapter. (1952 Code § 55-611.1; 1942 Code § 1038-10; 1942 (42) 1456; 1949 (46) 311.)

§ 55-612. Circumstances warranting parole; reports of parolees.—The Probation, Parole and Pardon Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it shall appear, to the satisfaction of the Board, that the prisoner has shown a disposition to reform that, in the future, he will probably obey the law and lead a correct life, that by his conduct he has merited a lessening of the rigors of his imprisonment, that the interests of society will not be impaired thereby and that suitable employment has been secured for him. The paroled prisoner shall, as often as may be required, render a written report to the Board giving such information as may be required by the Board which shall be confirmed by the person in whose employment the prisoner may be at the time. (1952 Code § 55-612; 1942 Code § 1038-11; 1942 (42) 1456; 1949 (46) 311.)

§ 24-21-630

CORRECTIONS, PROBATIONS, ETC.

shall be given benefit for time served in prison in excess of three months while awaiting trial or between trials.

HISTORY: 1962 Code § 55-611.2; 1968 (55) 2717.

§ 24-21-640. Circumstances warranting parole; reports of parolees.

The Probation, Parole and Pardon Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it shall appear, to the satisfaction of the Board, that the prisoner has shown a disposition to reform that, in the future, he will probably obey the law and lead a correct life, that by his conduct he has merited a lessening of the rigors of his imprisonment, that the interests of society will not be impaired thereby and that suitable employment has been secured for him. The paroled prisoner shall, as often as may be required, render a written report to the Board giving such information as may be required by the Board which shall be confirmed by the person in whose employment the prisoner may be at the time.

HISTORY: 1962 Code § 55-612; 1952 Code § 55-612; 1942 Code § 1038-11; 1942 (42) 1456; 1949 (46) 311.

CASE NOTES

Cited in State v Morris, 243 SC 225,
133 SE2d 744 (1963).

§ 24-21-650. Order of parole.

pre 1986
The Board shall issue an order signed by at least two thirds of its members authorizing the parole, with terms and conditions, if any. Thereupon the supervisor of parole, or one lawfully acting for him, shall issue a parole order, which, if accepted by the prisoner, shall provide for his release from custody.

HISTORY: 1962 Code § 55-613; 1952 Code § 55-613; 1942 Code § 1038-11; 1942 (42) 1456; 1949 (46) 311.

§ 24-21-660. Effect of parole.

Any prisoner who shall have been paroled shall be subject during the remainder of his original term of imprisonment, up to the maximum, to the conditions and restrictions imposed in the order of parole or by law imposed. Every such paroled prisoner shall remain in the legal custody of the Board and may at any time on the order of the Board be imprisoned as and where therein designated.

HISTORY: 1962 Code § 55-614; 1952 Code § 55-614; 1942 Code § 1038-11; 1942 (42) 1456; 1949 (46) 311.

With 6 Life Terms, Smith Car

By HUGH E. MUNN.
Staff Writer
CT. CASE - MURDER
ORR, POT (Deputy Sheriff)

Last week, 22 year-old Vaughn Gregory Smith received six life sentences for murder and kidnaping convictions arising out of the July 2 slaying of a Kershaw County deputy and the abduction of a Camden woman and her four daughters.

In 10 years, Smith becomes eligible for parole despite the fact he

was given consecutive life sentences for the murder and one count of kidnaping. The other four counts of kidnaping drew concurrent life terms.

A sentence runs simultaneously with another sentence. A consecutive sentence however, must be served after completion of another term of imprisonment.

It apparently had been thought by the general public that a person

must begin serving the second sentence, if consecutive, even if he has been paroled for an earlier sentence. Not so, according to the attorney general's office.

Adding to the confusion is a 1968 S.C. attorney general's opinion that anyone serving such consecutive sentences still is eligible for parole after the first 10 years of his original sentence, even if he receives another consecutive sentence for a crime committed while in prison.

Those now appear into some call is going to get busy a native.

The Fifth C Foard trial in sentence this w Foard

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EVIOUS FRAME

e Paroled In 10 Years

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own facts of the State Code of Laws before
wn a scare commenting on the situation.

ls and the When asked if the sentences im-
gislature posed against Smith last week dic-
to pe of alter- tated a lengthy period of prison ser-
vice before parole eligibility would
be established, Foard answered,

sent up by "According to the code, he is eli-
John W. gible in 10 years."
the Smith

part of the Asked if the imposition of con-
light earlier secutive life terms made a differ-
erview with ence, Foard replied, "No. He's still
action 55-611 eligible in 10 years."

Foard then added another inter-
esting legal question which apparent-
ly has been handled by the S.C. Pro-
bation, Pardon and Parole Board
since the attorney general's office is-
sued an opinion in 1968.

"According to the attorney gen-
eral's office, and I'm inclined to agree
with them, a defendant with two or
more consecutive life terms still is

(See SMITH, S.C. Col. 4)

(Continued From 1-C)
eligible for parole in 10
years even if while serving the
time, he commits a crime
such as murder and is given
another consecutive life sen-
tence," said Foard.

He added, "The statutes
provide that he would be eli-
gible 10 years after the date of
his original life sentences."

Foard based his statement
on a portion of the 1968 attor-
ney general opinion to the par-
ole board, which reads:

"We feel that under Sec.
55-611 (2), the aggregation of
additional life sentences or
sentences for more than 30
years would not affect the
time a prisoner's record should
be considered for parole pur-
poses because the sum total of
them would equal one general
sentence of more than 30
years. This would apply re-
gardless of whether the sen-
tences were imposed on the
same date or at different
times." (Signed by Assistant
Atty. Gen. Emmet H. Clair,
Sept. 17, 1968.)

Foard conceded that con-
secutive life sentences proba-
bly have been misunderstood
by the general public. He said
most people think a person
sentenced to consecutive life
sentences is required to serve
at least 10 years for each life
term.

"That's not the way it is," he
said, adding, "but I feel the
legislature should amend the
law to spell out that 10 years
should be served for each life
term before parole is consid-
ered."

Foard also was asked to
comment on the law governing
punishment for kidnapping as
a protection for the kidnap
victim, and again he said the
law offered very little.

tec, chaired by Rep. Robert
E. Kneece, D-Richland, is re-
convened.

Foard told The State late
Tuesday he has sent a letter
to Kneece, outlining the prob-
lems posed by the state law as
it pertains to parole.

Said Foard, "Again, I must
say that I agree also with the
attorney general's opinion.
What has to be changed is the
law."

Foard said he has asked
Kneece for permission to ap-
pear before the Judiciary
Committee at the earliest pos-
sible date.

When contacted Tuesday
night, Kneece confirmed that
he had received Foard's letter
and said he believes arrange-
ments can be made for the
solicitor to appear at the Jan-
uary meeting.

"I think he should be given
the hearing and am concerned
about this problem," said
Kneece. "This thing has got to
be considered."

"He's pointed out some seri-
ous inadequacies in our laws
and he deserves the imme-
diate attention of the commit-
tee and legislature," said the
committee chairman.

Kneece said he is sending
copies of Foard's letter to
members of the committee,
which includes the Criminal
Law Subcommittee of the
House, "so we can arrange an
early appearance by him in
January when we reconvene."

At that meeting, Foard is
expected to recommend that
the law be revised to provide
that a person must serve at
least 10 years for each life
sentence imposed.

But the solicitor will go a
step further and tell the com-
mittee that the whole question
of parole eligibility must be
reexamined in light of the
abolishment of capital punish-
ment in South Carolina.

no protection to the person
who has been kidnaped."

Said Foard, "Under the law
today, a little child could be
kidnaped and the kidnaper
could kill the child, and the
maximum punishment would
be two consecutive life sen-
tences. He would then be eli-
gible for parole after 10 years
from the date of his sentence.

"That's not the way it
should be," he added.

The concern about the
state's laws governing parole
and kidnaping, however, is not
directed to the S. C. Proba-
tion, Pardon and Parole
Board, which, officials gener-
ally concede, is bound by the
statutes.

A conservative estimate
places the total number of
prisoners paroled by the board
last year at around 60 per cent
of all those who became eli-
gible.

J. P. "Pete" Strom, Chief of
the State Law Enforcement
Division (SLED), told The
State that the adverse feed-
back he has received has not
been about the parole board's
actions.

Strom said, however, the
problem of "early outs" from
prison is mounting and is a
situation which dictates another
look at the law. The veter-
an law officer also agreed that
the matter should be reviewed
by the House Judiciary Com-
mittee.

"I agree with Mr. Foard
completely," Strom said, "and
this definitely is a matter
which deserves immediate at-
tention."

Other lawmen echoed
Strom's remarks, and one offi-
cer who asked not to be identi-
fied pointed out another case
which he said shows the defi-
ciency of the parole law.

He said that some time ago,
a man was sentenced to 16
years for a crime and served
about nine years before being
paroled.

the problem with this law."

Richland County Sheriff
Frank Powell told The State
Tuesday night that law en-
forcement officials have
known about the inadequate
law for some time, but that
apparently the general public
has just found out.

"I'm confident, however,
that our legislature is going to
stand up and see that this
matter is corrected, and that
capital punishment is to be
reinstated for some crimes,"
said Powell.

"Until it is done," he added,
"we're going to continue
seeing a tremendous increase
in crimes of all types."

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EXHIBIT
PAGE 110 (CA)

000038

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interview with
o Section 55-611

Asked if the imposi-
secutive life terms made a difference,
Foard replied, "No. He's
eligible in 10 years."

with them, a defendant may two or
more consecutive life terms still is
See SMITH, S.C. Cal.

(Continued From 1-C)
eligible for parole in 10 years even if while serving the time, he commits a crime such as murder and is given another consecutive life sentence," said Foard.

He added, "The statutes provide that he would be eligible 10 years after the date of his original life sentences."

Foard based his statement on a portion of the 1968 attorney general opinion to the parole board, which reads:

"We feel that under Sec. 55-611 (2), the aggregation of additional life sentences or sentences for more than 30 years would not affect the time a prisoner's record should be considered for parole purposes because the sum total of them would equal one general sentence of more than 30 years. This would apply regardless of whether the sentences were imposed on the same date or at different times." (Signed by Assistant Atty. Gen. Emmet H. Clair, Sept. 17, 1968.)

Foard conceded that consecutive life sentences probably have been misunderstood by the general public. He said most people think a person sentenced to consecutive life sentences is required to serve at least 10 years for each life term.

"That's not the way it is," he said, adding, "but I feel the legislature should amend the law to spell out that 10 years should be served for each life term before parole is considered."

Foard also was asked to comment on the law governing punishment for kidnapping as a protection for the kidnap victim, and again he said the law offered very little.

According to law, kidnapping and murder are punishable by life imprisonment since a recent U.S. Supreme Court has outlawed the death penalty as cruel and unusual punishment. In South Carolina both crimes received the death penalty prior to the ruling.

It now becomes apparent that a kidnap victim's life is in much more peril, since the same penalty exists for murder as it does for kidnapping. Also, the attorney general's ruling coupled with the state parole law makes the possibility of parole attainable within 10 years after imposition of the sentence.

Several public officials agree, and action could come as early as January, when the S.C. House Judiciary Committee,

chaired by Rep. Robert E. Kneece, D-Richland, is reconvened.

Foard told The State late Tuesday he has sent a letter to Kneece, outlining the problems posed by the state law as it pertains to parole.

Said Foard, "Again, I must say that I agree also with the attorney general's opinion. What has to be changed is the law."

Foard said he has asked Kneece for permission to appear before the Judiciary Committee at the earliest possible date.

When contacted Tuesday night, Kneece confirmed that he had received Foard's letter and said he believes arrangements can be made for the solicitor to appear at the January meeting.

"I think he should be given the hearing and am concerned about this problem," said Kneece. "This thing has got to be considered."

"He's pointed out some serious inadequacies in our laws and he deserves the immediate attention of the committee and legislature," said the committee chairman.

Kneece said he is sending copies of Foard's letter to members of the committee, which includes the Criminal Laws Subcommittee of the House, "so we can arrange an early appearance by him in January when we reconvene."

At that meeting, Foard is expected to recommend that the law be revised to provide that a person must serve at least 10 years for each life sentence imposed.

But the solicitor will go a step further and tell the committee that the whole question of parole eligibility must be rescrutinized in light of the abolishment of capital punishment in South Carolina.

"In fact, since we no longer have capital punishment here," Foard later told The State, "I think that the eligibility of the parole should be raised to 15 years from the current 10-year provision. Where a person has two consecutive life sentences, he should not be eligible for parole."

Foard made no secret of the fact he will ask the committee and legislature to reinstate the death penalty for certain crimes, including premeditated murder and kidnapping where the victim is either seriously hurt or killed.

Under further questioning by The State, Foard agreed that the present law governing kidnapping provides "absolutely

no protection to the person who has been kidnaped."

Said Foard, "Under the law today, a little child could be kidnaped and the kidnaper could kill the child, and the maximum punishment would be two consecutive life sentences. He would then be eligible for parole after 10 years from the date of his sentence."

"That's not the way it should be," he added.

The concern about the state's laws governing parole and kidnapping, however, is not directed to the S. C. Probation, Pardon and Parole Board, which, officials generally concede, is bound by the statutes.

A conservative estimate places the total number of prisoners paroled by the board last year at around 60 per cent of all those who became eligible.

J. P. "Pete" Strom, Chief of the State Law Enforcement Division (SLED), told The State that the adverse feedback he has received has not been about the parole board's actions.

Strom said, however, the problem of "early outs" from prison is mounting and is a situation which dictates another look at the law. The veteran law officer also agreed that the matter should be reviewed by the House Judiciary Committee.

"I agree with Mr. Foard completely," Strom said, "and this definitely is a matter which deserves immediate attention."

Other lawmen echoed Strom's remarks, and one officer, who asked not to be identified pointed out another case which he said shows the deficiency of the parole law.

He said that some time ago, a man was sentenced to 15 years for a crime and served about nine years before being paroled. Within several months after his release, the man was arrested for killing a woman. He was sentenced in Richland County to a 14-year sentence to run consecutive with his previous 15-year sentence, since the judge also had ruled the man had violated terms of his parole by committing the murder. Within two years, the man again was considered for parole and gained his freedom, based on the original sentence, as outlined in the attorney general opinion.

"That case is true," Solicitor Foard later admitted when questioned about it. "I would prefer that the man's name not be used, but that's exactly what happened, and points out

the problem with this law."

Richland County Sheriff Frank Powell told The State Tuesday night that law enforcement officials have known about the inadequate law for some time, but that apparently the general public has just found out.

"I'm confident, however, that our legislature is going to stand up and see that this matter is corrected, and that capital punishment is to be reinstated for some crimes," said Powell.

"Until it is done," he added, "we're going to continue seeing a tremendous increase in crimes of all types."

Exhibit
Page 5 (10) (B)

Better Copy of Top page

Exhibit 11

Violent crimes defined

SECTION 8. Section 16-1-60 of the 1976 Code is amended to read:

"Section 16-1-60. (A) For purposes of definition under South Carolina law a violent crime includes the offenses of murder (Section 16-3-10); criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors (Section 16-3-655); assault with intent to commit criminal sexual conduct (Section 16-3-656); assault and battery with intent to kill (Section 16-3-620); kidnapping (Section 16-3-910); voluntary manslaughter (Section 16-3-50); armed robbery (Section 16-11-330); drug trafficking as defined in Section 44-53-370(e); arson in the first degree (Section 16-11-110(A)); burglary in the first degree (Section 16-11-311); and burglary in the second degree (Section 16-11-312(B)).

(B) For a person to be considered guilty of a violent crime, the offense must be defined as a violent crime pursuant to subsection (A) at the time of the commission of the crime."

Prospective application of act

SECTION 266. All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this act takes effect are saved. The provisions of this act other than Section 16-1-60(B) apply prospectively to crimes and offenses committed after the effective date of the act. The provisions of subsection 16-1-60(B) apply retroactively to all persons convicted under the laws of this State. All sentences pronounced on or after the effective date of this act must comply with the classification system, except where a penalty greater than the one in effect on the date the offense was committed would be required.

Exhibit - Page (11)

000040

11

"Section 16-23-490. Any person who is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, if the person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of the violent crime, shall, in addition to the punishment provided for the crime, be punished by a term of imprisonment of five years; provided, that this five-year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime. Service of this five-year sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year sentence to run consecutively or concurrently. The person so sentenced under this section is not eligible during this five-year period for parole, work release, or extended work release. Such five years may not be suspended and the person may not complete his term of imprisonment in less than five years pursuant to good-time credits or work credits; however, the person may earn credits during this period.

As used in this section, 'firearm' means any machine gun, automatic rifle, revolver, pistol, or any weapon which will, or is designed to, or may readily be converted to expel a projectile; 'knife' means an instrument or tool consisting of a sharp cutting blade whether or not fastened to a handle which is capable of being used to inflict a cut, slash, or wound.

No such additional punishment may be imposed unless the indictment alleged as a separate count that the person was in possession of a firearm or visibly displayed what appeared to be a firearm or visibly displays a knife during the commission of the violent crime and conviction was had upon this count in the indictment. The penalties prescribed in this section may not be

imposed unless the person convicted was at the same time indicted and convicted of a violent crime as defined in Section 16-1-60."

Extended work release program

SECTION 29. (A) Section 1 of Act 185 of 1977, as amended by Act 100 of 1981, is officially designated as Section 24-13-610 of the 1976 Code.

(B) Section 24-13-610 of the 1976 Code is amended to read:

"Section 24-13-610. The Department of Corrections (department) may establish an extended work release program. The program may allow the exceptional regular work release resident, male or female, convicted of a first and not more than a second offense, the opportunity of extended work release placement in the community with the privilege of residing with an approved community sponsor and continuing employment in the community; provided, that no person convicted of murder or criminal sexual conduct in the first or second degree may participate in this extended work release program."

Prisoner may be paroled

SECTION 30. Section 24-21-640 of the 1976 Code, as last amended by Act 100 of 1981, is further amended to read:

"Section 24-21-640. The Board shall carefully consider the record of the prisoner before and after imprisonment, and no such prisoner may be paroled until it shall appear to the satisfaction of the Board that the prisoner has shown a disposition to reform, that in the future he will probably obey the law and lead a correct life, that by his conduct he has merited a lessening of the rigors of his imprisonment;

incarceration and the general public. The paroled prisoner shall, as often as may be required, render a written report to the Board giving that information as may be required by the Board which must be confirmed by the person in whose employment the prisoner may be at the time. The Board shall not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60. Provided that where more than one included offense shall be committed within a one-day period or pursuant to one continuous course of conduct, such multiple offenses shall be treated for purposes of this section as one offense."

Order authorizing parole

SECTION 31. Section 24-21-645 of the 1976 Code, added by Act 100 of 1981, is amended to read:

"Section 24-21-645. The Board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case, ninety days prior to the effective date of the parole; provided that at least two-thirds of the members of the Board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. A provisional parole order shall include the terms and conditions, if any,

of parole, violent crime as defined in ... have their cases reviewed every two years ... the purpose of a determination of parole."

Further

SECTION 32. Section 24-21-650 of the 1976 Code, as last amended by Act 110 of 1977, is further amended to read:

"Section 24-21-650. The Board shall issue an order authorizing the parole which must be signed by at least a majority of its members, with terms and conditions, if any; provided, that at least two-thirds of the members of the Board must sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. Thereupon the supervisor of parole, or one lawfully acting for him, shall issue a parole order, which, if accepted by the prisoner, shall provide for his release from custody.

Provided, that upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole."

Exhibit PAGE(12) B

Deputy

CARROLL A. CAM
Governor

September 24, 1981
The Honorable BC
Member of Congress
Federal Building
201 Magnolia Street
Spartanburg, SC

Dear Representative:

I want to thank you from Father Eugene currently incarcerated of your interest in

Mr. Smith was convicted of Murder, for which he was consecutively on October 1976, convicted of Unlawful Killing of a Police Officer of Murder, was a Keene County escape which occurred

Mr. Smith's prior conviction for Shoplifting and Vehicle Theft in Richland County.

Mr. Smith has served time in prison having appeared before the court which have resulted in his release on or around March 1981

Exhibit PAGE(12) B

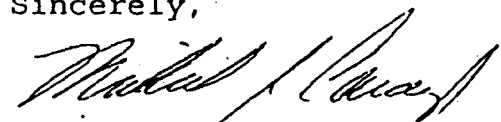
000002

Inglis, Page 2

It appears that Mr. Smith has participated in some self help programs while he has been incarcerated and his record of late has been very good. I would strongly suggest that Mr. Smith continue working at the S. C. School for the Deaf and Blind and continue to demonstrate positive behavior. If and when he is paroled, he will be under parole supervision for the duration of his life. Because of his classification as a Violent Offender, he is not eligible for any early release programs.

I hope this information will be of some help to you. If you have any questions, please do not hesitate to contact me.

Sincerely,



Michael J. Cavanaugh

Exhibit Page (13) B

and is not part of the SCDC.

6.2 PAROLE

(A) An inmate serving a sentence in the custody of the Department of Corrections will be considered for parole at the appropriate time. The South Carolina Department of Probation, Parole and Pardon Services will review your case whether or not any application has been made. The following parole information does not apply to you if you were sentenced under the Youthful Offender Act, as a separate parole procedure is followed in Youthful Offender cases.

(B) Approximately five months prior to your eligibility date, you will be interviewed by a Parole Examiner. Information relevant to your parole consideration will be gathered (residence, employment, your prior record and other information).

You will be asked to sign a document authorizing the South Carolina Department of Probation, Parole and Pardon Services to gather information needed by the Parole Board. If you refuse to sign, the parole process will continue but the Parole Examiner's record will state the information is incomplete because you refused to sign documents and this prevented the gathering of important facts.

If you do not wish to appear before the Parole Board you may sign a document so stating that you do not wish to appear or do not wish to be considered for parole.

After preliminary information and consents are obtained, a complete investigation will be conducted. The Parole Examiner will meet with you again for a final interview after the investigation is complete.

The Parole Board will consider your record before and after incarceration and your activities after incarceration. Numerous factors are considered before deciding to grant or deny parole. These factors include, but are not limited to:

- (1) Criminal record
- (2) Length and seriousness of criminal record
- (3) Indications of assaultive or violent behavior

(4) Reincarcerated while under parole or probation supervision

(5) Refusal to be supervised on parole

(6) Proposed employment and residence

(7) Results of psychological or psychiatric evaluations

(8) Indication of habitual criminal activity

(9) Institutional record

(10) Whether or not release would depreciate the seriousness of the crime or promote disrespect for the law. Factors in this area may be, but are not limited to, nature and seriousness of offense.

(11) Overall adjustment while incarcerated. Factors considered may include, but are not limited to:

(a) Physical attack upon another inmate or institutional staff.

(b) Possession of weapons or drugs

(c) Repeated violation of institutional rules

(d) Violation of any act prohibited by law

(e) Program participation while institutionalized.

Your case may be heard by a full board or a three-member panel if you were convicted of committing a non-violent crime. A unanimous vote for parole from a panel or a majority vote (four members) for parole by the full Board would entitle you to parole. If you are convicted of committing a violent crime, then your case will be heard by the full Board, and a two-thirds (2/3) (five members) vote for parole is required before you would be entitled to a parole.

In cases considered for parole where the individual receives favorable consideration within ninety(90) days of the individual's parole eligibility date, the Board may grant a Provisional Parole. In all cases where Provisional Parole has been granted, the individual must obey all rules and regulations

South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration

SC Board of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, SC 29250

Inmate Name <i>Vaughn G. Smith</i>	SCDC # <i>10090</i>
---------------------------------------	------------------------

Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainees or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

EXHIBIT PAGE (15)

I certify that the above material has been explained to me, and I have received a copy:

Inmate's Signature <i>Vaughn G. Smith</i>	Date <i>10/26/04</i>	Witness <i>[Signature]</i>	Date <i>10/26/04</i>
--	-------------------------	-------------------------------	-------------------------

Board, and such other administrative duties as assigned by the Board relating to Board activities.

The Commissioner shall have academic and professional qualifications commensurate with his duties and responsibilities including a background in the social sciences or criminal justice field. Salary for the Commissioner shall be determined by law.

The Commission shall give a thirty-day written notice of any hearing of the board considering parole for a prisoner who has been convicted of a crime of violence to the following persons:

- (a) Any victim of the crime who suffered damage to his person as a result thereof or in the event such victim is deceased, to members of his or her immediate family; to the best of its ability;
- (b) The solicitor who prosecuted the prisoner or his successor in the jurisdiction in which the crime was prosecuted;
- (c) The law enforcement agency that was responsible for the arrest of the prisoner concerned.

HISTORY: 1981 Act No. 100 § 4.

§ 24-21-20. Assistants.

When the necessity of the service requires, the Board shall appoint one or more assistants and fix their salaries.

HISTORY: 1962 Code § 55-552; 1952 Code § 55-552; 1942 Code § 1038-6; 1942 (42) 1456.

§ 24-21-30. Meetings; parole and pardon panels.

The Board shall hold regular meetings, as may be necessary to carry out its duties, but at least four times each year, and as many extra meetings as the Chairman, or the Governor acting through the Chairman, may order. The Board may preserve order at its meetings and punish any disrespect or contempt committed in its presence. The Chairman may direct the members of the Board to meet as three-member panels to hear matters relating to paroles and pardons as often as necessary to carry out the Board's responsibilities. Membership on such panels shall be periodically rotated on a random basis by the Chairman. At the meetings of the panels, any unanimous vote shall be considered the final decision of the Board, and the panel may issue an order of parole with the same force and effect of an order issued by the full Board pursuant to § 24-21-650. Any vote that is not unanimous shall not be considered as a decision of the Board and the matter shall be referred to the full Board which shall decide it based on a vote of a majority of the membership.

HISTORY: 1962 Code § 55-553; 1952 Code § 55-553; 1942 Code §§ 3437, 3439;

Exhibit Page (16)

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Witnesses

James Bragg

Reliable Mobile Sales

Roger Latham

Deputy Sheriff

Carolyn Virginia Wiley

Connie Wiley

Carolyn Wiley

Crissy Wiley

Claudia Wiley

V.L. De Bruhl, Sheriff

Verdict

Foreman

Exhibit PA96(17.) A

The State of South Carolina

County of KERSHAW

COURT OF GENERAL SESSIONS

OCTOBER

Term, 19 73

THE STATE

VS.

VAUGHN GREGORY SMITH

INDICTMENT FOR

ARMED ROBBERY, MURDER, UNLAW-
FULLY CARRYING A PISTOL AND
KIDNAPPING (FIVE COUNTS)

JOHN W. FOARD, JR.

True Bill SOLICITOR

J. L. Cooper, Jr.
Foreman of Grand Jury

McOAW PRINTERS, 2610 DEWEY ST., COLUMBIA, S. C. 29205

Ken Highland

Verdicts
Count One - Armed Robbery.

GUILTY

Count Two - Murder.

GUILTY

Count Three - Unlawful Wagon

GUILTY

000047

of the value of One Hundred Ninety (\$190.00) Dollars of the proper Sales, With a place of business in the State and County aforesaid goods and chattels of James Bragg, doing business as Reliable Mobile/ from the person and against the will of the said James Bragg

in the highway aforesaid, then and there feloniously and violently did steal, take and carry away against the form of the Statute in such case made and provided and against the peace and dignity of the State.

Count One

The sentence of the Court is that the prisoner Walter Gregory Smith be held to labor upon the public works of Kershaw County for a period of 25 years or be confined at hard labor in the State penitentiary for a like period.

10/24/73 J. B. Ness
Presiding Judge

Count Three

The sentence of the Court is that the prisoner Walter Gregory Smith be held to labor upon the public works of Kershaw County for a period of One year or be confined at hard labor in the State penitentiary for a like period. consecutive to Count One

10/24/73 J. B. Ness
Presiding Judge

Count Two

The sentence of the Court is that the prisoner Walter Gregory Smith be held to labor upon the public works of Kershaw County for a period of lifetime or be confined at hard labor in the State penitentiary for a like period. consecutive to counts 1, 2, 3

10/24/73 J. B. Ness
Presiding Judge

Count Four

The sentence of the Court is that the prisoner Walter Gregory Smith be held to labor upon the public works of Kershaw County for a period of life sentence or be confined at hard labor in the State penitentiary for a like period. consecutive to counts 1, 2, 3

10/24/73 J. B. Ness
Presiding Judge

Count Five

The sentence of the Court is that the prisoner
Walter Gregory Smith be held to
labor upon the public works of Kershaw County for
a period of life sentence or be
confined at hard labor in the State penitentiary for
a like period. concurrent

10/24/23

J. B. Ness
Presiding Judge

Count Six

The sentence of the Court is that the prisoner
Walter Gregory Smith be held to
labor upon the public works of Kershaw County for
a period of life sentence or be
confined at hard labor in the State penitentiary for
a like period. concurrent

10/24/23

J. B. Ness
Presiding Judge

Count Seven

The sentence of the Court is that the prisoner
Walter Gregory Smith be held to
labor upon the public works of Kershaw County for
a period of life time or be
confined at hard labor in the State penitentiary for
a like period. concurrent

10/24/23

J. B. Ness
Presiding Judge

Count Eight

The sentence of the Court is that the prisoner
Walter Gregory Smith be held to
labor upon the public works of Kershaw County
a period of life time or be
confined at hard labor in the State penitentiary
a like period.

10/24/23

J. B. Ness
Presiding Judge

Exhibit page (17)c

000049

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11

Mary G. Smith
285 Walnut Grove Road
Roebuck, S.C. 29376

The State of South Carolina
Administrative Law Court

My Husband: Vaughn G. Smith #70090
Tyger River Correctional Institution
Upper Yard Dorm 8 Room 210
200 prison road
Enoree, SC 29335.

Reference; to a particular Policy and procedure governing the South Carolina Department of probation, Parole and Pardon Services.

I Mary G. Smith; do hereby state fully aware of the penalty of law concerning the issue of perjury; proclaim the following to be true and factual

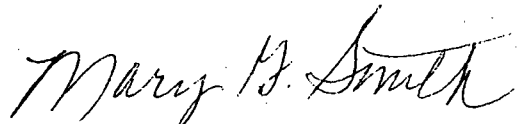
I Married inmate Vaughn G. Smith # 70090 while he was housed at the Northside Correctional Institution November 21, 1992. At the time I was living in a Mobile Home I owned at 4077 Glenn Springs Road, Pauline, South Carolina 29374

While living at this address I do recall one time, a South Carolina department of Parole Services parole examiner visiting me and interviewing me concerning my husband consideration for parole, during the calendar year of 1994.

Since then I have moved several time however always within the Spartanburg County area. For eight years (8) I lived at 100 Vanderbilt Lane, Spartanburg SC 29301 I wasn't interview by a parole examiner before any of the parole hearing doing that time or the times since I have lived at my present address, 285 Walnut Grove Road, Roebuck SC 29376. Where we built a house 3 and half years ago.

He has worked over 10 years within the Private Sector-Prison Industries Program. Their have been considerable changes in his and my life, however he has been constantly turned down for parole, saying that the parole Board has taken a careful and thorough investigative approach to their decision.

I do find this declaration in high error where as for 14 years no one has interview me or my family from the South Carolina Parole Department concerning my husband's parole consideration.



Mary G. Smith
285 Walnut Grove Road
Roebuck, SC 29376

*Sworn to before me this 15th
day of December, 2008.*

Angela B. Walker

Notary Public of SC

My Commission Expires 04/18/2017

000050

Exhibit Page (18)



SOUTH CAROLINA SCHOOL FOR THE DEAF AND THE BLIND

JOSEPH P. FINNEGAN, JR.
PRESIDENT

August 16, 1994

Mr. Michael J. Cavanaugh, Director
Department of Probation, Parole and Pardon
2221 Devine Street, Suite 600
P. O. Box 50666
Columbia, SC 29201

RE: Vaughn Smith #70090 (Northside Correctional Institute)

Dear Mr. Cavanaugh:

I'm writing this letter on behalf of Vaughn Smith, an inmate at Northside Correctional Institute. During the past two and a half years (beginning 2/1/92), Mr. Smith has been a regular participant in the trusty work program which functions here on our campus as part of a formal agreement between SCSDB and the Department of Corrections.

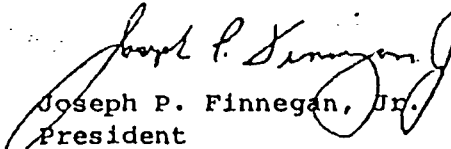
Mr. Smith has been assigned to work at our Warehouse where in addition to being involved with and responsible for handling millions of dollars worth of materials, he has also been involved in the vocational training of students who are assigned to this area as part of their educational program.

In addition, he has been involved in several formal instructional and/or counseling situations here with groups of students (under close staff supervision). The response from both students and staff to his presentations and counseling strategies has been extremely positive. There is little doubt that he has had a positive influence on the lives of some of our "at-risk" students. In my tenure here, Mr. Smith is the only inmate whom we have allowed to have this kind of continuous and direct involvement with our students. I believe this is due to the ability demonstrated by Mr. Smith and the trust that he has earned from both staff and students.

As Mr. Smith is considered for parole, please keep in mind his accomplishments and performance during the past two and a half years while he has been participating in our cooperative work program.

If I can be of any further assistance, please don't hesitate to contact me.

Sincerely yours,



Joseph P. Finnegan, Jr.
President

JPF,Jr.:fbc,
bcc: Vaughn Smith

Exhibit AAA (VSD)



SOUTH CAROLINA SCHOOL FOR THE DEAF AND THE BLIND

JOSEPH P. FINNEGAN, JR.
PRESIDENT

Attention: Gwendolyn Bright, Chief Parole Examiner
Department of Probation, Parole and Pardon Services
2221 Devine Street, Suite 600
P. O. Box 50666
Columbia, SC 29250

RE: Inmate Vaughn Smith, #70090

DATE: August 26, 1994

TO: All Members of the South Carolina Parole Board

We the undersigned united our deep concerns in behalf of Vaughn Smith, an inmate worker from Northside Correctional Institute.

Assigned as a member of the inmate workers program here at South Carolina School for the Deaf & Blind for more than 2 1/2 years. Mr. Smith has proven without question to be the most exemplary individual in the 12 year history of the school's tenure with the inmate workers program. Vaughn Smith is the only inmate even to acquire the unique distinction of being the unofficial social counseling doctor on campus.

We as citizens of South Carolina cannot express enough for Vaughn Smith's unwavering professional excellence in his working habits as well as his proven God gifted ability to interact with our troubled students, enhance their lack of understanding of social world reality and then direct them to a better way of thinking.

Although, we are aware that his conviction is a serious one, it is our combined observation and sincere feelings, with the understanding that all prisoners don't earn the right to return back to the community, Mr. Smith is indeed an exception to that norm, to which we highly recommend his release. We feel absolutely certain that his rehabilitation is complete and his abilities make him a much needed necessity in our community.

Sincerely,

James E. Thomas

COPY

Exhibit Pages (20)
000052 A

PETITION FOR VAUGHN SMITH

NAME	ADDRESS	OCCUPATION
Alfred Bond	1610 Holly Brook Ave / Spring	Education
Reggie Coleman	¹⁰¹³ 101 White Pine 21326	Printing Dept
Frank Brown	135 Strabbing Circle Spky	Education
Turner Sartin	327 Francis Marion Ave / Spky	Education / P.E.
Kathleen Wynn	104 prospect S.T.	S.C.S.D.B.
Harley Foster	205 Old Farm Rd	W.H. 17000 S.C.S.D.B.
Thomas Chapman	111 Brilling Dr / Greenville	Corporate Program / SCSB
Betty J. Smith	344 Daisy Ridge Rd Spky	Work Program / SCSB
Jackie Steading	3000 Kelly Oak Rd Spky	2302 switchboard Mail Clerk
David Blankenship	SCSDB	Teacher
L. R. R.	SCSDB	Minist. Dept.
Willie N. N.	307 Grand Ridge Dr / Moore SC	Minist. Dept.
Ellie N.	315 Fairmont Ave / Greenville SC	Liaison Counselor
David M. N.	195 Remsen Dr.	Minist. Dept.
Jean Holloway	168 Bristol Lane	Teacher and Assistant
Liz Malik	104 Pinewood Dr. / Moore	Counselor
Connie Hodge	P.O. Box 15154 Spartanburg	Recreation Specialist
Heather Foster	1580 Red Arthur Bridge Rd. / Spartanburg	Adapted Physical Education
Andrea McPart	108 Calypso Dr. / Spky	Recreation Specialist
Maria Moore	44 Woodland Dr. / Spky S.C.	Teacher assistant
Robert Taylor	233 Woodland Ave / Spky	Education / Spky
James Taylor	211 Fleming St. / Spky	Housekeeping Dept.
Elizabeth P. Taylor	24311 Prospect Ave / Spky	Supervisor / Spky
Henry J. Williams	47 Kent St. / Spky S.C.	Housekeeping Dept.
Johnny Anderson	11000 Oaks Ave. / Spky	Housekeeping Dept.
Charles Anderson	2440 Battleground Court	Housekeeping Dept.
Charles Taylor	3544 High Street	Housekeeping Dept.
Michael	350 Bryant Road / Spky	Director College High TL

PETITION FOR VAUGHN SMITH

NAME	ADDRESS	OCCUPATION
Dary Euland	151 Bentwood Circle, Spartanburg SC	Associate Teacher
Jaye Womick	229 Wallace Rd. Cowpens, S.C.	Administrative Specialist
Jay Williams	282 Swain St. Spartanburg SC 29301	Grounds Maintenance SCSD
Jackie C. Banks	140 Glen Spring Rd. Piedmont	Plumber + Welder
Randy May	803 Andromeda Ln. Spartanburg	Writer
R.D. Brannan	150 Smith Road	Maintenance
Elizabeth Johnson	212 Memorial Dr. Greenville SC	Administrative Specialist
Regina Robinson	3930 PINECROFT DR. TAYLORS, SC 29687	AV Media Specialist
Everett Hill	1618 New Cut Rd. Spartanburg, S.C. 29303	Sgt. B.I.D. + G.R.I.
Wanda Dodson	1013 Box 530 Rockwell SC 29376	Exec. Support Spec.
Spencer C.	31221 Oldfield St. Spartanburg SC 29301	Asst. Foreman
John L. Hill	820 Patch Drive	Media Director
James E. Smith	125 Douglas St. Spartanburg SC 29301	General Craftsmen
John W. Haffner	1014 Cannon Circle. Wellford, SC 29385	Admin. Asst.
Barbara Heming	PO Box 1034, Spitz SC 29304	Admin. Asst.
Brenda Moore	252 High Ave. Spitz, S.C. 29306	Admin. Asst. / Bus Driver
Larry Thompson	447 S. Wood Ave. Spitz SC 29302	Reg. School Nurse
Chris Jones	Only Child Apt.	Teacher
Mandy Green	320 Bygoneside Dr., Pauline SC	Admin. Asst. / M.H. School
Patricia Hill	111 E. 4th Ave. Spitz, S.C. 29302	Phone Room
John H. Hines	2017 Cannon Campground	Teacher
Walter Hines	12nd. 2000 High St. Spitz SC 29302	Officer
Charles H. Hines	2000 High St. Spitz SC 29302	Teacher
Charles Williams	131 Camburana Dr. Mena SC	Director, Power Plant
Lois Bailey	381 Foster Mill Rd. Spitz SC	Admin. Specialist / Recy.
William H. Hines	176 S. Carolina Ave. Spartanburg	Admin. Specialist

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Exhibit
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PETITION FOR VAUGHN SMITH

000055

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SOUTH CAROLINA SCHOOL FOR THE DEAF AND THE BLIND

JOSEPH P. FINNEGAN, JR.
PRESIDENT

August 16, 1994

Mr. Michael J. Cavanaugh, Director
Department of Probation, Parole and Pardon
2221 Devine Street, Suite 600
P. O. Box 50666
Columbia, SC 29201

RE: Vaughn Smith #70090 (Northside Correctional Institute)

Dear Mr. Cavanaugh:

I'm writing this letter on behalf of Vaughn Smith, an inmate at Northside Correctional Institute. During the past two and a half years (beginning 2/1/92), Mr. Smith has been a regular participant in the trusty work program which functions here on our campus as part of a formal agreement between SCSDB and the Department of Corrections.

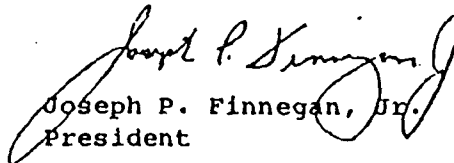
Mr. Smith has been assigned to work at our Warehouse where in addition to being involved with and responsible for handling millions of dollars worth of materials, he has also been involved in the vocational training of students who are assigned to this area as part of their educational program.

In addition, he has been involved in several formal instructional and/or counseling situations here with groups of students (under close staff supervision). The response from both students and staff to his presentations and counseling strategies has been extremely positive. There is little doubt that he has had a positive influence on the lives of some of our "at-risk" students. In my tenure here, Mr. Smith is the only inmate whom we have allowed to have this kind of continuous and direct involvement with our students. I believe this is due to the ability demonstrated by Mr. Smith and the trust that he has earned from both staff and students.

As Mr. Smith is considered for parole, please keep in mind his accomplishments and performance during the past two and a half years while he has been participating in our cooperative work program.

If I can be of any further assistance, please don't hesitate to contact me.

Sincerely yours,


Joseph P. Finnegan, Jr.
President

JPF, Jr.:fbc.
bcc: Vaughn Smith

Exhibit PAGE (2)
000036

SOUTH CAROLINA SCHOOL FOR THE DEAF AND THE BLIND

JOSEPH P. FINNEGAN, JR.
PRESIDENT

June 13, 1994

RECEIVED
JUN 17 1994
DEPT. OF CORRECTIONS
PROGRAM SERVICES

RECEIVED

JUN 14 1994

COMMISSIONER

Mr. Parker Evatt, Commissioner
S.C. Dept of Corrections
PO Box 21787
4444 Broad River Road
Columbia, S.C. 29221-1787

Dear Commissioner Evatt:

I'm writing in behalf of Vaughn Doc Smith, who is one of inmates who works on our campus, here at the S.C. School for the Deaf and Blind.

My observation of his presence here during the past 2½ years compels me to grant him the highest appreciation possible.

Although Vaughn is assigned to our warehouse faculty, in which I've always heard that he carries this job with a high degree of competence and respect to everyone he is in contact with, moreover, it is his constant volunteer work with our students that rates nothing less than remarkable.

To be strait to the point, this man is changing peoples lives in a most sincere and positive way. His incarceration seems to be a hindera to the community, because its clearly evident that as long as Vaughn is in jail, we cannot receive the full benefit of his gift towards bettering the minds of our children, to which Vaughn has proven to be experienced and amazingly gifted.

Although I'm not an expert in evaluating all inmates within the Dept. of Corrections, however I'm aware of few people whom have gone thru the system, and I have read much on some of those that have been paroled and have made work release. I have a basic knowledge of Vaughn's conviction as well as awareness of the enormous amount of time he has served on his sentence. Surely in comparison Vaughn seems to have attained the highest standard of consideration and without doubt is proving on a day to day basis year after year, that he has been fully rehabilitated and our society will benefit from his release.

Sincerely:

Daisy P. Foster

Daisy Foster

Dean of Students Deaf Middle/Sec.
S.C. School For Deaf And Blind

EXHIBIT PAGE (22)

Copy to DPPPS 6-20-94

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COOPER v. S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON (opinion No. 26480, May 5, 2008), the South Carolina Supreme Court addressed an inmate's appeal of the rejection of his parole and the denial of his request for reconsideration. The appeal was filed with the Administrative Law Court (ALC). The ALC dismissed the appeal on the grounds that it lacked subject matter jurisdiction to hear the appeal. The Court held that an appeal to the ALC was appropriate under the Administrative Procedures Act under these circumstances even though parole eligibility had not been permanently denied. In this case, the Parole Board's rejection was based on three (3) limited factors, all of which were related to the parole applicant's crime. The Board did not state that it considered the factors outlined in SC Code Section 24-21-640 or the 15 factors listed in its parole form. The Court held: "Because Cooper is not appealing the denial of parole, but rather, is challenging the method and procedure employed by the Parole Board in reaching its decision, Cooper's claim raises a sufficient liberty interest to trigger due process requirements of judicial review. If a Parole Board fails to consider and apply the statutorily-created parole criteria, it has the effect of rendering an inmate parole ineligible, which under FURTICK warrants review by the ALC. In the instant case, the Parole Board apparently failed to consider the requisite factors and instead, based its decision on certain fixed factors that are unaffected by any rehabilitation efforts on the part of Cooper."

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STATE OF SOUTH CAROLINA
In the Administrative Law Court
Docket Number 08-ALJ-15-00042

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

VAUGHN SMITH, #70090 APPELLANT

v.

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

BRIEF OF RESPONDENT

Teresa A. Knox,
Deputy Director of Legal Services

J. Benjamin Aplin
Assistant Legal Counsel

Tommy Evans, Jr.
Legal Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

ATTORNEYS FOR THE RESPONDENT

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STATEMENT OF APPELLANT'S ISSUE ON APPEAL

- 1. DID THE RESPONDENT IN ANYWAY CREATE A STATE LIBERTY INTEREST THAT IMPLIED THE EXPECTANCY FOR THE APPELLANT TO BE GRANTED PAROLE.**
- 2. DID THE RESPONDENT INCUR UPON THE APPELLANT A PROGRESSIVE SERIES OF LEGISLATIVE PENAL CODE AMENDMENTS THAT SUBSTANTIALLY ADDED DISADVANTAGING FACTORS TO HIS CONSIDERATION, THAT CONSTITUTES A VIOLATION FO EX POST FACTO.**
- 3. DID THE RESPONDENT VIOLATE ANY OF ITS OWN MANDATED STATUTORY GUIDELINES THAT DENIED THE APPELLANT A CAREFUL LEGITIMATE CONSIDERATION FOR PAROLE, RENDERING THE APPELLANT INELIGIBLE AND CAUSING A 14TH AMENDMENT VIOLATION OF DUE PROCESS AND EQUAL PROTECTION.**

STATEMENT OF THE CASE

On July 2, 1973, the Appellant entered Reliable mobile homes armed with a handgun with the intent to rob this business, the Appellant then fled the scene once he completed this robbery. While attempting to escape, deputy sheriff Pat Orr of the Kershaw County Sheriff's Department witnessed the Appellant driving in Lugoff, South Carolina. He recognized the Appellant and the vehicle as those being sought due to an involvement in an armed robbery being committed at Reliable Mobile Homes. Deputy Orr immediately initiated a traffic stop, while examining the vehicle the Appellant gave deputy Orr his drivers license. Upon receiving the Appellant's driver's license deputy Orr was shot by the Appellant four times, twice in the stomach, once in the chest and once in the head. While deputy Orr lay dead next to his vehicle the Appellant fled the scene, deputy Orr's body was later discovered with the Appellant's license still in his possession.

While fleeing the murder scene the Appellant entered the home of Mr. Presley Wiley. At gunpoint the Appellant forced Mr. Wiley's wife and four daughters in his vehicle and drove them to Savannah, Georgia, he then released them unharmed. The Appellant was later found and arrested in St. Augustine, Florida, upon arrest he was found in possession of a .38 caliber pistol. A ballistic's test was performed on this weapon and it resulted in a match with the bullets removed from deputy Orr's body. The Appellant was then extradited to South Carolina and was charged with offenses of murder, armed robbery, possession of an unlawful weapon, and five counts of kidnapping.

The Appellant later stood trial for all of the above referenced offenses, and on October 24, 1973, found guilty by a jury of his peers on all counts. Upon conclusion of this jury trial the

Appellant appeared before the Honorable James Ness. Judge Ness sentenced the Appellant to life incarceration for the offense of murder; life for each offense of kidnapping to be served consecutively to the conviction for murder; twenty-five (25) years for the offense of armed robbery; and, one (1) year for the offense of unlawful possession of a weapon. At the time the Appellant committed this offense South Carolina law allowed a person serving a life sentence parole eligibility upon the service of ten (10) years.

On January 11, 1974, the Appellant attempted an escape by hiding inside a sofa. He was caught prior to leaving the prison, with burglary tools in his possession. The Appellant later appeared before the Honorable Louis Rosen for the offense of attempted escape. Judge Rosen sentenced the Appellant to a six (6) month term of incarceration to be served consecutively to the offense he was currently serving. Then on April 18, 1976, the Appellant successfully escaped incarceration, and was able to elude the authorities for fourteen months. He later appeared before the Honorable Hicks Harwell for the offense of escape, he was sentenced to an eighteen month (18) term of incarceration to be served consecutively to all other offenses.

The Appellant initially appeared before the Parole Board on March 7, 1984, the Board decided to deny the Appellant an opportunity for parole. Since this initial denial, the Appellant has appeared before the Board an additional fourteen (14) times each resulting in a denial of parole. The last appearance before the Parole Board occurred on August 13, 2008. The Appellant's was denied an opportunity for parole due to: 1) nature and seriousness of the offense; 2) indication of violence in this or a previous offense; 3) use of a deadly weapon in this or a previous offense; and, 3) his prior criminal record indicates poor community adjustment. At the conclusion of his latest denial of parole the Appellant was notified by the Respondent as to his

denial. Upon receiving this denial the Appellant requested reconsideration by the Parole Board. On September 25, 2008, the Appellant was notified that the Board decided to deny his petition for reconsideration.

Upon receiving the denial of reconsideration, the Appellant decided to file a notice of appeal within the Administrative Law Court(ALC). Within this appeal the Appellant alleges that the Respondent's denial of his parole is a violation of his Constitutional rights. It is the position of the Respondent that they are well within their rights to deny the Appellant an opportunity for parole once it is determined that he failed to meet the qualifications. No violation of the Appellant's Constitutional rights has occurred upon this denial of parole, so the decision denying parole should be affirmed. The Respondent's brief follows.

**THE APPELLANT DOES NOT HAVE A LIBERTY
INTEREST IN RECEIVING PAROLE; THEREFORE, THE
ADMINISTRATIVE LAW COURT DOES NOT HAVE
JURISDICTION OVER A DECISION TO DENY PAROLE.**

The ALC's jurisdiction to hear final decisions of the Respondent is derived from the decisions of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) and Furtick v. S.C. Department of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002). In Al-Shabazz, the Supreme Court created a new avenue by which inmates could seek review of some final decisions of a state agency in "non-collateral" matters related to a conviction or sentence, i.e. matters in which an inmate does not challenge the validity of a conviction or sentence. The Court held that inmates could appeal those final agency decisions to the ALC and ultimately to the Court of Appeals pursuant to the Administrative Procedures Act. Al-Shabazz, at 376.

The Court recognized in Al-Shabazz, that “these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed; and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status.” Id., at 338. The Court noted that the appealable final decisions in Furtick arises in the latter manner, where an inmate alleges that the Department erroneously determined that he was not eligible for parole. The Court held that, in order to determine whether an inmate’s claim against the Department is entitled to review by the ALC under the procedures set forth in Al-Shabazz, it is first necessary to determine whether an inmate has a liberty interest in gaining access to the Parole Board. Id., at 352. The Court determined that the “*permanent denial of parole eligibility*” by the Department “implicates a liberty interest sufficient to require at least minimal due process.” Id. (emphasis in original)

The Appellant’s appeal does not involve a determination by the Respondent that he is not permanently ineligible for parole; instead, the Appellant is challenging the Respondent’s procedures and its decision not to grant him parole at his regularly scheduled parole hearing. Since there exist no liberty interest in being granted parole, this court lacks jurisdiction over a prisoners denial of parole. The Supreme Court addressed this very issue in Furtick, where the Court noted, [a]lthough this provision creates a liberty interest in parole eligibility it **does not** create a liberty interest in parole. Furtick, at 598 n.4 (emphasis added). Since no liberty interest is implicated when a potentially eligible inmate is denied parole by the Board, an inmate has no right to appeal the denial of parole to the ALC, but instead must await their next parole hearing. Id. Pursuant to the Supreme Court decision in Furtick, the Board’s decision is not appealable to the ALC. An inmate has a right of review by the Administrative Law Judge Division after a final

decision of parole eligibility; however, a **parole eligible inmate does not have the same right of review after a decision denying parole.** Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2004). Parole eligibility is not a matter within the jurisdiction of the trial court, but falls within the province of the Board of Probation, Parole and Pardon Services. Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991).

The ability to deny parole lies totally with the Parole Board. Though there are certain criteria that the legislature has established must be followed, the responsibility has always been with the Parole Board to determine whether or not to award parole. The South Carolina Code of Laws specifically state:

The board must carefully consider the record of the prisoner before, during and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and, that suitable employment has been secured for him.

S.C. Code Ann. §24-21-640 (Supp. 2007).

The Appellant is of the opinion that he was wrongfully denied parole due to inmates being awarded parole in greater numbers between 1952 to 1975. The rate past boards has allowed parole has no bearing on the current parole board. The decision to grant or deny parole lies solely with the Parole Board that you are currently appearing before and not the board that existed thirty years ago. There are great societal differences that exist now, so there will be a noticeable difference regarding the board's ideology now compared to the Board in 1975. There are absolutely no members on the board today that served in 1975; therefore, the argument of the Appellant regarding the board that exist at the time of his arrest carries no weight. The current

board is the only entity that decides whether the Appellant should be allowed to be released on parole.

It is the opinion of the Appellant that the denial of parole was unlawful due to the criteria currently used has factors that was not considered at the time of his arrest, so this denial should be considered violation of ex post facto. Ex post facto relates to the law as it exist at the time he committed the crime and not at the time he was convicted. The law existing at the time of the offense, and not at the time of sentencing determines whether an increase of punishment or reduction of benefits constitutes an ex post facto violation. Elmore v. State, 305 S.C. 456, 409 S.E.2d 397 (1991). The legislature established that the Respondent must create a criteria and the inmate be given a copy. Since this requirement is statutory the Appellant believes the Respondent's policy created criteria constitutes a law established by the legislature, that if changed would violate ex post facto. The criteria is almost identical to the criteria in 1973, however, the criteria created by the Respondent is not law, so it does not fall under ex post facto.

All the Respondent's criteria must reflect all of the aspects established by the legislature and include a review of the prisoner's disciplinary and other records. S.C. Code Ann. §24-21-640 (Supp. 2007). The Respondent's criteria does include all of the criteria established under South Carolina law. The only addition is that fact that the victims, law enforcement and the sentencing judge are now informed of the hearing, which were added when these notification became mandatory pursuant to South Carolina law. The South Carolina Code of Laws specifically state:

The director must give thirty-days written notice of any board hearing during which the board will consider parole for a prisoner to the following persons:
(1) any victim of the crime who suffered damage to his person as a

result thereof or if such victim is deceased, to members of his immediate family to the extent practicable;

(2) the solicitor who prosecuted the prisoner or his successor in the jurisdiction in which the crime was prosecuted; and

(3) the law enforcement agency that was responsible for the arrest of the prisoner concerned.

S.C. Code Ann. §24-21-221 (Supp. 2007).

This addition to the criteria cannot be considered a change in the law that creates an ex post facto violation. The legislature has given the Respondent the authority to create any criteria as long as it includes the established criteria listed within the statute. Notification to the victims, law enforcement and the solicitor is necessary to determine if the interest of society will be impaired through the Appellant's release, a criteria found in the statute. The victim, law enforcement, and the solicitor must be given notice regarding the commencement of a hearing so they can voice any opposition. Under the victims bill of rights, this is a right found in the South Carolina Constitution.¹

The Appellant also had issue with Benny DeBruhl being allowed to voice his opposition at this hearing. Mr. DeBruhl was a friend of deputy Orr and a citizen wishing to voice his opposition regarding the Appellant being released on parole. It is the Appellant position that since Mr. DeBruhl was not a party to the actual crime he should not have been allowed to present his testimony in opposition to parole. The Appellant had numerous individuals writing letters on his behalf requesting the Board to grant parole. These individuals also were not involved in the commission of the Appellant's crime, however, their opinions were allowed to be presented and

¹Victims of a crime have the right to:

(10) be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision. S.C. Const. art I, §24.

were given as much consideration as Mr. Debruhl. If the Board denies Mr. DeBruhl an opportunity to express his opinion regarding the Appellant's release on parole, the same holds true to anyone presenting testimony in the Appellant's behalf.

It is the Appellant's position that South Carolina law regarding the criteria for parole is different now than when he committed his crime, and following the current law is a violation of ex post facto. The law at the time of the offense is identical to the existing law; therefore, this does not constitute an ex post facto violation. At the time of the Appellant's conviction §55-612 listed the mandatory criteria that the Board uses to determine parole. Section 55-612 of the South Carolina Code of Laws stated:

The Probation, Parole and Pardon Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it appear, to the satisfaction of the Board, that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interests of society will not be impaired thereby; and, that suitable employment has been secured for him.

S.C. Code Ann. §55-612 (Supp. 1962)

In comparing this section to Section 24-21-640 quoted earlier in this brief it differs only in the word "shall" replaced by the word "may." This change should be considered as procedural; therefore, it cannot be considered an ex post facto violation. Even though it may work to the disadvantage of the defendant, a procedural change is not ex post facto. Roller v. Gunn, 107 F.3d 227 (1997). In both versions of the statute the Parole Board has full responsibility to decide whether or not a person should be granted parole. The current statute does not change the criteria or the decision makers relating to the acceptance or denial of parole. The current statute is exactly

identical to the statute that existed at the time the crime was committed; therefore, there exist no violation of ex post facto.

**THE APPELLANT HAS FAILED TO PROVE THAT THE
RESPONDENT HAS FAILED TO THOROUGHLY
EVALUATE ALL OF THE FACTS PRIOR TO THE DENIAL
OF PAROLE.**

It is the opinion of the Appellant that the Parole Board has failed to examine all of the evidence thoroughly prior to deciding that he should not be released on parole. The Appellant believes this was created due to, then director Michael J. Cavanaugh letter to the Honorable Bob Inglis, stating that the Appellant was given five (5) consecutive life sentences and his sentences are classified as violent. Though the letter was incorrect, Mr. Cavanaugh is no longer the director of the Department, and even when he was director he had no influence over the Board's decision to deny parole. The Appellant also is of the opinion that not all of the information available is being considered prior to the denial of parole, due to the fact no one from the Department has visited his wife or interviewed her regarding the Appellant's release on parole. The parole examiner cannot visit each relative of an inmate that is going before the Board. The examiner interviews the inmate to receive information relating to the family history, health and welfare of the inmate. The inmate is also informed of the criteria established by the Respondent and provides him a copy as required by law. The examiner will also notify the prisoner of the scheduled date of his hearing, this will give him an opportunity to notify anyone he wishes to attend or write a letter in support of him being released on parole. The Parole Board takes into consideration any letter delivered to them either in support or in opposition of the inmate being granted parole.

These reasons presented by the Appellant are not sufficient to prove that the Parole Board

failed to consider all of the information presented prior to the denial of parole. The burden of proof lies with the Appellant regarding whether or not he has been unlawfully denied parole. In administrative proceedings the general rule is that the applicant for relief, benefits, or a privilege has the burden of proof and the burden of proof test rest upon the one who files a claim with an administrative agency to establish that required conditions of eligibility have been met. Leventis v. South Carolina Department of Health and Environmental Control, 340 S.C. 118, 530 S.E.2d 643 (2000). The Appellant has failed to provide any evidence showing the Board failed to consider all of the evidence provided. He has only made assumptions as to what was applied during his parole hearing. He believes if all of the evidence was considered he would have been awarded parole; however, after all of evidence is considered it continues to be the Parole Board's determination whether or not an inmate should be released on parole.

In order for the ALC to rule against the order of an administrative agency the substantial evidence rule must be followed regarding the Administrative Procedures Act. Here the decision to deny parole was reasonable, the Appellant was convicted of killing a police officer in the line of duty, while attempting to flee an armed robbery; he then unlawfully entered a residence and kidnapped five people; and also attempted and successfully escaped incarceration. Not only these facts of the conviction warrant the denial of parole but there was vehement opposition expressed by the victim's family, both Richland and Kershaw County Sheriffs, the fifth circuit solicitor, and one of the sentencing Judges.² The Honorable Jake Knotts, State Senator of District 23 also voiced his objection to the Appellant being released on parole. It is impossible for this Honorable Court to believe that the Parole Board will ignore all of these factors in the determination of parole.

²The original sentencing Judge James Ness is now deceased.

The decision to deny parole is reasonable and follows the criteria provided from the statute and the policy created by the Respondent. The Appellant has not provided any evidence proving the Board failed to consider all of the criteria or the evidence presented. A reasonable person would reach the identical conclusion; therefore, the Board's decision should be upheld. The findings by an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. Summersell v. South Carolina Department of Public Safety, 334 S.C. 357, 513 S.E.2d 619 (1999). This denial is reasonable due to the offense and the opposition that was presented to the Parole Board prior and during the hearing, so there exist substantial evidence that the decision to deny parole was reasonable. It does not matter that the Board could have awarded parole, there continues to remain enough evidence to support the denial of parole. "Substantial evidence" is not a mere scintilla of evidence nor evidence viewed blindly from one side of the case, but is evidence which considering the record as a whole would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action. Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981).

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Vaughn G. Smith #70090

Appellant

VS

SOUTH CAROLINA DEPT. OF
PROBATION, PAROLE, AND PARDON
SERVICES

Respondent

DOCKET NO. 08-ALT-15-00042-AP

GRIEVANCE NO. TyRCI

MOTION TO ATTER AND/OR AMEND - PURSUANT TO S.C. RULES
OF CIVIL PROCEDURE - RULE 15 ...

THE PRO-SE, APPELLANT RESPECTFULLY REQUEST TO THE COURT,
TO ATTER AND MAKE AN AMENDMENT TO THE RECORDS CONCERNING
THE APPELLANT'S (PRIMARY APPEAL BRIEF), SUBMITTED TO THE ADMINISTRATIVE
LAW COURT, DATED - (DECEMBER-30-2008) DOCKET NO. 08-ALT-15-00042-
AP, GRIEVANCE NO. TyRCI .., FOR THE PURPOSE OF A BETTER
CLARIFICATION OF THE S.C. CODE OF LAW OR STATUTE, BEING USED
WHEN THE APPELLANT WAS FIRST INCARCERATED AND WHEN CERTAIN
CODES BECAME LAW ...

WITH REFERENCE TO THE APPELLANT'S PRIMARY BRIEF, REFERED
TO FIRST; (WRITTEN WITHIN PAGE-5-) OF THE BRIEF; AND ALSO CONCERNING
ATTACHED EXHIBIT PAGE (1A); WHERE-AS THE APPELLANT WISHES TO

CORRECT ALL STATEMENTS ADDRESSING THAT S.C. TITLE §16-1-60 WAS
INACTED IN 1976... WHEREAS IT IS AMENDED TO BE UNDERSTOOD
THAT SECTION §16-1-60 S.C. CODE OF LAW; TO PROVIDE A DEFINITION
FOR VIOLENT CRIME OFFENDERS WAS INACTED IN 1986; NOT 1976...

IT IS FURTHER REQUESTED IN MOTION TO AMEND THE RECORD TO
SUBMIT TO THE COURT AND ALL PARTIES (RESPONDENT); THAT THE
APPELLANT RESIDES AT AN INSTITUTION THAT IS VERY LIMITED IN
PROVIDING ADEQUATE RESEARCH INFORMATION (TYGER RIVER CORR. INST.)
HOWEVER; APPELLANT AMENDS THE RECORD TO REFLECT THAT HE WAS
CONVICTED UNDER THE COMMON LAW CODE OF S.C., UNCLASSIFIED FELONY
OF 1962 §16-51 (WITH A POSSIBLE CONNECTION TO §16-11)... AND OTHER
VARIOUS CODES OF 1962 THAT ARE DEFINED AS FELONIES...

MAY-18-2009

Vaughn G. Smith * 70090
Tyger River Correctional Inst.
Upper Yard - Dorm-8 - Room-210
200 Prison Road
Enoree, S.C. 29335

Page (2)

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FILED

MAY 20 2009

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

COPY

Vaughn G. Smith #70090

APPELLANT

VS

SOUTH CAROLINA DEPT. OF
PROBATION, PAROLE, AND PARDON
SERVICES

RESPONDENT

DOCKET NO. 08-ALJ-15-00042-AP

GRIEVANCE NO. Ty RCI

FILED

MAY 20 2009

SC ADMIN. LAW COURT

- CERTIFICATE OF SERVICE -

I, Vaughn G. Smith; Pro-se Appellant, do hereby CERTIFY - UNDER PENALTY OF PERJURY; THAT OF THIS DATE, MAY-18-2009; I HAVE SERVED AN ORIGINAL (MOTION TO SHOW GOOD CAUSE FOR A ORAL HEARING); TO THE HONORABLE JUDGE JOHN MCLEOD, ADMINISTRATIVE LAW COURT, EDGAR A. BROWN Bldg, 1205 PENDLETON ST. SUITE 224-COLA, S.C. 29201; AND A SAID COPY TO; THE SOUTH CAROLINA DEPT. OF PROBATION, PAROLE AND PARDON SERVICES, ATTN; DEPUTY OF LEGAL SERVICES, P.O. BOX 50666, COLA, S.C. 29250; BOTH BEING MAILED CERTIFIED - U.S. POSTAL

MAY-18-2009

Vaughn G. Smith

Vaughn G. Smith #70090

TYGER RIVER CORRECTIONAL INST.

UPPER YARD - DORM-8 - ROOM-210
200 PRISON ROAD

000076 ENDREE, S.C. 29335

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Vaughn G. Smith #70090

Appellant

vs

SOUTH CAROLINA DEPT. OF
PROBATION, PAROLE, AND PARDON
SERVICES

Respondent

DOCKET NO. 08-ALJ-15-00042-AP

GRIEVANCE NO. TY RCI

-- MOTION TO SHOW GOOD CAUSE FOR AN ORAL HEARING --

I, Vaughn G. Smith; PRO-SE APPELLANT, do hereby REQUEST RESPECTFULLY, TO MOTION THE ADMINISTRATIVE LAW COURT, TO PROVIDE AT THEIR SOONEST CONVENIENCE, AN ORAL HEARING DATE; TO RESOLVE ISSUES OF NOVEL JURISPRUDENCE IMPORTANCE.

AT FIRST, THE APPELLANT WOULD MOST HUMBLY REQUEST THE HONORABLE COURT, TO REVIEW THE BRIEFS ON RECORD AND THE EXHIBITS OF UNCONTESTABLE EVIDENCE SUBMITTED BY THE APPELLANT FOR THE DIRECT PURPOSE OF CLARITY CONCERNING THIS APPEAL AND REASONING FOR THE REQUEST FOR A ORAL HEARING ...

THE APPELLANT'S REQUEST FOR ORAL HEARING IS BASED ON (THREE) MAJOR ISSUES; (ONE BEING), THE APPELLANT'S (ADAMANT) FORMAL CHALLENGE, THAT ITS AN ABSOLUTE FACT (NOT AN OPINION), AND SUPPORTED BY EVIDENCE; THAT THE PAROLE AGENCY RESPONDENT'S BRIEF, CONTAINS NON-ACCIDENTAL DISCREPANCIES, PRESENTED TO THE COURT, DESIGNED TO MASK THE SERIOUS LACK OF ADHERENCE TO S.C. STATE LAW MANDATOR, PROCEDURES, AS WELL AS THE PAROLE AGENCY'S OWN STATUTORY CREATED PROCEDURES...

IT IS DEFINED AS AN ACT OF MIS-REPRESENTATION -- WHEN AN (AGENCY TRIBUNAL) CLAIMS OR DECLARES; WITHIN AN OFFICIAL CAPACITY, THAT THEY HAVE THOROUGHLY INVESTIGATED A CRITERIA REQUIREMENT OR SOMETHING FOR EVALUATIONAL PURPOSES; BUT IN ESSENCE, THEY KNOW THEY HAVEN'T; AND IT IS FURTHER ALLEGED THAT WHEN A FORM OF MIS-REPRESENTATION OF THE FACTS OCCURED DURING THE (EVALUATION AND DETERMINATION) OF ANYONE (LIVELYHOOD OR FREEDOM), THIS ACT STRONGLY AWAKENS THE DEFINITION OF A (BIAS TRIBUNAL), WARRANTING JUDICIAL REVIEW BY THE ADMINISTRATIVE LAW COURT...

(SECONDLY)

THERE IS A MAJOR JUDICIAL ISSUE CHALLENGED BY THE APPELLANT IN HIS ORIGINAL BRIEF; (CONCERNING THE UNLAWFUL CLASSIFICATION CHANGE); THAT WAS CONFIRMED BY THE RESPONDENT'S BRIEF (PAGE-9-); AS BEING ONE OF THE ERRORS

(CHANGING A FELONY CONVICTION) INTO A (VIOLENT OFFENDERS CONVICTION); THAT WAS EVALUATED INCORRECTLY WITHIN THE PAROLE AGENCY DIRECTOR'S STATUS REPORT., YET THE AGENCY BLANTANTLY DISREGARDS THE SIGNIFICANCE OF THE YEARS OF TREMENDOUS DISADVANTAGING CONSEQUENCES INCURRED UPON THE APPELLANT WHERE-AS THEY HAVE YET TO MAKE EVEN AN ATTEMPT TO OFFICIALLY CORRECT THE ADMINISTRATIVE DAMAGES...

THE WRONGFUL CLASSIFICATION OF THE APPELLANT BEING EVALUATED WITHIN THE VIOLENT OFFENDERS SYSTEM, OPENS UP A WHOLE PANDORA'S BOX OF ISSUES... THE VIOLENT OFFENDERS DEFINITION; UNDER THE (1986 OMNIBUS CRIME BILL § 16-1-60); WASN'T ENACTED UNTILL (12 PLUS YEARS) AFTER THE APPELLANT HAD ALREADY BEEN CONVICTED AND INCARCERATED; AND FURTHER HAD ALREADY ACCUMULATED EARNED WORK CREDITS, THAT WERE USED TO SET THE APPELLANT'S FIRST PAROLE HEARING REVIEW IN 1984; UNDER THE COMMON LAW - PENAL CODE CLASSIFICATION (FELONY CONVICTION); ALSO, THE APPELLANT HAD ALREADY APPEARED BEFORE THE PAROLE BOARD REVIEW (NO-LESS THAN TWICE); UNDER THE STANDING YEARLY-ANNUAL REVIEW CRITERIA AND PROCEDURE...

HOWEVER, BECAUSE THE AGENCY WRONGFULLY RE-CLASSIFIED THE APPELLANT; THE CONSEQUENCE (AMONG THE MANY); WAS THE CHANGING OF HIS ANNUAL PAROLE REVIEWS TO BI-ANNUAL REVIEWS; WHICH RESULTED IN MANY YEARS OF UNCONSTITUTIONAL DENIALS OF PAROLE HEARING REVIEWS; WHERE-AS BY RIGHTFUL OBLIGATION; THE PAROLE AGENCY UPON

ACKNOWLEDGMENT OF THE ERROR; SHOULD HAVE IMMEDIATELY RE-INSTATED THE APPELLANT'S ANNUAL PAROLE HEARING REVIEWS...

NOT DOING SO; WHERE-AS THE APPELLANT'S NEXT PAROLE REVIEW WOULD BE THIS CALENDER YEAR (August-2009), IS SHOWING THE AGENCY'S NON-DESIRE TO RECONCILE THEIR ERRORS WITH THE APPELLANT; WHICH FURTHER AWAKEN AND CONSTITUTES THE MEANING OF A Bias TRIBUNAL, WARRENTIA ADMINISTRATIVE LAW INTERVENTION...

(Thirdly)

IT IS STRANGELY odd, how THE PAROLE AGENCY RESPONDENT'S BRIEF, ATTEMPTS TO IMPLY TO THE COURT WITHIN (PAGE-6-) OF THEIR BRIEF, THAT THE CRITERIAS BEING USED TODAY ARE ALMOST IDENTICAL TO THAT OF (1973);

YET THE APPELLANT HAS SUBMITTED TO THE COURT IN EVIDENCE, WITHIN BOTH BRIEFS (EXHIBIT PAGE-15-) OF THE ORIGINAL FIRST BRIEF, AND (EXHIBIT PAGE 1 AND 2) OF THE REPLY BRIEF; THAT THE PAROLE AGENCY HAS DRASTICALLY CHANGED THE LANGUAGE AND THE CONSIDERATIONAL FACTORS FOR PAROLE; WHICH PROFOUNDLY DEFY THE RULE OF LAW, WRITTEN WITHIN S.C. CODE OF LAW - 1986 (SECTION §24-21-640): WHERE AS IT IS EXCLUSIVELY DEFINED, THAT THE PAROLE BOARD (SHALL) ESTABLISH A WRITTEN (SPECIFIC) CRITERIA FOR THE GRANTING OF PAROLE AND PROVISIONAL PAROLE, -- -- -- THAT THE CRITERIA (SHALL) REFLECT ALL ASPECTS OF (SECTION §24-21-640); (MOST IMPORTANTLY DEFINED HERE)

IT SAYS --- THAT THE CRITERIA (MUST) BE MADE AVAILABLE TO ALL PRISONERS AT THE (TIME OF THEIR INCARCERATION)...

THIS DEFINITION CLEARLY DEFINES A NON-DISCRETIONARY COMMAND IN STATE LAW; WHERE-AS ONCE THE APPELLANT HAS BEEN INCARCERATED; THE PAROLE AGENCY (CAN-NOT) CHANGE THE RULE OF LAW OR PROVISIONS, AS TO WHAT IS EXPECTED OF THE APPELLANT TO WARRANT PAROLE; NOR CAN THE AGENCY CHANGE (MANY YEARS LATER), THE WRITTEN PREREQUISITE LANGUAGE CONSIDERING PAROLE; NOR THEIR OWN CREATED EVALUATIONAL CONSIDERATIONAL FACTORS FOR CONSIDERING PAROLE, THAT MAKES THE PLAYING FIELD DIFFERENT AND MORE DISADVANTAGING...

(IN CONCLUSION)

CLEARLY THE APPELLANT HAS PROVIDED SUBSTANTIAL EVIDENCE WITHIN HIS BRIEF, LITERAL DIRECTION IN SHOWING THAT THE AGENCY HAS IN FACT (CHANGED THE PLAYING FIELD), AS WELL AS USED STATEMENTS TO THE COURT, THAT THE APPELLANT FORMALLY DESIRES TO CHALLENGE (UNDER OATH IF NECESSARY), TO SHOW CAUSE THAT THE AGENCY HAS POSTURED IN BIAS; WHERE-AS A ORAL HEARING IS RESPECTFULLY REQUESTED TO RESOLVE THIS SERIOUS JUDICIAL MATTER...

MAY-16-2009

Taughn G. Smith * 70090
TYGER RIVER CORRECTIONAL INST.
UPPER YARD DORM-8 - ROOM-210
200 PRISON ROAD - EUREE, S.C

PAGE(5)

000081

29335

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Vaughn G. Smith #70090
Appellant

VS

SOUTH CAROLINA DEPT. OF
PROBATION, PAROLE, AND PARDONS
SERVICES

Respondent

DOCKET NO. 08-ALT-15-00042 - AP

GRIEVANCE NO. TyRCI

FILED

MAY 20 2009

SC ADMIN. LAW COURT

- CERTIFICATE OF SERVICE -

I, Vaughn G. Smith, Pro-se, Appellant, do hereby CERTIFY - UNDER PENALTY OF PERJURY; THAT OF THE DATE: MAY - 18 - 2009; 'I HAVE SERVED (AN ORIGINAL REPLY BRIEF) WITH A MOTION FOR ATTACHMENT OF EXHIBITS; 'TO THE ADDRESS; THE HONORABLE JUDGE JOHN McLEOD, ADMINISTRATIVE LAW COURT, EDGAR A. BROWN Bldg. 1205 PENDLETON ST. SW. To 224 Colo. S.C. 29201; AND A SAID COPY; To, SOUTH CAROLINA DEPT. OF PROBATION, PAROLE, AND PARDON SERVICES; ATTN: Deputy of LEGAL SERVICES, P.O. BOX 50666, Colo, S.C. 29250; Both BEING MAILED CERTIFIED - U.S. POSTAL AT THE TYGER RIVER INST.

MAY - 18 - 2009
Vaughn G. Smith

Vaughn G. Smith #70090
Tyger River Correctional Institution
Upper Yard - Dorm-8 - Room 210
200 Prison Road
Endree, S.C. 29335

000082

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Vaughn G. Smith #70090

Appellant

vs

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

Respondent

Docket No. 08-ALJ-15-00042-AP

GRIEVANCE NO. TYRCI

(Appellant's Reply Brief)

THE PRO-SE - APPELLANT RESPECTFULLY RESPONSE TO
THE SOUTH CAROLINA DEPT. OF PROBATION, PAROLE, AND PARDON
SERVICES'S -- (BRIEF OF RESPONDENT) DATED FEBRUARY 19-
2009; CONCERNING ISSUES THERE-IN ... THE APPELLANT RESPECT-
FULLY REFERS TO THE PROB. DEPT. AS THE (AGENCY) ...

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ARGUMENTATIVE ISSUES:

APPELLANT'S - REPLY BRIEF RESPONSE - TO CREATED LIBERTY
INTEREST... PAGES (1) THRU (2)

- REPLY RESPONSE - TO THE AGENCY'S CLAIM, THE APPELLANT HADN'T
PROVIDED EVIDENCE, THAT THEY DIDN'T THOROUGHLY EVALUATE FACTS...
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TO SUPPORT BRIEF ---- (PAGES 1 THRU 18)

(A)

TABLE OF AUTHORITIES

- STATUTES -

S.C. CODE OF LAW : 1976 - TITLES 21-24 - VOL - 9 (2007 REVISED)

§ 24-21-220 - - PAGE - (3)

S.C. CODE OF LAW : § 55-611-OF-1952 - 62 - - - PAGE (5)

STATEMENT OF APPELLANT'S ISSUES ON APPEAL

- 1.) Did The Agency in ANYWAY CREATE A STATE LIBERTY INTEREST THAT IMPLIED THE EXPECTANCY FOR THE APPELLANT TO BE GRANTED PAROLE...
- 2.) Did The Agency INCUR UPON THE APPELLANT, A PROGRESSIVE SERIES OF LEGISLATIVE PENAL CODE AMENDMENTS THAT SUBSTANTIALLY ADDED DISADVANTAGING FACTORS TO HIS CONSIDERATIONAL CHANCES OF MAKING PAROLE, THAT CONSTITUTES A VIOLATION OF THE EX POST FACTO CLAUSE ...
- 3.) Did The Agency VIOLATE ANY OF ITS OWN MANDATED STATUTORY GUIDELINES THAT DENIED THE APPELLANT A CAREFUL LEGITIMATE CONSIDERATION FOR PAROLE, RENDERING IT INELIGIBLE AND CAUSING A 14TH AMENDMENT VIOLATION OF DUE PROCESS AND EQUAL PROTECTION ...

- THE AGENCY RESPONDENT'S ARGUMENTATIVE ISSUES -

- 1.) THE APPELLANT DOES NOT HAVE A LIBERTY INTEREST IN RECEIVING PAROLE; THEREFORE, THE ADMINISTRATIVE LAW COURT DOES NOT HAVE JURISDICTION OVER A DECISION TO DENY PAROLE...
- 2.) THE APPELLANT HAS FAILED TO PROVE THAT THE RESPONDENT HAS FAILED TO THOROUGHLY EVALUATE ALL OF THE FACTS PRIOR TO THE DENIAL OF PAROLE...

III

STATEMENT OF CASE

THE APPELLANT WAS CONVICTED-OCT-24-1973, OF ARMED ROBBERY MURDER AND KIDNAPPING-ALONG WITH AN UNLAWFUL WEAPONS CHARGE. THE TOTAL COMBINED SENTENCE, WITH A 1974 AND 1976, ATTEMPT AND THEN ESCAPE, COMES TO 2 LIFE SENTENCES-PLUS 26 YEARS-PLUS 24 MONTHS-WITH 4 LIFE SENTENCES-CONCURRENT. THE APPELLANT'S FIRST PAROLE HEARING AND REJECTION WAS HELD-MARCH-7-1984; AND THE HEARINGS WERE HELD ANNUALLY UNTILL IN-1986-, A QUESTIONABLE RE-CLASSIFICATION CHANGED THE HEARINGS TO BI-ANNUAL... AFTER THE APPELLANT'S LAST PAROLE REJECTION, DATED (AUGUST-13-08); HE FILED A NOTICE OF APPEAL (DATED-AUGUST-26-08); CITING, THE AGENCY HAS BEEN USING THE WRONG PROVISIONS AND CRITERIA CODES IN ACCORDANCE WITH THE APPELLANT'S INCARCERATION DATE OF (OCT-24-1973)... THE AGENCY DENIED THE APPEAL REQUEST FOR RE-HEARING (SEPT-25-08); TO WHICH APPELLANT FORWARDED HIS APPEAL TO THE ADMINISTRATIVE LAW COURT (A.L.C.) DATED-OCT-14-08)... APPELLANT RECEIVED AN ASSIGNMENT DOCKET NO. FROM A.L.C. (DATED-NOV-5-08); FILED A PRIMARY BRIEF -DATE DELIVERED (DEC-30-08); AND THE AGENCY RESPONDENT'S BRIEF WAS RECEIVED (DATED-FEB-19-09)...

-Reply RESPONSE-TO AGENCY'S BRIEF; THAT APPELLANT DIDN'T HAVE A LIBERTY INTEREST; WHEREFORE A.L.C. DOESN'T HAVE JURISDICTION...

THE AGENCY'S BRIEF SERIOUSLY SIDE-STEPS AND IGNORES THE TRUE ISSUES CONCERNING THE APPELLANT'S LIBERTY INTEREST; WHERE-AS, DURING THE PERIOD OF HIS ENTERING THE SYSTEM; (100 PERCENT) OF EVERY ELIGIBLE PRECINCT INMATE (INCLUDING ALL THOSE WITH LIFE SENTENCES); MADE PAROLE WITHIN A MAXIMUM OF A (15 YEAR SPAN); UNDER THE

(When it shall appear that the Appellant has shown a disposition to reform doctrine... The word (shall) is non-discretionary and demands by law an (obligation); very different from the word (may) which allows discretion... Under the old system, when an inmate truly had shown years of solid reform and rehabilitative behavior; the Agency did in fact acknowledge the (obligation) to parole the inmate.

The important relevant issue here; is not only whether or not the old parole members of (1973) are still actively sitting on the Board anymore; but rather (explicitly); are the new members being (advised) as to what was the (basic standard of law) and (prevailing criterias) being used when the Appellant was first incarcerated... Then whether or not the new members are making (at least) an (intelligent) effort and (attempt), to evaluate considerational factors for parole under those parameters!!! Clearly, by the Agency's own admittance, written within (Page-5) of their brief; they knowingly express and adopted the using of progressive amended laws and criterias, enacted years after the Appellant's incarceration, without any regard or attempt what-so-ever to consult the legal issues in place when the Appellant was first incarcerated.

This awakens both Equal Protection and Ex Post Facto violations because the word (shall) helped to imply the means to obtain parole with the showing of good behavior -- Hence Franks a Liberty Interest...

-Reply Response- To the Agency's claim; The Appellant hasn't provided evidence, that they didn't thoroughly evaluate facts...

The Agency makes a deliberate attempt to mis-lead and down-play

THE IMPORTANCE OF THE FORMER DIRECTOR'S STATUS REPORT, AS WELL AS OTHER ISSUES ESTABLISHED IN THE APPELLANT'S BRIEF; HOWEVER REFERENCED WITHIN (PAGE-9) OF THE AGENCY'S BRIEF, THE APPELLANT PROVIDES DIRECT (REBUTIAL EVIDENCE) CONCERNING THE INFLUENCE THE DIRECTOR HAS WITHIN HIS OFFICE. REGARDLESS AS TO WHETHER OR NOT HE/SHE IS A VOTING MEMBER!! WRITTEN WITHIN S.C. CODE OF LAW - 1976 TITLES 21-24 - VOL-9 (2007 REVISED); §24-21-220; CLEARLY EXPRESSED IN PARTS - THAT THE DIRECTOR IS (VESTED) WITH MANAGEMENT AND CONTROL OF THE AGENCY; AND IS TO (ASSURE) THAT THE (PROPER CASES) AND (INVESTIGATIONS) ARE (PREPARED FOR THE BOARD); ALONG WITH BEING EXCLUSIVELY - RESPONSIBLE FOR ALL RECORDS UNDER THE CONTROL OF THE AGENCY!!

THEREFORE, IT IS ESTABLISHED BY LAW THAT THE DIRECTOR'S REPORT IS DEEMED OFFICIAL; BEARING FULL LEGAL AUTHORITY AND RESPONSIBILITY OF THE AGENCY... BECAUSE THE DIRECTOR IS VESTED WITH THE RESPONSIBILITY TO MAINTAIN ALL RECORDS AND PREPARE INVESTIGATIONS; WHEN THE DIRECTOR'S STATUS REPORT IS WRONG; THEN BY DIRECT LEGAL MANDATORY ASSOCIATION, THE VOTING BOARD MEMBERS INFORMATION BEING EVALUATED FOR PROLE CONSIDERATION IS WRONG!! THE APPELLANT HEREBY DECLARES AS DIRECT EVIDENCE; WRITTEN WITHIN (PAGE-9) OF AGENCY'S BRIEF; THEY CONCEDE THAT THE (DIRECTOR'S STATUS REPORT IS INCORRECT); WHICH WAS A MAJOR ITEM CHALLENGED IN THE APPELLANT'S ORIGINAL BRIEF... FOR THE AGENCY TO CONSUME AN INCORRECT STATUS REPORT, ALONG WITH WRONGFULLY CHANGING THE APPELLANT'S (UNCLASSIFIED FELONY) INTO A (VIOLENT OFFENDERS CONVICTION) WHICH IS EXPRESSED IN S.C. CODE OF LAW - TO BE PROHIBITED; AND YET CLAIM THE APPELLANT DIDN'T PROVE THE AGENCY DIDN'T PROVIDE A THOROUGH EVALUATION, IS ABSURD... FURTHERMORE, THE AGENCY WILLFULLY SURPRESSES THE MAGNITUDE OF THE YEARS OF DISADVANTAGING

CONSEQUENCES ATTACHED TO THE (VIOLENT OFFENDERS) CRITERIA BASE, DIRECTLY
EFFECTING FACTORS FOR PAROLE... ONE OF SEVERAL MAJOR DISADVANTAGING
CONSEQUENCES, WAS THE CHANGING OF THE APPELLANT'S ANNUAL PAROLE
REVIEW TO BI-ANNUAL... ANOTHER MIS-LEADING STATEMENT THE AGENCY'S
BRIEF CLAIMS WITHIN (PAGE-9-); IS THE SAYING THAT THE AGENCY'S PAROLE
EXAMINER INTERVIEWS THE APPELLANT TO RECEIVE FAMILY HISTORY INFORMATION
(UNDER THE GROUNDS OF THE PENALTY OF PERJURY) THE APPELLANT HEREBY STATES
THAT DURING A PERIOD OF NO-LESS THEN 15 YEARS, THE EXAMINER, WHEN
INTERVIEWING THE APPELLANT AT THE INSTITUTION, HAS (NEVER-EVER) RECEIVED
OR INQUIRED ABOUT FAMILY HISTORY OTHER THEN TO ASK (WHERE WILL I LIVE
AND WHERE WILL I WORK)... APPELLANT PRESENTS AS EVIDENCE (SEE EXHIBIT
REPLY BRIEF PAGE -1-2) THE ACTUAL FORM USED TO WHICH VERY LITTLE INFORMATION
IS RETRIEVED... FURTHERMORE, THE EXAMINER HAS NEVER INTERVIEWED, CALLED,
OR RECEIVED DIRECT INFORMATION FROM THE SUPERVISORS, S.R.D. PROGRAM MANAGERS,
OR INMATE EMPLOYER PLANT MANAGER, CONCERNING ANYTHING THAT INVOLVES THE
APPELLANT'S WORK HABITS OR REHABILITATIVE SKILLS FOR THE ENTIRE 11 PLUS YEARS
HE'S WORKED IN THE SPECIAL INDUSTRIES PROGRAM, WHICH REPRESENTS A-
MOTHER FALSE CLAIM THE AGENCY SAYS THEY DO BEFORE ANY HEARING...
(SEE EXHIBIT PAGE-3)... YET ANOTHER MIS-LEADING CLAIM MADE TO THE COURT BY
THE AGENCY WITHIN (PAGE-10-) OF THEIR BRIEF, CONCERNS THE MENTIONING OF
VEHEMENT OPPOSITION BY THE VICTIM'S FAMILY... THE APPELLANT WILL FREELY
GRIEVE THAT A LIFE WAS LOST WITHIN THIS TERRIBLE TRAGEDY, HOWEVER THE REAL
TRUTH AND DYNAMICS OF THIS CASE HAS ALWAYS BEEN DELIBERATELY ALTERED
AND SUPPRESSED, THE SAME IN SIMILAR, WHERE-AS THE AGENCY FAILED
TO EQUALLY ADVISE TO THE COURT'S AWARENESS, (THAT BY ACTUAL ACCOUNT
MAJORITY OF ALL LIVING VICTIMS AND FAMILY AND ACTUAL CREDIBLE
WITNESSES, HAVE LONG AGO AND TO THE PRESENT, APPROVED OF THE
PAGE (4) 000091

APPELLANT'S RELEASE; (SEE EXHIBITS PAGES 4 THRU 9); WHERE-AS THE AGENCY HAS MOST - FREQUENTLY RELIED ON OPPOSITION (DISCLOSED IN SECRET); COMING FROM NON-VICTIM, NON-RELATIVES, AND NON-WITNESSES ASSOCIATED WITH THE CASE; WHEN BOTH SITUATIONS VIOLATE S.C. CODE OF LAW STATUTE § 55-611, OF 1952-62, IN PLACE WHEN APPELLANT WAS FIRST INCARCERATED.. THE AGENCY CONSISTENTLY USES A (FIXED STANDARD OF REASONS FOR REJECTION); ADDRESSING EXCLUSIVELY TO EVENTS THAT HAPPENED (30 PLUS YEARS AGO); WHILE ALSO EXPRESSING SOME OF THOSE PAST EVENTS OUT-OF-FACTUAL CONTEXT.. MOST IMPORTANTLY, THE AGENCY DOES NOT ADDRESS THE (25) EXCEPTIONAL YEARS OF SOLID-POSITIVE REFORMATIVE AND REHABILITATIVE BEHAVIOR, WHICH OVERWHELMINGLY FULFILLS ALL CRITERIA PROVISIONS SET-FOURTH IN THE WARRANTING OF PAROLE; WHEN THE APPELLANT WAS FIRST INCARCERATED, (SEE SOME OF THE MANY EXHIBITS OF MERIT WITHIN PAGES 10-THRU-18)...

IN CONCLUSION

WHEN THE AGENCY ADMITS THAT THEIR STATUS REPORT IS INCORRECT, WHICH IS RELATIVE TO THEIR PRIMARY EVALUATIONAL TOOL; AS WELL AS WRONGFULLY CLASSIFY THE APPELLANT, INFLECTING A MAGNITUDE OF DISADVANTAGING CONSEQUENCES; BUT REFUSES (TO EVEN ATTEMPT) TO PROVIDE ANY (RECONCILIATION) FOR THE DORM, IS ALLEGED TO CONSTITUTE A BIAS-TRIBUNAL THAT GIVES THE A.L.C. REASON TO INTERVENE !!

MAY-16-2009

Vaughn G. Smith # 70090
TYGER RIVER CORRECTIONAL INSTITUTION
UPPER YARD - DORM-8 - ROOM-210
200 PRISON ROAD

ENDREE, SOUTH CAROLINA 29335

000092

STATE OF South CAROLINA
ADMINISTRATIVE LAW COURT

Vaughn G. Smith #70090

APPELLANT

VS

SOUTH CAROLINA DEPT. OF
PROBATION, PAROLE, AND PARDON
SERVICES

RESPONDENT

Docket No. 08-ALT-15-00042-AP

GRIEVANCE NO. TYRCI

- ATTACHMENT Exhibits -

MOTION FOR LEAVE TO SUPPLEMENT THE RECORDS TO INCLUDE
PAGES (1-THRU-18) OF EXHIBITS; TO SUPPORT APPELLANT'S REPLY
BRIEF.

Respect Fully

Vaughn G. Smith #70090

Tyger River Correctional Inst.
Upper Yard - Down 8 - Room - 210
200 Prison Road

Endree, S.C. 29335

MAY-18-2009

000093

South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration

Inmate Name <i>Vaughn G. Smith</i>	SCDC # <i>70090</i>
---------------------------------------	------------------------

SC Board of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, SC 29250

Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature <i>Vaughn G. Smith</i>	Date <i>5/24/06</i>	Witness <i>[Signature]</i>	Date <i>5/24/06</i>
--	------------------------	-------------------------------	------------------------

EXHIBIT REPLY BRIEF PAGE (1)

Instructions: If inmate wishes to be considered for parole, complete section A. If inmate wishes to waive parole consideration complete section B.

Inmate Name: Vaughn Smith SCDC #: 70090

A. INITIAL INTERVIEW INFORMATION

Residence Plan

Date: 5-24-06

Who will inmate live with? Name: Mary Smith

Relationship: Wife

Address: 785 Walnut Grove Rd.

Isleburg SC

Phone Number: 587-8007

State/County: SC / Sp11g. Zip code: 29376

Comments: _____

Employment Plan

Who will inmate work for?: Name of Business: Anderson Hardwood Floor

Address: _____

Clinton SC

Phone Number: Brian Boggis

Contact Person /Position: _____

Inmate Health Status (self report): Good.

Comments: _____

Interviewer's Signature: [Signature] Date: 5-24-06

B. WAIVER OF PAROLE CONSIDERATION

TO THE SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES: THIS IS TO CERTIFY THAT I DO NOT WISH TO BE CONSIDERED FOR PAROLE. I UNDERSTAND THAT MY PROJECTED PAROLE HEARING DATE IS _____ AND I UNDERSTAND THAT BY SIGNING THIS WAIVER I WILL BE REJECTED FOR PAROLE AT MY REQUEST:

- 1) I FULLY UNDERSTAND THAT IF I AM SERVING FOR A VIOLENT OFFENSE, AS DEFINED IN SECTION 16-1-60 SOUTH CAROLINA CODE OF LAWS, I MAY NOT BE ELIGIBLE FOR PAROLE CONSIDERATION UNTIL TWO YEARS FROM THE DATE OF MY PROJECTED PAROLE HEARING DATE, AND IF I AM SERVING FOR A NON-VIOLENT OFFENSE, AS DEFINED IN SECTION 16-1-70 SOUTH CAROLINA CODE OF LAWS, I MAY NOT BE ELIGIBLE FOR PAROLE CONSIDERATION UNTIL ONE YEAR FROM THE DATE OF MY PROJECTED PAROLE HEARING DATE.
- 2) I ALSO UNDERSTAND THAT ONCE THIS WAIVER IS SIGNED BY ME, AND IF I AM SERVING FOR A VIOLENT OFFENSE, IT MAY BE VALID FOR TWO YEARS AND CANNOT BE WITHDRAWN. IF I AM SERVING FOR A NON-VIOLENT OFFENSE IT IS VALID FOR ONE YEAR AND CANNOT BE WITHDRAWN.

Inmate Signature: _____

Witness Signature: _____ Date: _____

IF INMATE WAIVES PAROLE CONSIDERATION, FORWARD THE ORIGINAL COPY TO PAROLE SERVICES.

Form 1333 (Stock)

Distribution: White Copy - Agent; Canary Copy - Inmate

Exhibit Reply BRIEF page 2



ANDERSON™

December 11, 2008

Dear Sir or Madam:

Mr. Vaughn Smith SCDC# 070090 has worked under my close supervision over the past five years. Mr. Smith has been a very important piece to the success of Anderson Hardwood Floors at the Tyger River location. I believe that Mr. Smith has worked in the Anderson PI program since we started over ten years ago. Mr. Smith not only has responsibilities with quality and manufacturing he is also very key when it comes to training all new hires. He will take it upon himself to make sure that any new inmate understands what is expected from them and helps make them feel that they are important to the success of Anderson Hardwood Floors. If Mr. Smith were to be released he would have a great opportunity for key employment at our location in Clinton South Carolina. He cares very much for this company and supports all company goals and objectives. I thank you for your time.

Sincerely,

Doug Van Nest
Plant Manager, Anderson Hardwood Floors – Tyger River

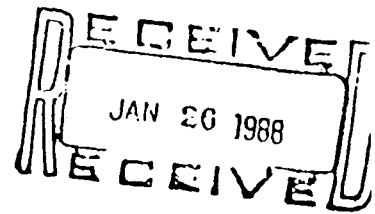
Exhib. T Reply BRIEF page (3)

000096

224 LUKKINDON ROAD PO BOX 1122 CLINTON SC 29325 PHONE 864 833 6250 WWW.ANDERSONFLOORS.COM FAX 864 833 6664

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN RE:)
Vaughn Gregory Smith,)
Applicant for)
Parole.)

A F F I D A V I T



The undersigned, being duly sworn, deposes and states that she is a resident of 776 McCords Ferry Road, Lugoff, South Carolina, and was a victim in a kidnapping crime committed upon her by Vaughn Gregory Smith, who personally appears before the South Carolina Department of Probation, Pardon and Parole as an applicant for parole;

I have followed with tremendous personal interest, the progress Vaughn Gregory Smith has made as an inmate in the various institutions of the South Carolina Department of Corrections;

Further I feel as though Vaughn Gregory Smith has, in fact, been a credit to the Rehabilitation System at the South Carolina Department of Corrections, and has, in fact, served an adequate sentence for all crimes he committed;

NOW, THEREFORE, it is my personal desire while under no intimidation or harassment, that Vaughn Gregory Smith be allowed to make parole as it was my desire two (2) years ago, when I attempted to personally appear before the South Carolina Probation and Pardon Parole Board to advance those same feelings.

Finally, be it accepted by the South Carolina Probation, Pardon and Parole Board, it is my candid and personal judgment that

Exhibit Copy Brief Page (4)
000097

parole should be granted to Vaughn Gregory Smith.

Virginia J. Wiley
Virginia J. Wiley

776 McCords Ferry Road
Lugoff, South Carolina 29078

Telephone Number: (803) 438-2536

Presley Pickett Wiley
1/25/89

EXHIBIT REPLY BRIEF PAGE (5)

000098

125 Mc Cord Ferry Road
Lugoff, S.C. 29078
Feb. 1, 1985

Dear Vaughn,

I received your last two letters and I enjoyed hearing from you and appreciate you writing. Maybe I am a little intimidated by your beautiful poetic form of writing, you use words beautifully. But then I could also be lazy when it comes to writing letters.

A week or so ago I received a letter from the Correction Board saying your review is Feb. 20 at 9:30 AM. They said that we are ~~in~~ welcome to come. We were coming anyway if you would like for us to come. The letter said only 3 people can come in addition to an attorney. Please tell us how many other people you have in mind to be there.

Last year I was off guard when

Reply BRIEF exhibit page (6)

000000 000099

we went in before the board. I thought they would ask us questions instead, they said talk and I was not really prepared. I would like for you to take time and write your accomplishments over the years there, your school credits, work with the children, everything don't be modest. A lot could depend on this. I will then write a paper condensed but ~~not~~ including it all, and read it to the board. By the way, there will be two of us. Presley and me. But if you have other arrangements let us know. I am enclosing a stamped envelope to be sure you have one on hand.

All our family is well. Connie is out of town a lot. Crissy is still at Benedict ^{College}. Claudia is finishing high school this spring and in the fall will also go to Benedict College. Last but by no means least Carolyn is still in Charlotte N. C.

Take care. Be positive then you are always close to Divine Power (over)

or God. Notice our new address.
Write as soon as possible.

Yours truly,
Virginia J. Wiley

Reply Brief Exhibit PAGE (8)

000000

000101

125 Mc Cord Ferry Road
Lugoff, SC 29078



Mr. Vaughn Smith
Stevenson
4546 Broad River Road
Columbia, SC 29210

125 Mc Cord Ferry Road
Lugoff, SC 29078
June 7, 1987

Dear Vaughn,
Just a short note. I have written letters to
your family explaining everything that I knew
I asked them, your parents, sister and uncle for
their coordinated efforts to help you. I told each
one that the jury did not hear a lot they should have
because you weren't allowed to testify.
I believe you will get something done now. I told
each one of your life in prison as I saw it also of
your accomplishments and hard work at whatever
you're assigned. I think I painted an understanda
picture.

Let me know when you hear something.
"Chin up!"

RECEIVED

SEP 23 1987

Central Records Office

Virginia D. Wiley

Rec'd: 2015 EMT Page (2)

000102

SOUTH CAROLINA SCHOOL FOR THE DEAF AND THE BLIND

JOSEPH P. FINNEGAN, JR.
PRESIDENT

June 3, 1994

RECEIVED

JUN 06 1994

COMMISSIONER

RECEIVED

JUN 07 1994

COMMUNITY
SERVICES

Mr. Parker Evatt, Commissioner
SC Department of Corrections
PO Box 21787
Columbia, S.C. 29221-1787

Dear Mr. Evatt:

I am writing you on behalf of inmate Vaughn Smith who participates in the inmate labor agreement between SCDC and SCSDb here on the campus of SCSDb. Vaughn has worked on our campus for three years and has contributed very positively to our school in numerous ways.

His work ethic is exemplary, his ambition is admirable, and his manner respectful. Vaughn's initiative and desire to learn is evidenced by his acquiring sign language skills of his own volition while here at SCSDb.

We would very much like to employ Vaughn should he be granted parole or become a candidate for work release.

I understand the gravity of Vaughn's crime of 20 years ago. However, this particular individual is truly an exceptional example of rehabilitation by the S.C. Department of Corrections. Vaughn Smith, without doubt, is prepared and capable to become a contributing, productive, and law abiding citizen.

Sincerely,

Gail Sanders
Gail Sanders, Director
Fiscal Management Services

c: Joseph Finnegan, President

In

Reply Brief Exhibit Page (10-)

copy to DPPPS 6-13-94 000103

SOUTH CAROLINA



HIGH SCHOOL EQUIVALENCY CERTIFICATE

Be it known that VAUGHN GREGORY SMITH *has satisfactorily*
completed the General Educational Development Tests Examination and upon the
recommendation of the Chief Supervisor of the Accreditation and Educational
Improvement Section, State Department of Education, the State Board of Ed-
ucation awards this certificate, which is regarded to be equivalent of the high school
diploma.

Given at Columbia, South Carolina, this 11th day of June 1979.

Charlie B. Williams

State Superintendent of Education

Ernest B. Carnes

*Chief Supervisor of Accreditation and
Educational Improvement Section*

Richard W. Riley

Governor of South Carolina

Joseph D. Parker

Chairman, State Board of Education

Reply Brief Exhibit PAGE (11-A)
000104

University of South Carolina



This is to certify that

VAUGHN G. SMITH

has participated in and successfully completed

THIRTY HOURS OF UNIVERSITY CREDIT

USC-FORT JACKSON

AUGUST 1982

John J. Powers
Dean, Lifelong Learning

John J. Duffy
Vice President for Two Year Campuses
and Continuing Education

000105

000105

Reply Brief Exhibit page (11-B)

George Hampton, Jr.
165 Chinquapin Circle
Columbia, S.C. 29210

*Former WARDEN OF
Stevenson Corr. Inst.
Columbia, S.C.*

April 28, 2002

Chairman and Members of the
S. C. Parole Board
2221 Devine St.
Columbia, S.C.

Dear Mr./Ms. Chairman, and Board Members,

This correspondence is being submitted on behalf of Mr. Vaughn Smith whom I understand is being considered for parole from the S.C. Department of Corrections.

Let me first say that all of my contact with Mr. Smith has been on a professional basis as I met Mr. Smith while I served as Warden of the Stevenson Correctional Institution from 1987-1994. Mr. Smith was an inmate at Stevenson from 1989-1992. I should also note that I'm no longer employed by the SCDC.

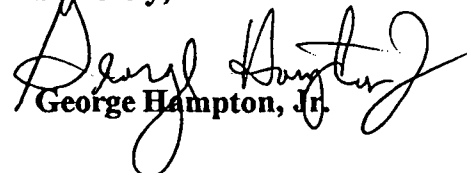
While at Stevenson one of Mr. Smith's jobs was in the Habitation Unit, a program that served inmates who were mentally challenged and low functioning. My recollection of Mr. Smith is that he was a very dedicated hard working individual who's behavior and performance left little to be desired in his role as a para-professional. He appeared to be very concerned about the inmates he was responsible for helping to develop work skills that would enable them to find meaningful jobs and function independently upon their release.

Further I recall Mr. Smith being involved in many positive activities that would promote his own rehabilitation as well, and as a result of the foretated he was an asset to the staff at the facility and a role model for other inmates.

I can recall no incidents of inappropriate behavior nor disciplinary infractions involving Mr. Smith while he was at Stevenson and I believe he was genuine and sincere in his efforts to conduct himself appropriately and rehabilitate himself, and not merely trying to manipulate the system through deceptive tactics.

While I abhor the crimes Mr. Smith committed and empathize with the families of the victims of his crimes, I believe that people can and do change and I believe that Mr. Smith has. I do not believe that he is the same foolish young man today, that he was when he was involved in the horrible crimes he committed some 20 years or more ago and that he is indeed remorseful of what he did. I also believe and that he deserves a second chance and ask that the board review him favorably for release considering that his disciplinary record remains flawless and his progress toward rehabilitation continual since leaving Steveson.

Sincerely,


George Hampton, Jr.

Reply BRIEF EXHIBIT PAGE (12-)

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000106

SOUTH CAROLINA DEPARTMENT OF CORECTIONS

M E M O R A N D U M

TO: STEVENSON INMATE POPULATION

FROM: Terry T. Candee, Deputy Warden
Stevenson Correctional Institution

SUBJECT: SCI INMATE OF THE YEAR - 1988

DATE: November 23, 1988

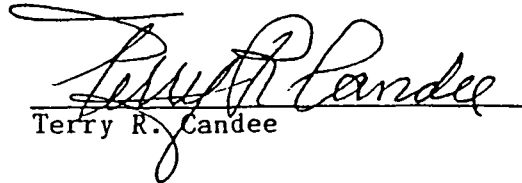
We received three nominations for Stevenson's Outstanding Inmate of the Year - 1988. They were:

Vaughn Smith
Richard Leach
Michael Collins

The committee, Mr. Frank Taylor, Ms. Barbara Craig, COAS Wayne McCabe, and I selected Richard Leach.

All three men are outstanding, command respect of staff and inmates, hard workers, good leaders, and represent the best at Stevenson. The decision was a most difficult one, as all three inmates are outstanding.

Please join me in congratulating these men, especially Mr. Leach.


Terry R. Candee

TRC:br

CC: Warden Hampton
Inmate Bulletin Boards (5)
File

Polly B. F. Exhibit Page (13-1)

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000107

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
KIRKLAND CORRECTIONAL INSTITUTION

MEMORANDUM

TO: All Inmates and Staff
Kirkland Correctional Institution

FROM: Kenneth D. McKellar, Warden
Kirkland Correctional Institution

SUBJECT: "Outstanding Inmate of the Year"
Kirkland Correctional Institution

DATE: December 4, 1985

It is indeed a pleasure to inform you that Inmate Marvin Spell, SCDC #109920, has been selected as the "Outstanding Inmate of the Year" for Kirkland Correctional Institution (KCI). Mr. Spell will represent KCI for the selection of the "Outstanding Inmate of Year" for the Midlands Correctional Region. If Mr. Spell is successful in achieving this award, he will be a candidate in the selection for the South Carolina Department of Corrections "Outstanding Inmate of the Year."

Runners-up to Mr. Spell for this honor at KCI were Inmates Ronald Smart, SCDC #122160, Vaughn Smith, SCLC #70090, and Lonnie McManus, SCDC #74416. Each of these men is to be commended for placing in the final four in the selection process.

I am sure that you join with me in congratulating Mr. Spell and wish for him success in all future endeavors.


Kenneth D. McKellar

KDMcK:far

DISTRIBUTION "A" + "D" + PRC (10)

Reply Brief Exhibit Page (-14)

000108

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
HABILITATION UNIT FOR MENTALLY DISABLED

70090

M E M O R A N D U M

TO: Vaughn Smith SCDC#70090

FROM: Cary D. Marsh, Deputy Warden
Habilitation Unit

SUBJECT: DESIGNATION OF CHIEF PARA-PROFESSIONAL COUNSELOR

DATE: February 27, 1988

* * * * *

I am writing to advise that you have been approved for the position of Chief Para-Professional Counselor in the Habilitation Unit. The staff unanimously approved this appointment based on your superior performance and efforts to assist the clients as a teacher assistant and residential counselor living in the unit. I expect you to continue the good work and assist the staff in further developing the role of para-professional counselors in the unit.

I want to take this opportunity to congratulate you and personally thank you for a job well done.

s/ C.D. Marsh
Cary D. Marsh

RECEIVED

FEB 10 1988

Central Records Office

CDM:an

cc: Central Records
Warden's Jacket

Reply BRIEF EXHIBIT PAGE (-15-)

000109

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
HABILITATION UNIT

MEMORANDUM

76090

TO: Vaughn Smith, Para-Professional
Residential Counselor and Teacher

FROM: Adrienne D. Conine, Unit Director
Habilitation Unit

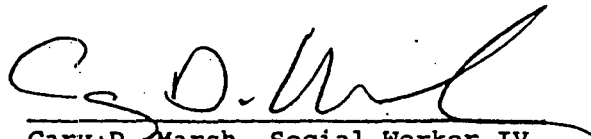
Cary D. Marsh, Social Worker IV/Assistant Director
Habilitation Unit

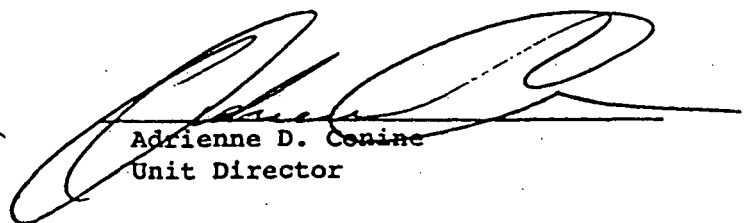
SUBJECT: OUTSTANDING WORK PERFORMANCE

DATE: June 25, 1987

We are writing to formally recognize and commend your performance as a para-professional counselor in the Unit. This recognition is based partly on your assistance to the correctional officer staff in managing a client on June 24, 1987, who was acting out as a result of chronic psychiatric illness. Your efforts to calm the client undoubtedly prevented the situation from becoming much worse and added much credibility to your role as a para-professional counselor. The correctional officer staff has described your helping actions with clients as being fair, consistent, always reflecting a genuine interest in the client's welfare and your availability to assist with problems is 24 hours a day. You have never abused your position and the attitude of taking care of clients to insure effective unit operation reflects a high degree of professionalism and sense of duty which is not often seen much less recognized.

Your efforts on behalf of clients and cooperation with correctional officer staff are commendable and you are clearly an asset to this Unit. We would also like to express our appreciation for your job performance and offer a personal thanks for a job well done.


Cary D. Marsh, Social Worker IV
Assistant Director


Adrienne D. Conine
Unit Director

CDM:ADC/an

Reply BRIEF exhibit PAGE (-16-)

000110

CENTRINORIC AMNE OF

APPRECIATION

This Certifies That

VAUGHN SMITH

is awarded this Certificate for

OUTSTANDING SERVICE TO THE SAVE THE CHILDREN PROGRAM

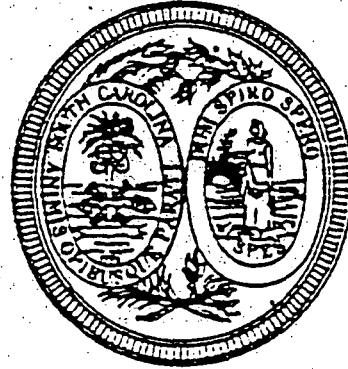
Given at CENTRAL CORRECTIONAL INSTITUTION, this 4th day of May, A. D., 1963

Ben Taylor
CO-CHAIRMAN, STC/AEP

Lee Munn
CO-CHAIRMAN, STC/AEP

Reply BOSTON EXHIBIT 6-17-71

South Carolina Department of Corrections



Certificate of Training

Presented to

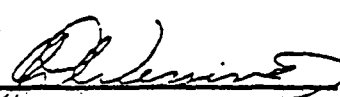
VAUGHN SMITH
SCDC #70090

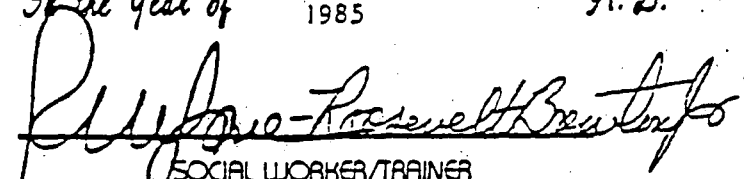
In Recognition of Successfully Completing
AS A TEACHER'S AIDE FOR
"HOW TO IMPROVE YOUR LIFE"
Kirkland Correctional Institution

On this 14TH Day of NOVEMBER

In the Year of 1985

A.D.


WARDEN/UNIT MANAGER


SOCIAL WORKER/TRAINER

000112

RBE-1095 (18)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Vaughn G. Smith #70090

Appellant

vs

SOUTH CAROLINA, DEPT. OF
PROBATION, PAROLE, AND PARDON
SERVICES

Respondent

DOCKET NO. 08-ALJ-15-00042-A,

GRIEVANCE NO. TYRCI

FILED

JUN 05 2009

SC ADMIN. LAW COURT

- CERTIFICATE OF SERVICE -

I, Vaughn G. Smith #70090, do hereby certify, under PENALTY OF PERJURY, THAT I SERVED AN ORIGINAL (MOTION TO SUPPLEMENT THE RECORDS) WITH (2) PAGES OF ENCLOSED ATTACHMENTS TO HONORABLE JUDGE JOHN McLEOD, ADMINISTRATIVE LAW COURT, EDGAR A. BROWN Bldg, 1205 PENDLETON ST. SUITE 224 C/P, S.C. AND SAID COPY TO, S.C. DEPT. OF PROBATIONS, PAROLE, AND PARDONS SERVICES, ATTN: Deputy DIRECTOR OF LEGAL SERVICES, P.O. Box 50666, C/P, S.C. 29250, BOTH BY CERTIFIED U.S. POSTAL MAIL ON THE FORWARDING INSCRIBED DATE: JUNE-1-2009...

June-1-2009

Vaughn G. Smith #70090
TYGER RIVER CORRECTIONAL INST.
UPPER YARD - DORM-8 - ROOM-210
200 PRISON ROAD
ENDREB, S.C. 29335

000113

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Vaughn G. Smith #70090

APPELLANT

VS

SOUTH CAROLINA DEPT. OF
PROBATION, PAROLE, AND PARDON
SERVICES

RESPONDENT

Docket No. 08-ALJ-15-00042-AP

GRIEVANCE NO. TYRCI

- NOTICE OF MOTION TO SUPPLEMENT THE RECORD -
FOR THE PURPOSE OF CLARIFYING THE BRIEFS AND EXHIBITS SUBMITTED
TO THE ADMINISTRATIVE LAW COURT CONCERNING THE APPELLANT'S APPEAL.

THE APPELLANT RESPECTFULLY ADDRESSES THE HONORABLE
JUDGE JOHN D. McLEOD IN REQUEST; TO RE-REVIEW ALL
DOCUMENTS SUBMITTED TO THE COURT CONCERNING THE ABOVE
MENTIONED (DOCKET NO. 08-ALJ-15-00042-AP) APPEAL.

THERE SEEMS TO BE A CRUCIAL ERROR IN THE ASSESSMENT
OF BRIEFS SUBMITTED TO THE COURT; WHERE-AS THE DOCUMENT
FILED (MAY-21-2009) ADDRESSED TO A (MR. TOMMY EVANS)
ESQUIRE, S.C. DEPT. OF PROBATIONS, PAROLE, AND PARDON SERVICES,
(COPY OF LETTER ATTACHED/ENCLOSED) STATES WITHIN PARAGRAPH
(2) TWO - THAT THE BRIEFS IN THIS MATTER WERE FILED

IN REVERSE, THAT IS, THE RESPONDENT FILED BACK IN FEBRUARY 2009, AND APPELLANT VAUGHN HAS JUST FILED IN MAY 2009 ...

RESPECTFULLY SPEAKING, THIS STATEMENT IS IN SERIOUS ERROR; APPELLANT'S ORIGINAL BRIEF, ALONG WITH NUMEROUS ATTACHED EXHIBITS OF EVIDENCE AND A SWORN AFFIDAVIT, WAS SUBMITTED TO THE HONORABLE JUDGE McLEOD; WAS DELIVERED VIA CERTIFIED MAIL (DATE OF DELIVERY (DECEMBER/31/2008 ...)) (ATTACHED COPIES OF CERTIFIED MAIL RECEIPTS) ENCLOSED ...

FILED BY THE COURT, FEBRUARY-3-2009, THE RESPONDENT WAS GRANTED THEIR MOTION TO ENLARGE THE TIME NECESSARY TO RESPOND WITH THEIR BRIEF, TO THE COURT; WHEREAS AS APPELLANT RECEIVED THE RESPONDENT'S BRIEF FEB. 24-2009 THAT WAS DATED FEB-19-2009 ...

THERE-AFTER, APPELLANT WAS GRANTED HIS MOTION FOR AN EXTENSION TO REPLY TO THE RESPONDENT'S BRIEF; TO WHICH THE APPELLANT FILED WITH THE HONORABLE JUDGE McLEOD APPROXIMATELY ON FEB-18-2009 ...

THE APPELLANT'S REPLY BRIEF, WITH ADDED EXHIBITS OF EVIDENCE; ALONG WITH A (MOTION TO AMEND AND ATTER, AND ALSO, (A MOTION TO REQUEST AN ORAL HEARING); WAS SUBMITTED TO THE HONORABLE JUDGE - MAY-19-2009 WHICH WAS RECEIVED - MAY-20-2009, BY RECEIPT RECORDS.

THEREFORE, THE COURT SHOULD BE IN POSSESSION OF (2) SEPARATE BRIEFS FROM THE APPELLANT AND NO LESS THEN (41) PLUS PIECES OF EXHIBITS AND EVIDENCE; ALONG WITH (1) BRIEF FROM THE RESPONDENT; (S.C. DEPT. OF PROBATION, PAROLE, AND PARDON SERVICES.) PRIOR TO THE (MAY-21-2009) LETTER TO (MR. TAMMY EVANS) FROM (MR. ANTHONY R. GOLDMAN) JUDICIAL LAW CLERK... ALL THESE BRIEFS WERE DELIVERED WITH LETTERS OF CERTIFICATES OF SERVICES...

Also AN IMPORTANT ISSUE THE APPELLANT RESPECTFULLY BRINGS TO QUESTION; IS THE FACT THAT ALONG WITH A MOTION TO (AMEND AND ALTER) CONCERNING A LEGAL FACT ISSUE WITHIN THE APPELLANT'S APPEAL BRIEF; THE APPELLANT HAS SUBMITTED A (MOTION TO SHOW GOOD CAUSE FOR AN ORAL HEARING); BECAUSE OF THE (FORMAL CHALLENGE) BACKED BY DOCUMENTED EVIDENCE; SUBMITTED BY THE APPELLANT CONCERNING MORE-THEN-A FEW DELIBERATE MIS-REPRESENTATION OF FACTS DESIGNED TO MIS-LEAD THE HONORABLE JUDGE AND COURT, IN ORDER TO HAVE THIS APPEAL DIS-MISSED...

THE PRO-SE APPELLANT DOES HEREBY STATE THAT EVERY PAGE OF PRESENTED EVIDENCE, EVERY DOCUMENT AND SWORN AFFIDAVIT IS GENUINELY ACCURATE AND THEREFORE DECLARED UNCONTESTABLE.

THE APPELLANT MADE A FORMAL CHALLENGE WITHIN HIS ORIGINAL BRIEF THAT THE RESPONDENT CONCEALED TO WITHIN THEIR BRIEF; THAT LEGALLY CONSTITUTES A JUDICIAL RESOLUTION WITHIN ITSELF (THE ISSUE IS MENTIONED WITHIN THE MOTION FOR ORAL HEARING); HOWEVER, THE APPELLANT FURTHER CHALLENGES, INTRICATE MIS-LEADING STATEMENTS

MADE WITHIN THE RESPONDENT'S BRIEF, THAT AMOUNTS TO (LEGAL FRAUD); AND EVIDENCE WAS FORWARDED TO THE COURT TO SHOW CAUSE FOR THIS CLAIM...

THE PRO SE APPELLANT SERIOUSLY AND RESPECTFULLY ASKS; WHY IS THIS MATTER NOT LEGALLY REASONABLE AND JUSTIFIABLY SUFFICIENT TO WARRANT A FAIR AND THOROUGH ORAL HEARING, WHEN THERE IS PRESENTED DOCUMENTED EVIDENCE SUBMITTED OFFICIALLY TO THE COURT, TO SHOW CAUSE FOR IT??

IN CONCLUSION

THE APPELLANT, DEEPLY PRAYS AND HUMBLYP REQUEST THAT FURTHER ASSESSMENT AND RESEARCH OF ALL MATERIAL PRESENTED TO THE HONORABLE JUDGE MCLEOD, CONCERNING THIS ENTIRE CASE BE-RE-REVIEWED; DUE TO THE (ATTACHED ENCLOSED LETTER) TO MR. TOMMY EVANS; STRONGLY IMPLYING THAT NOT ALL MATERIAL AND BRIEFS HAVE BEEN RECEIVED OR REVIEWED IN PROPER ORDER OR OTHERWISE...

IT IS FURTHER REQUESTED TO THE HONORABLE JUDGE MCLEOD, TO RESPECTFULLY (RESCIND) THE ORDER WRITTEN WITHIN THE (MAY 21-2009) LETTER TO MR. TOMMY EVANS; UNTILL A VERIFICATION OF ALL BRIEFS, MOTION, AND EXHIBITS OF EVIDENCE HAVE BEEN REVIEWED.

June 1-2009

Respectfully,
Vaughn G. Smith #70090
TYGER RIVER CORRECTIONAL INST.
UPPER YARD-DORM-8-ROOM-210
200 PRISON ROAD - ENDORRÉ S.C. 29335

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SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

FILED

JUL 07 2009

SC ADMIN. LAW COURT

Vaughn G. Smith #70090

Appellant

vs.

SOUTH CAROLINA DEPT. OF
PROBATION, PAROLE, AND PARDON
SERVICES

Respondent

DOCKET NO. 08-ALJ-15-00042-AP

GRIEVANCE NO. Ty RCI

CERTIFICATE OF SERVICE

THE PRO SE Appellant, VAUGHN G. SMITH #70090, does hereby CERTIFY UNDER PENALTY OF PERJURY, THAT AN ORIGINAL (3) page (MOTION TO DEFAULT) document; along with a (1) page ATTACHED EXHIBIT; WERE SENT VIA U.S. MAIL-CERTIFIED TO: THE HONORABLE JUDGE JOHN D. McLEOD, ADMINISTRATIVE LAW COURT, 1205 PENNETTON ST. SUITE 224, COLA, S.C. 29201; AND A ORIGINAL COPY SENT TO: DEPUTY DIRECTOR OF LEGAL SERVICES, S.C. DEPT. OF PROBATIONS, PAROLE, AND PARDON SERVICES, P.O. Box 50666, COLA, S.C. 29250., DELIVERED TO THE TYGER RIVER INST. MAIL ROOM - JULY-6-2009 ...

July-6-2009

Vaughn G. Smith #70090

TYGER RIVER CORRECTIONAL INST.

UPPER YARD - DORM-8 - ROOM - 210

1000 249 PRISON ROAD - ENOREE, S.C. 29335

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Sincerely

July - 6 - 2009

Vaughn G. Smith #70090
TYGER RIVER CORRECTIONAL INST.
UPPER YARD - DORM - 8 - ROOM - 210
200 PRISON ROAD - ENDORF, S.C.
29335

C.C. DEPUTY DIRECTOR OF LEGAL SERVICES
S.C. PROBATIONS, PAROLE, AND PARDONS SERVICES

C.C. APPELLANT - VAUGHN G. SMITH #70090

(12 copy of Judges Order Attached)

Page (3)

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STATE OF SOUTH CAROLINA
Administrative Law Court

MARVIN F. KITTRELL
Chief Judge

JANA E. SHEALY
Clerk

(803) 734-0550
FAX: (803) 734-6400
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May 21, 2009

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MAY 21 2009

SC ADMIN. LAW COURT

Tommy Evans, Esquire
S.C. Dept. of Probation, Parole, and Pardon Services
P.O. Box 50666
Columbia, SC 29250

RE: Vaughn G. Smith, #70090 v. South Carolina Department of Probation,
Parole and Pardon Services, Docket No. 08-ALJ-15-00042-AP

Dear Mr. Evans,

Despite the impressive record displayed by Inmate Smith, Judge McLeod feels that the law is against him.

The Briefs in this matter were filed in reverse, that is, the respondent filed back in February 2009 and Appellant Vaughn has just filed in May 2009.

Judge McLeod requests that PPPS prepare a Final Brief in the form of a Proposed Order and include therein any matter in reply to Appellant's Brief which has not already been covered.

Please submit this to me by email within thirty (30) days of the date of this letter.

Respectfully,



Anthony R. Goldman
Judicial Law Clerk to
The Honorable John D. McLeod

Cc: Inmate Vaughn G. Smith, #70090

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Vaughn Smith, #70090

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

) Docket No. 08-ALJ-15-00042-AP
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**ORDER DISMISSING IN PART
AND REMANDING**

FILED

JUL 28 2009

SC ADMIN. LAW COURT

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal by Vaughn Smith (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On August 13, 2008, the South Carolina Department of Probation, Parole and Pardon Services (DPPPS) notified Appellant that the South Carolina Board of Pardons and Paroles (Board) had rejected him for parole. Appellant now challenges the Board's decision.

FACTS

Appellant was indicted at the October, 1973, term of the Kershaw County grand jury for murder, armed robbery, five (5) counts of kidnapping, and unlawfully carrying a pistol, all committed in 1973. On October 24, 1973, Appellant was found guilty by a jury of his peers. He was sentenced to incarceration for the remainder of his natural life for murder, and each count of kidnapping; twenty-five (25) years for armed robbery; and one (1) year for the offense of unlawful possession of a weapon. At the time of Appellant's conviction, South Carolina law allowed a person serving a life sentence for murder and kidnapping parole eligibility upon the service of ten (10) years.

When Appellant initially appeared before the Board on March 7, 1984, he was denied an opportunity to be released on parole. Since this initial denial, Appellant has appeared before the Board an additional fourteen (14) times, each resulting in a denial. Appellant's most recent appearance before the Board occurred on August 13, 2008. At the conclusion of this hearing, the Board decided to deny parole due to: 1) nature and seriousness of the offense; 2) indication of

000122

violence in this or a previous offense; 3) use of a deadly weapon in this or a previous offense; and 4) his prior criminal record indicates poor community adjustment. Appellant now appeals.

ISSUES ON APPEAL

1. Did the Board, through its actions, create in Appellant an expectancy of being paroled that rose to the level of a liberty interest?
2. Did the denial of parole to Appellant constitute an ex post facto violation?
3. In denying Appellant parole, did the Board violate its guidelines for making parole decisions?

STANDARD OF REVIEW

The ALC reviews decisions of DPPPS in an appellate capacity and is restricted to reviewing the decision below. Al-Shabazz v. State, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000). When acting in an appellate capacity, the ALJ must apply the criteria of S.C. Code Ann. § 1-23-380(5) (Supp. 2008). See S.C. Code Ann. § 1-23-600(E) (Supp. 2008) (directing Administrative Law Judges to conduct appellate review “in the same manner as prescribed in Section 1-23-380”). This section provides:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision [of the agency] if substantial rights of the appellant have been prejudiced because the administrative 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.

S.C. Code Ann. § 1-23-380(5) (Supp. 2008). When appealing an agency’s decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced based on one of six statutory criteria listed above. S.C. Dep’t of Corrections v. Mitchell, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008).

LAW/ANALYSIS

The basis for the jurisdiction of the ALC in this matter is found in Al-Shabazz, 338 S.C. 354, 527 S.E.2d 742, where the Supreme Court held that an inmate may “seek review of [a

Department of Correction⁹s] final decision by an ALJ in a non-collateral or administrative matter.” Id. at 376, 527 S.E.2d at 754. A few years later, in Furtick v. S.C. Dep’t of Probation, Parole and Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003), the Supreme Court extended its holding in Al-Shabazz to final decisions of DPPPS. In that case, a prisoner argued that the ALC had jurisdiction to hear his appeal from DPPPS’s decision that he was not parole eligible under Section 24-21-640. The Supreme Court agreed with the prisoner, explaining:

In Al-Shabazz, the Court recognized that “[t]hese administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status.” Respondent’s case arises in the latter manner. He alleges that the DPPPS erroneously determined that he is not eligible for parole.

Under Wolff, to determine whether Respondent is entitled to review of the DPPPS’s decision, the Court must decide whether Respondent has a liberty interest in gaining access to the parole board. In our opinion, the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process. Section 24-21-620 provides for review by the Board, “regardless of whether or not any application has been made therefore (sic), for the purposes of determining whether or not such prisoner is entitled to any of the benefits provided for in this chapter.”

Following DPPPS’s determination that Respondent was ineligible for parole as a violent offender under section 24-21-640, Respondent then had the same right to review as the inmate in Al-Shabazz. In Al-Shabazz, the Court outlined the nature of the review available to inmates raising non-collateral issues that implicate liberty interests; those procedures apply equally to inmates affected by final decisions of the DPPPS that affect liberty interests, such as the decision in this case.

Furtick, 352 S.C. at 598-99, 576 S.E.2d at 148-49 (internal citations omitted).

In South Carolina, parole is a privilege, not a right. Cooper v. S.C. Dep’t of Probation, Parole and Pardon Servs., 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008). The ultimate decision to grant or deny parole lies with the Board. Id. Subject to statutory exception, prison inmates have a right of access to the Board, i.e., parole eligibility, but no right to parole itself. James v. S.C. Dep’t of Probation, Parole and Pardon Servs., 376 S.C. 392, 656 S.E.2d 399 (2008).

ISSUE #1 ON APPEAL EXPECTANCY OF BEING PAROLED

Appellant argues that the Board, as far back as 1952, has paroled prisoners having sentences similar to his, in as little as 8 to 10 years, and did so with such regularity that it created

in him an expectancy of being paroled that rose to the level of a liberty interest. The Court disagrees. Appellant advances no legal authority to support his argument, and the Court is not aware of any such legal authority. This is merely a mistaken expectation by Appellant, nothing more. Moreover, the issue addressed here is entitlement to parole in which Appellant cannot claim a liberty interest. See James, 376 S.C. 392, 656 S.E.2d 399.

Furthermore, the Court notes that its review is limited to the evidence contained in the record. See S.C. Code Ann. § 1-23-380(4) (Supp. 2008) ("The review must be conducted by the court and must be confined to the record."). Here, the factual claim made by Appellant regarding other prisoners with similar sentences being customarily paroled within 8 to 10 years is not adequately supported by the record.¹ Therefore, the Court cannot rule in favor of Appellant on this issue. See Mitchell, 377 S.C. 256, 659 S.E.2d 233 (reversing an ALC decision upon determining that there was no evidence in the record to support it).

Finally, even if Appellant's factual claim were true, the Board, in making its decision to grant or deny parole, must consider numerous factors. See S.C. Code Ann. § 24-21-640 (2007). As to the paroled prisoners he refers to in his Brief, Appellant has not claimed that he is similarly situated to them with respect to all of the factors that the Board must consider. Therefore, the Court finds no due process or equal protection violation here.

ISSUE #2 ON APPEAL EX POST FACTO LEGISLATION

Appellant's Brief on this issue is garbled at best, but each argument will be addressed as well as it can be understood.

I. Apparently relying on S.C. Act 184 of 1993, §§ 8, 266 (effective January 1, 1994), Appellant contends that to be found guilty of a violent crime under Section 16-1-60, the offense had to be classified as violent at the time of the commission of the crime.² There are, however, two critical flaws with Appellant's argument. First, the pertinent portions of S.C. Act 184 of

¹ The only evidence that Appellant cites in support of his argument is a 1973 newspaper article, which is attached to his brief, that states that "[a] conservative estimate places the total number of prisoners paroled by the board last year at around 60 per cent of all those who became eligible." It appears from the article that the 60% figure applies to *all* prisoners eligible for parole, not just those with sentences similar to Appellant's. Moreover, the Court notes that, under the Administrative Procedures Act (APA), parties may not supplement the record by merely attaching exhibits to their briefs. See S.C. Code Ann. § 1-23-380(3) (Supp. 2008) (setting forth the procedure for presenting additional evidence in an appeal under the APA).

² S.C. Act 184 of 1993, § 8, which divided Section 16-1-60 into two subsections, states in relevant part that "[f]or a person to be considered guilty of a violent crime, the offense must be defined as a violent crime pursuant to subsection (A) at the time of the commission of the crime."

1993 were repealed by S.C. Act 7 of 1995, Part I, § 3 (effective January 12, 1995). See Sullivan v. State, 331 S.C. 479, 504 S.E.2d 110 (1998). In this case, there is no evidence that Appellant committed any crimes during the period in which the applicable portions of S.C. Act 184 of 1993 were in effect.

Second, Appellant has failed to explain why the issue of whether his crimes can be classified as violent under Section 16-1-60 is relevant in this case. The Court will thus not consider further whatever point Appellant sought to make here except to note that there is nothing in the record to indicate that Appellant has the status of a subsequent violent offender, which, under S.C. Code Ann. § 24-21-640 (2007), would prevent him from being granted parole.³ See Shell v. Brown, 243 S.C. 380, 382-83, 134 S.E.2d 214, 215 (1963) (“We have held in many cases that every ground of appeal ought to be so distinctly stated that the court may at once see the point which it is called upon to decide without having to ‘grope in the dark’ to ascertain the precise point at issue.”).

II. The second issue raised by Appellant is whether the application of the “15 criteria” established by the Board upon the authority found in section 24-21-640 constitutes an ex post facto violation.⁴ Section 24-21-640 provides in pertinent part:

The board must carefully consider the record of the prisoner before, during and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that, in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and, that suitable employment has been secured for him. **The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records. The criteria must be made available to all prisoners at the time of their incarceration and the general public.**

S.C. Code Ann. § 24-21-640 (2007) (emphasis added).

In 1973, the predecessor section of section 24-21-640 was section 55-612 of the 1962 Code of Laws of South Carolina, which provided in full that:

³ Section 24-21-640 states in relevant part: “The board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60.”

⁴ Both the Federal and State Constitutions expressly prohibit the passage of ex post facto laws. See U.S. Const. art. I, § 10; S.C. Const. art. I, § 4.

The Probation, Parole and Pardon Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it shall appear, to the satisfaction of the Board, that the prisoner has shown a disposition to reform that, in the future he will probably obey the law and lead a correct life, that by his conduct he has merited a lessening of the rigors of his imprisonment, that the interests of society will not be impaired thereby and that suitable employment has been secured for him. The paroled prisoner shall, as often as may be required, render a written report to the Board giving such information as may be required by the Board which shall be confirmed by the person in whose employment the prisoner may be at the time.

The 1973 pocket part to the code indicates that there were no amendments to section 55-612 between 1962 and 1973, the latter being the year that Appellant committed the crimes resulting in his present incarceration.

Thus, it is clear that the requirement of establishing specific criteria, and the fifteen (15) criteria established by the Board, were not in force as of the date of Appellant's crimes. This is notable since "[t]he law existing at the time of the offense determines whether an increase of punishment constitutes an ex post facto violation." Jernigan v. State, 340 S.C. 256, 260 n.3, 531 S.E.2d 507, 509 n.3 (2000).

It is apparently Appellant's argument that the Board must apply the same guidelines that were applicable at the time he committed his offenses in 1973 and that to do otherwise violates the constitutional provisions against ex post facto legislation.

The question here is thus whether or not the changes in section 55-612 (now section 24-21-640), as applied to Appellant, constitute ex post facto legislation.

The most significant post-1973 amendment to section 24-21-640 is the language requiring creation by the Board of "specific criteria" to be examined in parole considerations.⁵ The criteria developed by the Board in compliance with that statutory mandate are set out in Cooper, 377 S.C. 489, 661 S.E.2d 106, to wit:

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;

⁵ This language was added pursuant to 1981 Act No. 100, § 12 (effective June 15, 1981).

5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational educational courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Cooper, 377 S.C. at 494 n.2, 661 S.E.2d at 109 n.2.

The six statutory criteria currently set forth in section 24-21-640 are virtually the same as the six criteria contained in the 1973 version of section 55-612. The six statutory criteria (paraphrased) are: (1) consideration of the record of the prisoner, before and after imprisonment; (2) whether the prisoner has shown a disposition to reform; (3) whether he will in the future probably obey the law and lead a correct life; (4) whether his conduct has merited a lessening of the rigors of his imprisonment; (5) whether the interests of society will be impaired by his parole; and (6) whether suitable employment has been secured for him.

As discussed in more detail below, the Court finds that no ex post facto violation occurred here.

No Disadvantage to Appellant

According to the South Carolina Supreme Court, "[t]o fall within the ex post facto prohibition, a law must be retrospective and must disadvantage the offender by altering the

definition of criminal conduct or increasing the punishment for the crime." Farris v. State, 334 S.C. 21, 23, 511 S.E.2d 688, 689 (1999).

In this case, the fifteen criteria created by the Board under the direction of section 24-21-640 are all questions that could be asked to discover whether the prisoner satisfies the original six statutory criteria. In other words, the fifteen are subsumed by the six statutory criteria, and they have not created anything new. Accordingly, the court concludes that Appellant has not been disadvantaged by the Board's creation or consideration of the fifteen criteria. Cf. Cooper, 377 S.C. 489, 661 S.E.2d 106 (finding no ex post facto violation where the Board created fifteen criteria on parole form after the commission of inmate's crimes).

Too Attenuated

In Jernigan, 340 S.C. 256, 531 S.E.2d 507, the Supreme Court set forth the framework for determining, with respect to the prohibition against ex post facto legislation, when a change in the law increases the punishment for a crime:

Regarding the issue of increase of punishment, the relevant inquiry is whether the legislative amendment produces a sufficient risk of increasing the measure of punishment attached to the covered crimes. If the amendment produces only a speculative and attenuated possibility of increasing an inmate's punishment, then there is no ex post facto violation.

Jernigan, 340 S.C. at 261, 531 S.E. 2d at 509 (internal citations omitted).

Here, even if there is a possibility that the post-1973 changes in section 24-21-640 and the creation of the fifteen criteria retroactively increased Appellant's punishment for his crimes, the possibility is so speculative and attenuated that I conclude that there has been no ex post facto violation. Guided by Jernigan, this Court has considered the effect of the statutory amendments and the fifteen criteria upon the "quantum of punishment" to determine whether they offend the ex post facto clauses of the State and Federal Constitutions. Upon so doing, I find and conclude that neither the amendments to section 24-21-640 nor the fifteen criteria produce "a sufficient risk of increasing the measure of punishment attached to the covered crimes" to constitute ex post facto legislation.

The "quantum of punishment" is used here as meaning the increase in the time that the inmate will actually serve as a result of the application of the fifteen criteria, including any increase occasioned by the decrease in his opportunity for early release. While some of the fifteen criteria involve matters that are "fixed" and beyond the control of the inmate (e.g., "The nature and seriousness of the inmate's offense..."), there are others which give the inmate a

Appellant, it is clearly procedural and does not violate the ex post facto clause of the State or Federal Constitutions.

NOT LAW

"An ex post facto violation occurs when a **change in the law** (emphasis supplied) retroactively alters the definition of a crime or increases the punishment for a crime." Jernigan v.State, 340 S.C. 256, 531 S.E.2d 507 (2000).

As pointed out by Respondent's Brief, the fifteen criteria established by the board are **not law at all**. Rather, they are merely guidelines that have never been enacted as statutes nor properly promulgated as regulations. Thus they cannot be the basis for a claim of an ex post facto violation.

III. Appellant also cites the participation by a Mr. Benny DeBruhl in the Board proceeding as a violation of the prohibition against ex post facto legislation. He has failed, however, to describe with sufficient clarity in his Brief exactly how Mr. DeBruhl's participation in the proceeding constituted an ex post facto violation and this issue is thus deemed abandoned. See Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("This court has noted that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.").

Appellant also seems to argue that the Board violated the law in hearing from Mr. DeBruhl because he is neither: (1) a victim or a family member of a victim; (2) a solicitor who prosecuted the crime or his successor; (3) the law enforcement agency responsible for the arrest; or (4) the judge who participated in the trial. See S.C. Code Ann. § 24-21-221 (2007) (pertaining to victim, solicitor and law enforcement agency); S.C. Code Ann. § 24-21-610 (2007) (pertaining to solicitor and judge). Appellant apparently contends that only those in the four categories just enumerated, but no others, can be heard from in a parole investigation or hearing. The Court disagrees.

The statutory provisions cited above merely require DPPPS to notify certain specified entities prior to holding a parole hearing or granting a prisoner parole. They do not prohibit DPPPS from contacting others who may have meaningful input to offer. Under Appellant's interpretation of these statutes, an individual who planned to hire a prisoner upon the prisoner's parole could not participate in a Board proceeding if he did not fall within one of the four categories listed above, even though one of the factors that the Board must consider is whether

suitable employment has been secured for the prisoner. See S.C. Code Ann. § 24-21-640 (2007). Because such a result would be absurd, the Court rejects Appellant's interpretation of these statutes. See Ray Bell Constr. Co. v. Sch. Dist. of Greenville County, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998) (holding that courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature).

ISSUE #3 ON APPEAL MANDATED GUIDELINES

Appellant's position here appears to be similar to that of the "disingenuous" approach taken by the prisoner in Cooper, that is, Appellant complains of the failure of the Board to follow its own guidelines (i.e., failure to contact his wife per criteria #12), yet contends that its use of the fifteen criteria – of which #12 is a part – constituted an ex post facto violation. Nevertheless, despite the incongruent nature of Appellant's position, since the Court is convinced of the propriety of the use of the fifteen criteria, this issue will be examined.

The Supreme Court in Cooper plainly held that the Board should clearly state in its orders denying parole that it had considered the fifteen criteria set forth on the parole form. See Cooper, 377 S.C. at 500, 661 S.E.2d at 112. In this case, the "Order" dated August 13, 2008, denying Appellant's parole states: "After considering all of the criteria listed within section 24-21-640 and the Department policy, parole is denied . . ."

From this language, the reader is left wondering what the "Department policy" may be. It is unclear whether it is the fifteen criteria published on the parole form. Moreover, there are no findings of fact or conclusions of law as required by the APA. See S.C. Code Ann. § 1-23-350 (2005) ("A final decision shall include findings of fact and conclusions of law, separately stated."); Cooper, 377 S.C. at 500, 661 S.E.2d at 112 (holding that the Board must comply with the provisions of the APA, including Section 1-23-350). Thus, while the Board may have followed correct procedure as outlined in Cooper, that fact does not appear from the record. Therefore, the matter must be remanded to the Board for reconsideration to determine if the "Department policy" included the fifteen criteria and to make findings of fact and conclusions of law.⁷

THEREFORE, IT IS ORDERED

⁷ Conclusions of Law are based on the Findings of Fact. Hence, the Findings of Fact should be stated first, followed by Conclusions of Law.

(ISSUE #1)

That the temporary denial of parole to a parole-eligible inmate does not, on its own, implicate a liberty interest and that Appellant has failed to show that the Board treated him differently than similarly situated prisoners.

(ISSUE#2)

That there has been no violation by the Board of the ex post facto clause of either the Federal or State Constitution in the application of any law relative to Appellant's parole.

(ISSUE #3)

That because of the uncertainty created by the Board's decision dated August 13, 2008 as to whether the Board followed the "appropriate criteria" described in Cooper, 377 S.C. 489, 661 S.E.2d 106, this matter must be remanded to the Board with the following instructions:

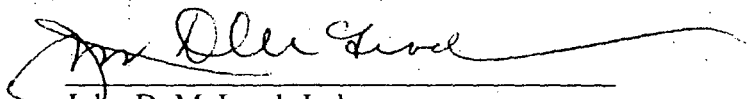
The Board must determine: (1) if the record is adequate to determine if it followed the fifteen "appropriate criteria" set forth in Cooper, and, (2) if the record is adequate to provide the basis for Findings of Fact and Conclusions of Law. If so, an amended decision shall be issued in accordance with the guidelines of Cooper.

However, if the Board determines that the record is insufficient for any one of the foregoing purposes, then it must grant Appellant an additional hearing using the appropriate criteria and thereupon issue its decision in the manner set forth in Cooper.

Any matter not addressed by this Order is deemed to be without merit.

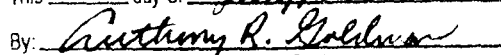
AND IT IS SO ORDERED.

July 28, 2009
Columbia, SC


John D. McLeod, Judge
S.C. Administrative Law Court

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 28 day of July, 2009
By: 
Judicial Law Clerk

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable John D. McLeod, Administrative Law Judge
Trial Court Case No.: 08-ALJ-15-00042

Vaughn Smith #70090,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

The Appellant appeals the dismissal by the Administrative Law Judge's Order of Issue No. I and Issue No. II...

Issue No. I

Did the Respondent in anyway create a State liberty interest that implied the expectancy for the Appellant to be granted parole?

Issue No. II

Did the Respondent incur upon the Appellant a progressive series of legislative penal code amendments that substantially added disadvantaging factors to his consideration to be paroled, that constitutes a violation of Ex Post Facto?

STATEMENT OF CASE

The Appellant, Vaughn G. Smith #70090, was convicted October 24, 1973 of Armed Robbery, Murder and kidnapping along with an unlawful weapons charge. The Appellant was sentenced to combined total of two consecutive Life sentences with four life sentences running concurrent, plus twenty six (26) years. (R.pp. 10-14).

The Appellant's first parole hearing and rejection was held March 7, 1984; after appellant received his last Notice of Rejection, dated August 13, 2008; he filed an affidavit for Notice of Appeal, dated August 26, 2008, for a rehearing citing, that the agency has been using the wrong set of provisions and criteria codes in accordance with the appellant's conviction date of October 24, 1973. (R.pp.5-8; p.28).

The Agency denied the Appellants request for rehearing, September 25, 2008; to which the Appellant forwarded his Appeal to the Administrative Law Court, dated October 14, 2008, filed date, October 20, 2008, and assigned to the Honorable Judge John D. McLeod, November 5, 2008. (R.pp.3-4).

The Appellant filed his Original Brief to the A.L.J. December 30, 2008; The Respondent filed their Brief February 19, 2009; The Appellant followed with his Reply Brief May 19, 2009 and a Motion to Alter and Amend was also filed May 19, 2009; along with a Motion to Show Cause for an Oral Hearing; that was not responded to was filed May, 19, 2009. June 1, 2009, a Motion to Supplement the Records was filed; and July 6, 2009, a Motion to Default was filed against the Respondent for failing to adhere to the Honorable Administrative Law Judge, John D. McLeod's letter request for a Proposed Order dated May 21, 2009. (R.pp.18-58; pp.59-73; pp.74-75; pp.77-81; pp.83-112; pp.114-117; p.119-120; p.121).

Appellant received the Administrative Law Judge's Order to Dismiss in part and Remand in part, July 28, 2009; to which August 11, 2009, Appellant filed a Notice for Intent to Appeal to the S.C. Court of Appeals and a formal Notice to all parties received September 1, 2009 whereas the Appellant is Appealing the two (2) issues on Appeal that were dismissed – not the Order to Remand. (R.pp.122-132).

ISSUE NO. I ON APPEAL

Did the Respondent in Anyway create a State Liberty Interest that implied the expectancy for the Appellant to be granted parole?

It is with much due respect that the Appellant honorably but adamantly appeals the decision of the Honorable Administrative Law Judge, John D. McLeod, concerning the pre-stated issue.

It is quite apparent that by definition, implied expectancy and entitlement are two different meanings, where-as, the statement, did the Respondent (Parole Board), do anything to imply an expectancy to be paroled?

The question purely asked here by definition is did the Respondent of 1973, create a contingency plan that created an expectancy for the Appellant to be paroled?

The answer to this question first lies in the simple understanding as to the meaning of the words used.

Then secondly, examining the evidence within the Appellant's Brief; see exhibit page 8, attachments sent to the Honorable Administrative Law Judge (A.L.J.) December 30, 2008. (R.p.35).

S.C. Code of Law: §55-612 (Circumstances Warranting Parole)

The heading (caption), within itself (warranting); is in fact legally or otherwise defined by the American English language and (Black's Law Dictionary); respectfully as meaning – as a form of a promise, an insurance, an agreement...end-quote..

Circumstances Warranting Parole – followed by a list of things to do, that will authorize that parole; is comparable to the meaning of a (contingency contract); a

contract, part of a performance of which at least is dependant on the happening of a contingency – (by Black’s Law meaning)...

Although this definition, by itself does not create (entitlement); it does however, directly refute the claim the Honorable A.L.J. has made concerning expectancy; because the root definition of (circumstances warranting parole), followed by any sort of contingency plan to receive parole; does create the full meaning of (implied-expectation regardless as to whether you receive parole or not...

To delete the expectations, the party presenting the warranting circumstances creating the expectations; would first have to remove the contingencies there-in...

The Appellant is aware that the Respondent has done something similar...

See exhibit page 15, from the Appellant’s Primary Brief attachments, dated December 30, 2008 or Appellant’s Reply Brief attachments, Page 1, dated May 19, 2009...which states;

“Criteria for Parole Consideration

The South Carolina Parole Law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Probation, Parole and Pardon Services, has absolute discretion to grant or deny parole, as such the publication of these parole criteria in no way creates an expectancy of release, nor does it bind the parole Board in anyway to a favorable parole decision or establish any presumption of entitlement to parole.”

(R.p.45; p.94).

What is being extremely overlooked by the Honorable A.L.J. in this matter as well as the Respondent, is the realization that this language (not to expect any concept of expectations concerning parole, was not given or presented to the Appellant until some 20 plus years after his incarceration...

Therefore, when anyone whom was presented with the basic form exhibited in page 15 of the Appellant's Primary brief exhibit attachments; concerning – S.C. 1962 Code of Law §55-612, circumstances warranting parole and upon reading said document; was not given anything else concerning other provisions or criteria; while being oriented into the S.C. Dept. of Corrections; with rational comprehension, would not the average prisoner or civilian; logically believe and think that if one stays out of trouble, conforms to rehabilitating him or herself, repents for the crime they committed and makes preparation to have a job of employment; would they not believe they had a right to make and receive parole!!

Because the (Warrantor) being the states (S.C. Code of Law §55-612) is the element that provided the contingency plan that created the implied expectancy...by legal definition.

Now the Appellant asks to review the definition of entitlement and liberty interest.

(By Black's Law Dictionary); abridged sixth edition Centennial Edition (1981-1991):

Entitlement; meaning, a right to benefits, which may not be abridged without due process;

Entitle: meaning, in its usual sense, to entitle is to give a right; to qualify for; to furnish with proper grounds for seeking or claiming;

With these definitions and meanings in mind; the Appellant will now merge into some of the statements made by The Honorable A.L.J., concerning the argument against the Appellant.

Reading from The Honorable A.L.J.'s order to dismiss in part and remand in part, dated July 28, 2009. (R.pp.122-132).

Issue No. 1, expectancy of being paroled 1st paragraph, starting on page 3, bottom to page 4 it states;

“Appellant argues that the Board, as far back as 1952, has paroled prisoners having sentences similar to his, in as little as 8 to 10 years, and did so with such regularity, that it created in him an expectancy of being paroled that rose to the level of a liberty interest.. The Court disagrees... it further states, the Appellant advances no legal authority to support his argument, and the Court is not aware of any such legal authority. This is merely a mistaken expectation by the Appellant, nothing more. More-over, the issue addressed here is (entitlement) to parole in which the Appellant cannot claim a liberty interest. See (James v. S.C. Dept. of Probation, Parole and Pardon Services, 376 S.C. 392, 656 S.E.2d 399 (2008) end quote. (R.pp.124-125).

The Appellant will respectfully re-argue the Honorable A.L.J.'s statement within Issue No. I in two (2) parts.

Part 1

The Appellant has already illustrated and presented the fundamental (Black's Law) meaning, concerning the true definition of expectation or expectancy, that should help in better defining the honest direction of this issue within this appeal.

The Honorable A.L.J. states; That the Appellant advances no legal authority to support his argument. (R.p.125).

The bottom-line question here is how does implied expectancy, rise to a level of a liberty interest?

Again, as a reminder; the Laws that rightfully govern the playing filed of this case and issue respectfully come from the S.C. Code of Laws of 1952-1962. There are also some common law principles in place as well, because the Appellant was convicted of murder under the S.C. Common Law Code §16-51.

Keeping that in mind, the Appellant directs the Honorable Court of Appeals to the issue and definition (reference Black's Law Dictionary) to help define;

Custom and Usage

Custom and Usage: A usage or practice of the people which by common adoption and acquiescence and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject matter to which it relates.

It results from a long series of actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a tacit and common consent.

A habitual or customary practice, more or less widespread, which prevails within a geographical or sociological area:

Usage: is a course of conduct based on a series of actual occurrences...

Parole evidence rule does not bar evidence of custom or usage to explain or supplement a contract or memorandum of the parties. U.C.C. §2-203...

Classification – customs are general, local, or particular. General customs are such as to prevail throughout a country and become the law of that country, and their existence is to be determined by the Court... end quote.

The Appellant claims that this is a lukewarm version of what is in the Record, written within the Appellant's briefs (Please review pages 3 and 4, from primary

appellant brief, dated December 30, 2008 and then the Reply Brief pages 1 and 2 dated Mary 19, 2009. (R.pp.20-21; pp.88-89).

The Appellant respectfully alleges that the Respondent (The S.C. Parole Board), is a State Sanctioned Administrative Tribunal, that is deemed to be held accountable for upholding all prisoner's U.S. 14th Amendment right, that have not been abridged because of their incarceration; which truly covers the due process principles of fairness and equal protection.

With that said, the Appellant raises yet another crucial stepping block issue, that helped to create the bridge and element of liberty interest from what started first as just an implied expectancy contingency plan.

Where-as, all prisoners between 1952 through 1975, with parole eligibility sentences (and we are speaking about life sentence recipients of all types); were given the same basic circumstances for warranting parole, contingency plan criteria, written within the 1952-62, S.C. Code of Law (§55-611 thru §55-612)...

(and it must be noted with great importance)

That the (no expectation) and (no liberty interest) clauses language or other disclaimers; written within (Exhibit page 15) of the December 30, 2008 Appellant's Brief attachments; was no provided or expressed in writing or otherwise to any prisoner during the 1950's thru the 1975 era. (R.p.45).

Coupled with the realistic compulsory fact that all prisoners from across the entire state of South Carolina; was being paroled, within an eight (8) to fifteen (15) years span, upon their initial conviction, regardless as to what type or seriousness of the life sentence they had – Raise the Question How can a State Administrative Tribunal, the Respondent,

create during the period of 1952 to 1975, a standard of punishment, from the custom and usage of a substantial repetitive habit, which lasted some twenty (20) plus years; and not be considered responsible for creating the seed from which something is to be benefited from ; The longevity of the actions rationally creates the common (mind-set-ideology) setting the grounds for seeking and claiming equal treatment from;

All prisoners who qualify for parole would rationally (expect) the same standard of treatment, especially due to the fact that regardless as to the life sentence conviction; The standard of approving parole to all prisoners within eight (8) to fifteen (15) years remained consistent during the time period in question.

-This is defined as implied entitlement-

Henceforth, this is an act of common actions speaking louder than common words and it is true that common practice, creates many of common laws, where-as South Carolina's history created many a laws thru common practice.

However, last but not the least of the final ingredient that provided the Appellant the combined element stepping block to create a liberty interest; comes simply within the Appellant's sincere and exceptional behavior.

The exceptional progress and longevity of the stellar disposition and achievements within the community (during the time the State had a state-wide Trustee program work force and community programs) gives testament to his ability to be an asset to the communities within South Carolina; to which the Appellant received numerous high awards and commendations spanning eight (8) plus years.

See Exhibits page 19 thru 22 from the Appellant's primary Brief attachments and exhibits page 3 thru 18 of the Appellant's Reply Brief attachments. (R.pp.51-57; pp.96-112).

The record shows over a span of twenty five (25) solid years the Appellant's consistent disposition, conduct and out-right exceptional achievements, rises up within the category of the rare few; where-as the Appellant's record expounds his level of rehabilitation and high integrity towards professionalism, that often had him summoned by the many within the communities of South Carolina to share and or assist in leading or co-assisting in special programs within schools, pretrial intervention programs, save the Children programs and participation in very special intense therapy programs for emotionally disturbed children programs. True to life; the Appellant's behavior and standard of conduct consistently has stayed above that which can be classified as satisfactory, which brings up the questions;

See exhibit page 3 of the Appellant's brief Attachment December 30, 2008
Bottom paragraph it states;

Parole will be granted when it shall appear to the satisfaction of the Board that you have shown a disposition to reform; that by your conduct, you merit a lessening of the rigors of imprisonment... end-quote. (R.p.30).

Understanding that there is a lot to be evaluated, however, in the determination of what is satisfactory, the Appellant's record is worth a considerable amount of concern...

However, when putting together the three element discussed separately;

(Circumstances warranting parole) (1) – The contingency plan. (2) The (customary and usage), of a repetitive habit of paroling all eligible prisoners, that created

the common standard; and add (3) The exceptional conduct, disposition, and rehabilitation of the Appellant, that rises to a level higher than that of most prisoners whom were ever paroled in the history of the Department of Corrections;

When putting the (three) mentioned factors together the psychological formula, naturally and realistically creates a rational implied expectancy to be equally treated by the Respondent (Parole board) within the same equal evaluational system.

The Appellant's proven track record and with the due process sense of fairness applied, with those prisoners he was originally incarcerated within time , the same era; entitle the Appellant to be qualified to receive the same level of compatible judgement toward parole.

Part 2

The Appellant now asks the Honorable Court of Appeals to reflect back to the Honorable A.L.J.'s Court Order (Issue No. I) starting at the bottom of page 3 and reading to page 4. (R.p.124-125).

The Honorable A.L.J. uses the case (James v. S.C. Dept. of Probation, Parole and Pardon Services 376 S.C. 392, 656 S.C.2d 399 (2008), as a means to prevent the Appellant from claiming a liberty interest. (R.p.125).

The Appellant alleges that respectfully the (James) case, does not apply to this case; as well as the citing of all the other case mention in reference only to the topic Liberty Interest for the Appellant to received parole because, like the (James v. S.C. Dept. of PPPS) case; their conviction date comes after 1976; whereas (James) conviction date is (1979) respectfully.

The case supplied by the Honorable A.L. J. all were determined under completely different time era paradigm.

In 1976, a whole new volume of 1976, S.C. Code of Law books was introduced to the South Carolina Judicial system, and with it, many new codes of law, amendment, provisions, and sociological changes. New categories of law and provision were implemented into the criminal Justice system that directly effected the Respondent's and the Public's ideology.

However, in the most profound way; the one biggest difference that separates cases similar to the (James v. S.C. DPPPS) 376 S.C. 392, 656 S.E.2d 399; from being applicable to the Appellant's case on Appeal, is the fact that in approx 1977-78, the S.C. State Legislatives in acted into Law the twenty (20) year parole eligibility requirement.

The change instituted a 100% percent quantum leap difference of what was previously a ten (10) year eligibility requirement. This was one of the first but many more to come, major impacts on the psyche of the Respondent's ideology that openly caused the Respondent to change their former procedure and standards.

The Appellant is not exactly sure what section of code of law the twenty (20) year eligibility provision was attached to; possibly section 16-3-20 (1977-1978). However, what is certain is the enactment did affect the norm in 1977-1978.

The Appellant now moves to address the core root of the evidence given, already in the record that gives credence and authority to support the Appellant's argument with this appeal.

The Appellant, upon entering the Department of Corrections in October of 1973, was first incarcerated at S.C. former Central Corrections Institution in Columbia.

For some several years prior to this appellant's arrival and for some years after his arrival, the Respondent (Parole Board) hearings were being held at Central Corrections Inst.

It was by compelling natural instinct for the Appellant to avidly research information, talk to veteran prisoners and stay acutely aware of the Respondent's present and past decision and results.

This is why all of the information given to the Honorable A.L.J. concerning (Issue No. I), written within the Appellant's primary Brief and attached Exhibits page 10-A and 10-B as well as all the information within the Appellant's Reply Brief and quoted statistics; and conservatively incontestably accurate. (R.pp.18-27; pp.38-39; pp.83-92).

Whereas the Respondent has not been able to contest this information given to the Court.

Which brings the Appellant to point out the following;

The Appellant asks the Honorable Court of Appeals to focus in on the Respondent's Brief (dated February 19, 2009) starting on page 5, last paragraph, which states:

The Appellant is of the opinion that he was wrongfully denied parole due to inmates being awarded parole in greater numbers between 1952 to 1975. (R.p.67).

The rate past Boards has allowed parole has not being on the current parole board. End quote. (R.p.67).

The Statement made here by the Respondent was made in direct response to the statistics and customary habit information presented to the Honorable A.L.J. by the Appellant in his brief.

The question here that's very important is why is there no denial or act of contesting any of the statistic or allegations of past repetitive habits?

Is it not, the responsibility of the Respondent to refute or contest the accuracy of the Appellant's allegations (if they were incorrect)!!??

The Appellant wishes to briefly bring attention to the Respondent's (confidentiality clause); written within their criteria for parole consideration. See exhibit page 15, Appellant's Primary Brief attachment... starting at paragraph 2, at the end of line 2 it states;

These files are maintained by the Dept. of Probation, Parole, and Pardon Services, and are by statute, privileged and confidential. (R.p.44).

The confidentiality of the parole file is far reaching: Inmates themselves have no right to inspect the contents of their files. If the inmate thinks he/she file is somehow incorrect or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken – end quote. (R.p.44).

The point to bringing up the (confidentiality clause) is to express to the Honorable Court, that the Appellant supplied all information in earnest that was basically available to him within an incarcerated environment.

Experiencing first hand a lot as a witness, then speaking and living with thousands of present and former prisoners; provided a lot of the valuable resources given.

The Respondent's confidentiality clause severely limits and stops the Appellant from obtaining much further evidence; Therefore its alleged that the Respondent creates their responsibility above the normal to be held responsible to reveal or correct or contest

any allegations of fact or fiction concerning the information written within the Appellant's appeal.

However, the Appellant contends that the Respondent did respond to the facts given in this matter!!

See page 5 of the Respondent's Brief (last paragraph) it states

The decision to grant or deny parole lies solely with the Parole Board that you are currently appearing before and not the Board that existed thirty (30) years ago. (R.p.67).

There are great societal differences that exist now, so there will be a noticeable difference regarding the Board's ideology now, compared to the Board in 1975. End Quote. (R.p.67).

The Appellant alleges here that; Is it not comprehensively obvious, that the Respondent's statement, although written within a reluctant posture, acknowledges and concedes that the Appellant's information presented within his brief is on point and factual; It cannot be refuted.

Furthermore, the Respondent's statement openly admits how there are (great social differences) and ideologies that created major differences within the standard of evaluating parole as implied.

Because of the fact the Respondent's statement openly admits that the Board separated themselves from the action, concerns, procedures, and standards of the past board customary habits, does in fact revert to saying;

That the present respondent (Parole Board) is knowingly not providing this Appellant his due process of equal protection of the law; regarding the rules and provisions afforded him at the time of his incarceration; by knowingly changing the

standard of evaluation, and knowingly allowing thirty (30) years of accumulative social differences and provisions change the comparison of the Appellant right to be evaluated and Judge under the standards he was first incarcerated under.

Not doing so, violates the 14th amendment of the U.S. Constitution due process and ex post facto clause... U.S.C.A. Cont. Art 1 § 10 cl. 1..3

The authority here is also founded within the core value of what is the truth. When the respondent concedes to the allegations or the facts given in testimony or presentation in brief, those facts carry the weight of the preponderance of the evidence, which creates the fundamental element of law.

ISSUE ON APPEAL NO. 2

Did the respondent incur upon the Appellant, a progressive series of legislative penal code amendments, that substantially added disadvantaging factors to his considerational chances of making parole, that constitutes a violation of the ex post facto clause.

The Appellant respectfully appeals the Honorable A.L.J. dismissal of the Appellant's original issue No. 2; submitted on appeal, as forestated above here and within the Appellant's original Primary Brief.

The Appellant respectfully ask The Honorable Court of Appeals,

Was it not the responsibility and obligation for the Respondent to address and respond, in formal, the issue brought before the Honorable A.L.J. concerning the Appellant's issue No. 2 on Appeal?

The Appellant points to the Brief of the Respondent dated February 19, 2009, and reviewing the (Table of Contents), the Appellant fails to see in caption or otherwise, the Issue No. 2; which is the subject address in the first paragraph of this page. (R.p.60).

Neither is said Issue No. 2, defined in Respondent's content of their brief or argument section. (R.p.65-73).

What perplexes the Appellant even more, is how The Honorable A.L.J. argues the Appellant's Issue No. 2 and eventually dismisses the Issue within his order; when the respondent did not cover the issue in formal nor did they argue the base principle of the issue either anywhere in their brief!??

Doesn't the Respondent default that particular Issue no. 2?

How is it appropriate for the Honorable A.L.J. to provide a defense for the Respondent when the Respondent did not provide a core defense or principle rebuttal for themselves!!??

The Appellant further states that the Honorable A.L.J. has applied and based their statement of the Appellant's Issue No. 2, on appeal in error of its meaning and principle. See the Honorable A.L.J.'s July 28, 2009 Order to Dismiss, page 2, Caption Issues on Appeal, which states:

2 Did the denial of Parole to Appellant constitute an ex post facto violation? End quote. (R.p.123).

The Appellant adamantly declares that Issue No. 2 is not based on the Issue of Appeal stated by the Honorable A.L.J. within the Order to Dismiss...

For the purpose of mutual respect, the Appellant searches out a possible vague response to the Appellant's Issue No. 2 within the Respondent's Brief.

The Appellant points to page 6, opening paragraph of the Respondent's brief dated February 19, 2009, the entry states:

It is the opinion of the Appellant that the denial of parole was unlawful due to criteria currently used has factors that was not considered at the time of his arrest., so this denial should be considered violation of ex post facto...end quote. (R.p.68).

The Appellant adamantly declares that the Respondent argues a principle not present within the Appellants Issue No. 2 appeal.

The root issue discussed within Issue No. 2 of this appeal is fundamentally based on the numerous amended acts of laws initiated within the 1986 Omnibus Crime Bill, that was a major (single package deal) developed by the S.C. Legislators.

There is approximately (40 pages) of Amendments and additions to new categories to laws addressed within the 1986 S.C. Omnibus Crime Bill No. 462 that exclusively relates to S.C. State Prisoners and the Operations of the S.C. Dept. of Probation, Parole and Pardon Serv.

The changes and amendment were far too numerous to explain within a (10) page brief to the Honorable A.L.J. (The limit is by Rule) whereas changes and amendment were initiated in varied ranges of S.C. Titles and sections and act numbers.

Stating just a few of the numerous amendment directly effecting the Appellant are: 16-1-60; 16-3-20; Amendments 24-21-610; 24-21-640; 24-21-645 and 24-21-650 and more – see exhibit pages 12-A and 12-B of the Appellant's Primary Brief attachments. (R.p.41; Supp.R.p.1).

The true debate within the Appellant's Issue No. 2, is extremely being misunderstood and literally being challenged way out of context.

The Appellant respectfully request the Honorable Court of Appeals to review the Honorable A.L.J.'s opening statement made within the July 28, 2009 Order to Dismiss; See page 4, Issue No. 2, Bottom of page – It states

Apparently, relying on S.C. Act 184 of 1993 §§8 266 (effective January 1, 1994; Appellant contends that to be found guilty of a violent crime under section 16-1-60, The offense had to be classified as violent at the time of the commission of the crime end-quote. (R.p.125).

See Appellant's exhibit page 11 of the Primary brief attachments, for reference to how it's really stated. (R.p.40).

Now the Appellant moves to point out another statement made by the Honorable A.L.J. on page 5 of his order of dismissal; which states,

The Appellant has failed to explain why the issue of whether his crime can be classified as violent under section 16-1-60 is relevant in this case. End quote. (R.p.126).

Before addressing directly the question the Honorable A.L.J. is asking within page 5 of his Order, the question re-arises from the Appellant; is it appropriate to dismiss the Appellant's issue within his appeal when the Respondent didn't address this Issue?

However with respect, the Appellant declares that the Honorable A.L.J. has seriously overlooked the meaning and the usage of Section 16-1-60.

Section 16-1-60 by definition is something like a tool, or and agent, used to bridge the implementation of other various amend laws and provisions into play with prisoners whom fall under its classification.

Mainly, it activates various punitive clauses written within the 1986 Omnibus Crime Bill, that severely hinder the Appellant's chances to be paroled; which is one of the code principle issue addressed in this appeal that's being misunderstood by the Honorable A.L.J.

It is strongly believed by the Appellant that the Respondent chose not to address the issue of the element and the use of 16-1-60 because the respondent knows better then anyone, how 16-1-60 is used and how the Omnibus Crime Bill impacts their procedure and the effect it causes prisoners.

In essence, section 16-1-60, is nothing when it stands alone.

The Appellant's Primary Brief, page 5; when read entirely, expresses the connection between 16-1-60 and the Omnibus Crime bill of 1986. (R.p.22).

For example, see Appellant's Brief Primary attachment exhibit page 12-A and 12-B. (R.p.41; Supp. R.p.1). When reading all of the sections 24-21-640 the 24-21-645; then 24-21-650; each of these section has a clause within them and the (Bridge-agent) 16-1-60, where as, if a prisoner can be classified as a violent offender, defined by those crimes listed in section 16-1-60, then usually something more punitive is impounded on the prisoner;

Such as when being paroled under Section 24-21-645, which is a law that works in mandatory tandem with 24-21-640; if the prisoner is classified under 16-1-60 then the members of the parole board approving parole changes from a 4 vote majority to a 5 vote two thirds requirement. (R.p.36, pp.40-41; Supp.R.p.1).

Changing the number of votes that determine whether a prisoner goes free on parole or not; is a major change and can have a profound effect on the prisoner as serious as losing a championship game by one (1) point.

See also exhibit page 14 of the Appellant's Primary Brief attachments, second to last paragraph on insert page 33 for reference. (R.p.44).

In contrast to prisoners going up for parole in 1973; (all felons) were governed under one evaluational parole voting system.

This is one of a few major changes in code of law coming from the Omnibus Crime bill section 24-21-645, that seriously has an effecting element to the chances of the Appellant making parole.

This is the realistic example and core issue to what the Appellant is arguing within his appeal; where as the respondent defaultly didn't address and the Honorable A.L.J. dismissed because they overlooked the true understanding of how 16-1-60 is being

used within the massive parameters of the Omnibus Crime Bill; However, be it known dear Honorable court of Appeals, the Respondent knows the very workings of 16-1-60 and its connection to the many facts of the Omnibus Crime bill, because they live by it and use its provisions everyday respectfully!!

This is also why the Appellant requested both in his Primary Brief conclusion and in his Motion to show cause; an oral hearing, date May 19, 2009; that was never answered. (R.p.27; pp.77-81).

The reasoning was to avoid what virtually happened The Honorable Courts not knowing the workings of the many fascists of the Respondent; and the appellant given too little room in small briefs to explain in depth, what the Respondent is deliberately avoiding the issues that affect the Appellant's appeal.

Another reason why the Appellant raised the issue about 16-1-60, was simply it was never suppose to be used on the Appellant because of his conviction date of 1973 and that his original conviction classification is common law.

The provisions in 16-1-60 B prohibit the Respondent from using the classification of violent offender with the Appellant, but they did anyway in violation of due process and Ex post facto laws.

See exhibit page (11) of the Appellant's Primary Brief Attachments. (R.p.40).

Which leads up to a major discovery unknown to the Appellant until a couple of weeks after the Appellant was denied parole last August 13, 2008.

See exhibit page 13-A and 13-B of the Respondent's Director's letter status report, from the Primary Brief attachment. (Supp.R.p.2; R.p.43).

Within this official letter, the (Respondent-Director) reveals that for many years the (Board-Respondent) is evaluating the Appellant as if he has committed a prior violent crime Armed Robbery; which is grossly in error. It has since within the Respondent's brief; conceded that it was an error; but not after years of damage to the evaluational psyche of Board members when under section 24-21-640 see exhibit page (12-B) of the Appellant's Primary Brief attachments – last paragraph it states.

The Board shall not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60. end-quote.
(Supp.R.p.1).

This section of Law causes serious disadvantaging consequences upon the Appellant when classified as a violent offender – pursuant to 16-1-60; to which it has already been discussed that the respondent is not authorized to use the violent offenders terminology which automatically defines the definition 16-1-60. within today's system of classification.

When the Respondent-Director stated to a Public Official that the Appellant was classified as a violent offender; see Primary Brief Appellant's exhibit attachment page 13-B (R.p.43), the Respondent verified that the Respondent was knowingly violating the law, because 16-1-60 B, A S.C. Code of Law instructed the Respondent not to use said code if Appellant was convicted before dated of enactment.

Furthermore, the Respondent-Director's letter provides direct proof that the board as a whole, for years, engaged in the philosophy, the usage of provision set fourth within the 1986 Omnibus Crime Bill, that prohibited the Appellant from participating or being

eligible, or being seriously considered for wide variety of programs that effect freedom or a less restricted environment; which also had direct consequences on the Appellant parole hearing reviews.

Written within the 1986 Omnibus Crime bill, the addition to Law – Section 24-21-650 which runs tandem to 24-21-640; provided yet another provision activated by the 16-1-60 definition that changed the Appellant's parole hearing reviews from once every year to once every 2 years.

For verification of the Appellant's annual hearing change to bi-annual – see Exhibit pages (1,2, and 3) of the Appellant's Primary Brief attachments. (R.p.28, 30).

Because the Appellant's original classification was at best, a common law felony; and changing that classification to something else violates ex post facto and due process.

All in all, it is quite apparent, that when reading the Honorable A.L.J.'s order to dismiss in part and remand in part; Issues no. 2 was extremely misunderstood as to the core of the issue on appeal.

The Honorable A.L.J. clearly argues the 15 criteria items setup by the Respondent; that for the Appellant; the major issues about the 15 criteria topics is part of the major debate within Issue No. 3 within the Appellant's Appeal; which is not being challenged by the Appellant to the Court of Appeals; because it has been remanded. (R.pp.127-128).

The Appellant does, however, acknowledge that within the Appellatn's brief to the Honorable A.L.J. Issue No. 2, there is mention concerning the 15 steps of additional criteria was added on to the Appellant over the years.

The Honorable A.L.J. argues the criteria is identical to that of 1973... what the Honorable A.L.J is not including within his comparison of the ideology; is that massive fine print written within the forms today that wasn't there thirty (30) years ago; as well as the numerous amendments laws that have special hidden provisional actions that transparently effect how the particular criteria are implemented; the same way we have already discussed how the 16-1-60 directly effects the Appellant by how it activates numerous provision within various programs to grant or deny access.

What the Appellant respectfully request of the Honorable Court of Appeals to note and question is:

Why has the Honorable A.L.J. ignored the profound evidence established within the Respondent's director's letter illustrated in the Appellant's Primary Brief exhibit (13-A and 13-B). (Supp.R.p.1; R.p.43).

It is undeniable that concept and ideology play a key role when evaluating something yet human being having the capacity to Judge things that are old and Judge things that are new.

There is plenty of evidence within statements made and exhibits presented, that show cause that Issue No. 2 was not fairly represented by the Respondent and although the Honorable A.L.J. did respond to Issue No. 2 and dismissed it; he did base majority of the debate on a side-dish topic without ever mentioning the content of the 1986 Omnibus Crime bill which is the root of Issue No. 2.

In Conclusion

The Appellant respectfully mentions that although the Respondent and the Honorable A.L.J. have cited case law to express that the Appellant hasn't a liberty interest or ex post facto claim;

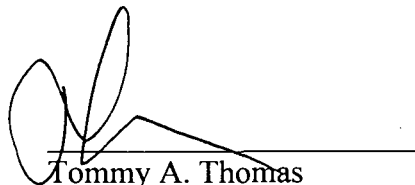
The Appellant *Pro se*, insist that only in the very slightness are some of those cases touching on an issue within the Appellant's case; where-as the core principle issue difference, which separates those cases from the Appellant's, is the conviction date of 1973; where-as the 1976 Code of Law began the changing of the field of play.

In conclusion, the Appellant respectfully request the Honorable Court of Appeals to grant a remand or a remedy concerning Issues No. 1 and Issue No. 2; of the Appellant's Issues on Appeal.

It remains a sincere request from the Appellant to be granted an Oral hearing because of the complexity of the issue mixed with the many rules of law.

Also due to the major error in dismissing Issue No. 2 because of the misunderstanding the Honorable A.L.J. has with the definition of Section 16-1-60.

And Also due to the fact that the Respondent did not formally represent or have a proper argument for Issue No. 2.



Tommy A. Thomas
Attorney for Appellant

May 17th, 2010.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable John D. McLeod, Administrative Law Judge
Trial Court Case No.: 08-ALJ-15-00042

Vaughn Smith #70090,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 210 (g) of SCACR and with the Supreme Court's order of August 13, 2007 and contains all material proposed to be included in the Final Brief by all of the parties and not any other material.



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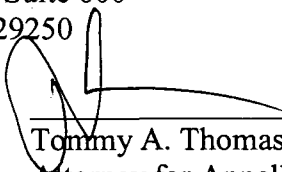
South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF SERVICE BY MAIL

I, Tommy A. Thomas, Attorney for Appellant certify that I have served a bound copies of the Final Brief on Tommy Evans, Legal Counsel for the South Carolina Department of Probation, Parole and Pardon Services, on May 17, 2010 by hand delivering it to the South Carolina Department of Probation, Parole and Pardon Services at:

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STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

Case Number 08-ALJ-15-00042-AP

VAUGHN G. SMITH, #70090

APPELLANT

v

SOUTH CAROLINA DEPARTMENT OF PROBATION
PAROLE AND PARDON SERVICES

RESPONDENT

FINAL BRIEF OF RESPONDENT

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STATEMENT OF APPELLANT'S ISSUES ON APPEAL

1. **DID THE RESPONDENT IN ANY WAY CREATE A STATE LIBERTY INTEREST THAT IMPLIED THE EXPECTANCY FOR THE APPELLANT TO BE GRANTED PAROLE?**
2. **DID THE RESPONDENT INCUR UPON THE APPELLANT A PROGRESSIVE SERIES OF LEGISLATIVE PENAL CODE AMENDMENTS THAT SUBSTANTIALLY ADDED DISADVANTAGING FACTORS TO HIS CONSIDERATION THAT CONSTITUTES A VIOLATION OF EX POST FACTO?**

STATEMENT OF THE CASE

On July 2, 1973, the Appellant entered Reliable mobile homes armed with a handgun with the intent to rob this business. The Appellant then proceeded to rob the owners and fled the scene. While attempting to escape, deputy sheriff Pat Orr of the Kershaw County Sheriff's Department recognized the Appellant and the vehicle as those being sought due to an involvement in an armed robbery. As a result, Deputy Orr immediately initiated a traffic stop. While examining the Appellant's driver's license, deputy Orr was shot by the Appellant four times, twice in the stomach, once in the chest, and once in the head. While deputy Orr lay dead next to his vehicle the Appellant fled the scene, deputy Orr's body was later discovered with the Appellant's driver's license still in his possession.

While fleeing the murder scene the Appellant entered the home of Mr. Presley Wiley. At gunpoint, the Appellant forced Mr. Wiley's wife and four daughters into his vehicle, he drove them to Savannah, Georgia, and released them unharmed. The Appellant was later arrested in St. Augustine, Florida, upon arrest he was found in possession of a .38 caliber pistol. A ballistic test was performed on this weapon, and it matched with the bullets removed from deputy Orr's body. The Appellant was then extradited to South Carolina and charged with offenses of murder, armed robbery, possession of an unlawful weapon, and five counts of kidnapping.

The Appellant later stood trial for all of the above referenced offenses. On October 24, 1973, he was found guilty by a jury of his peers on all counts. Upon conclusion of this jury trial the Appellant appeared before the Honorable James Ness. Judge Ness sentenced the Appellant to a period of incarceration for the remainder of his natural life for the offenses of murder, and kidnapping to be served consecutively; twenty-five (25) years for the offense of armed robbery;

and, one (1) year for the offense of unlawful possession of a weapon. (R.p.10-p.14). At the time the Appellant committed these offenses, South Carolina law allowed a person serving a life sentence parole eligibility upon the service of ten (10) years.

On January 11, 1974, the Appellant attempted an escape by hiding inside a sofa. He was caught prior to the escape with burglary tools in his possession. The Appellant later appeared before the Honorable Louis Rosen for the offense of attempted escape, who sentenced the Appellant to a six (6) month term of incarceration to be served consecutively to the offense he was currently serving. Then on April 18, 1976, the Appellant successfully escaped incarceration, and was able to elude the authorities for a period of fourteen months. He later appeared before the Honorable Hicks Harwell for the offense of escape, and was sentenced to an eighteen month (18) term of incarceration to be served consecutively to all other offenses. (R.p.15).

The Appellant initially appeared before the Parole Board on March 7, 1984, Upon conclusion of this parole hearing the Board decided to deny the Appellant an opportunity to be released on parole. (R.p.28). Since this initial denial, the Appellant has appeared before the Board an additional fourteen (14) times each appearance resulting in a denial of parole. His last appearance before the Parole Board occurred on August 13, 2008. Once again the Board decided to deny the Appellant a release on parole due to: 1) nature and seriousness of the offense; 2) indication of violence in this or a previous offense; 3) use of a deadly weapon in this or a previous offense; and, 4) his prior criminal record indicates poor community adjustment. (R.p.34). At the conclusion of each denial of parole the Appellant was notified by the Respondent as to his denial. Upon receiving this denial the Appellant requested a reconsideration by the Parole Board. The Board decided to reexamine the Appellant's parole file, and upon

conclusion of this reexamination the Board decided that the reason for his request would not affect the decision of the Board. So the Parole Board decided to deny the motion for reconsideration.

Upon receiving the denial of reconsideration, the Appellant decided to file a notice of appeal before the Administrative Law Court(ALC). Within his appeal the Appellant alleges that the Respondent's denial of parole is a violation of his Constitutional rights. It was the position of the Respondent that they are well within their rights to deny the Appellant an opportunity for parole once it is determined that he failed to meet the qualifications.

On July 28, 2009, the Honorable John D. McLeod, South Carolina Administrative Law Judge issued an order dismissing in part and remanding in part.. It was decided by Judge McLeod that the denial of parole does not on its own implicate a liberty interest, and the Appellant failed to show that the Board treated him any differently than any other prisoner. Judge McLeod also determined that there was no violation of ex post facto in the denial of the Appellant's parole. However, Judge McLeod, also ruled, that a new order must be made revealing that the record was adequate enough to make a sufficient finding of fact and conclusion of law prior to the decision to deny parole. (R.p.122-p.132)

Upon receiving this denial of parole the Appellant filed a notice of appeal before the South Carolina Court of Appeals. Within this appeal the Appellant argues that the ALC erred in deciding that he did not have a liberty interest in being granted parole, and his denial of parole was in violation of ex post facto. The Respondent will show that there exist no liberty interest in being granted parole and his denial of parole was not in violation of ex post facto. The Respondents Final Brief follows.

THE ALC HAS NOT ERRED IN DETERMINING THAT THERE EXIST NO EXPECTATION OF BEING RELEASED ON PAROLE, SO THE APPELLANT WAS NOT DENIED A LIBERTY INTEREST.

The Appellant claims that due to the language of the statute, and the amount of individuals being released on parole at the time he committed the crime there exist an expectation of release. In his opinion the Appellant believes he was denied a liberty interest due to his denial of parole. It is the position of the Respondent that the ALC did not err in determining that a prisoner seeking parole does not have a liberty interest in being released on parole, just a liberty interest in being allowed to appear before the Parole Board.

In Al-Shabbaz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) the South Carolina Supreme Court determined that inmates currently incarcerated could appeal final agency decisions before the ALC and ultimately to the Court of Appeals pursuant to the Administrative Procedures Act. Al-Shabbaz, at 376. In Al-Shabbaz, the Court recognized that “these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed; and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status.” Id., at 378. In Furtick v. South Carolina Department of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002), the Supreme Court decided that the appealable final decisions against the Department of Probation, Parole and Pardon Services arises in the latter manner, where an inmate alleges that the Department erroneously determined that he was not eligible for parole. The Court held that, in order to determine whether an inmate’s claim against the Department is entitled review by the ALC under the procedures set forth in Al-Shabbaz, it is first necessary to determine whether an inmate has a

liberty interest in gaining access to the Parole Board. Furtick, at 352. The Court determined that the “*permanent denial of parole eligibility*” by the Department “implicates a liberty interest sufficient to require at least minimal due process.” Id. (emphasis in original).

In the current case before the court, the Appellant does not involve a determination by the Respondent that he is not permanently eligible for parole; instead, the Appellant is challenging the Respondent’s decision not to grant him parole at a regularly scheduled parole hearing. The Appellant argues that the ALC erred in determining that an inmate does not have a liberty interest in obtaining parole; however, no liberty interest exist in being granted parole. The Courts have addressed this very issue in previous cases. This provision created a liberty interest in parole eligibility it does not created a liberty interest in parole, Furtick, at 598 n.4. An inmate has a right of review by the Administrative Law Court Division after a final decision of parole eligibility; however, **a parole eligible inmate does not have the same right of review after a decision denying parole.** Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2004).

The Appellant is of the opinion that he was wrongfully denied parole, and should have an expectation of being released on parole due to parole being awarded in greater numbers between 1952 and 1975. This factor is totally irrelevant to the Appellant’s current parole hearing. The Appellant has also not proven any individual convicted of murder and armed robbery were released in greater numbers during the aforementioned years. The current board the inmate is appearing before makes the decision and not the board as it exist thirty years ago. There are great societal differences that exist now, so there will be a noticeable difference regarding the board’s ideology now compared to the Board in 1975. There are absolutely no members on the board

today that served in 1975; so the fact that inmates were released in greater numbers in 1975 is irrelevant. It has been widely held by the courts that there exist no Constitutional right in being released on parole, See, Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979)(holding that there is no constitutional or inherent right of a person to be conditionally released before the expiration of a valid sentence.), Sullivan v. S.C. Dept. of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003)(finding there is neither a presumption of parole, nor a right to parole.); Furtick v. S.C. Dept. of Probation, Parole and Pardon Service, 352 S.C. 594, 576 S.E.2d 146 (2003)(noting there is no constitutionally protected Fourteenth Amendment liberty interest in parole).

THERE EXIST NO VIOLATION OF EX POST FACTO IN THE DENIAL OF THE APPELLANT'S PAROLE.

The Appellant argues that the Respondent applied criteria to his denial of parole which did not exist at the time he committed the crime, so applying this criteria is a violation of ex post facto. The law existing at the time of the offense, and not at the time of sentencing determines whether an increase of punishment or reduction of benefits constitutes an ex post facto violation. Elmore v. State, 305 S.C. 456, 409 S.E.2d 397 (1991).

At the time the Appellant committed his crime, Section 55-612 of the South Carolina Code of Laws listed the mandatory criteria that the Board uses to determine parole. Section 55-612 specifically stated:

The Probation, Parole and Pardon Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it appear, to the satisfaction of the Board, that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment;

that the interests of society will not be impaired thereby; and, that suitable employment has been secured for him.

S.C. Code Ann. §55-612 (Supp. 1962).

In comparing this to the current section the only difference is that the word “shall” is replaced by the word “may.” This addition should be considered procedural; therefore, it should not be considered an ex post facto violation. Even though it may work to the disadvantage of the defendant, a procedural change is not ex post facto. Roller v. Gunn, 107 F.3d 227 (1997).

In 1981 the legislature added, “The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner’s disciplinary and other records.” S.C. Code Ann. §24-21-640 (Supp. 1981). The criteria established by the Respondent includes:

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate’s offense, the circumstances surrounding the offense, and the inmate’s attitude toward it;
3. The inmate’s prior criminal record and his/her adjustment under any previous programs of supervision;
4. The inmate’s attitude toward his/her family, the victim, and authority in general;
5. The inmate’s adjustment while in confinement, including his/her progress in counseling therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate’s employment history including his/her job training and skills and his/her stability in the work place;

7. The inmate's physical mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational educational courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he/she will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victims family and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

(R.p.9). Cooper v. South Carolina Department of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008). These differences does not increase the punishment so applying these criteria is not a violation of ex post facto. To fall within the ex post facto prohibition a law must be retrospective and must disadvantage the offender by altering the definition of criminal

conduct or increasing the punishment for the crime. Farris v. State, 334 S.C. 21, 511 S.E.2d 688 (1999). The fifteen criteria does not change the Appellant's sentence nor does it change the eligibility of parole; therefore it cannot be considered a violation of ex post facto.

In the case of Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000), the South Carolina Supreme Court held, that retroactive application of a statutory amendment that reduced the frequency of parole reconsideration hearings for violent offenders from once every year to once every two years, violated ex post facto. In Jernigan, the Supreme Court specifically ruled:

Regarding the issue of increase of punishment, the relevant inquiry is whether the legislative amendment "produces a sufficient risk of increasing the measure of punishment attached to the covered crimes.

Id., at 509, *quoting*, California Dep't of Corrections v. Morales, 514 U.S. 499, 115 S.Ct. 1597 (1995).

The use of the additional criteria does not increase the prior punishment of the Appellant. The criteria that was established by the Respondent encompasses the criteria established by the legislature. The Respondent's criteria is just a more narrow interpretation of the criteria placed within the statute. The criteria regarding the Appellant's prison record and his possible life outside prison could actually be a benefit to the Appellant and is always considered prior to the decision made by the Parole Board.

Within his brief the Appellant addresses the fact that the Respondent did not respond to his argument relating to Section 16-1-60. This section is not relevant to the case at bar. The 1986 omnibus crime act created violent and non-violent classifications, this statute was not applied to his denial of parole. The Appellant was convicted of committing murder and five counts of kidnapping, which are very serious offenses. The Appellant was denied parole due to the

violence and seriousness of the offense; the use of a deadly weapon in the commission of this offense; and, his prior record. All of these reasons are allowed pursuant to South Carolina law. Section 16-1-60 of the South Carolina Code of Laws was never considered prior to the denial of parole; therefore, the mentioning of this statute is irrelevant.

CONCLUSION

There exist no liberty interest in being granted parole, and there is also no violation of ex post facto by applying the mandatory criteria established by the Respondent. Due to the above referenced reasons the Respondent would respectfully request this Honorable Court to affirm the decision of the ALC.

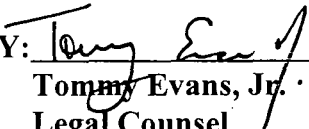
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March 31, 2010

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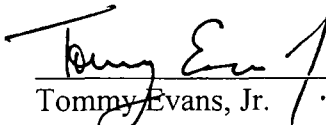
VAUGHN G. SMITH, #70090, ... APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES, ... RESPONDENT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with
the South Carolina Supreme Court's order dated August 13, 2007.



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Legal Counsel

March 31, 2010

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FINAL REPLY BRIEF OF APPELLANT

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STATEMENT OF APPELLANT'S REPLY BRIEF ISSUES

Issue No. I

The Appellant's rebuttal toward the Respondent's discrepancies within their statement of case.

Issue No. II

Did the Agency (Respondent) in any way create a state liberty interest that implied the expectancy for the Appellant to be granted parole?

Issue No. III

Did the Respondent incur upon the Appellant, a progressive series of legislative penal code Amendments, that substantially added disadvantaging factors to his possible chances of making parole, that constitutes a violation of the ex post facto clause?

REPLY BRIEF – RESPONSE TO RESPONDENT’S INITIAL BRIEF –
STATEMENT OF CASE

APPELLANT’S ARGUMENT NO. I

The Appellant contends that the statement of case should not be an issue of argument confronting the Honorable Court of Appeals, however, the Appellant is perplexed at how much inaccurate information is being administered to the Court concerning what chain of events led up to the Appellant’s conviction.

The Respondent’s statement of case is highly argumentative, and it shouldn’t be.

The Appellant has reason to be critical of what information is being evaluated because already within the early stages of the administrative law court procedures, the Appellant uncovered the major mistake being told to public officials that the Appellant had a prior Armed Robbery conviction, which was totally in error, but evaluated far as being something true within the Appellant’s records for years.

The Appellant will forever grieve over the pain he has caused and over the ignorance of his decisions that started a chain of events that eventually led up to the loss of a deputy sheriff’s life.

The Appellant will forever be in grievance over Mr. Pat Orr’s life.

However, it should be deeply understood that back in 1973, this shooting incident happened without today’s technology and onboard cameras and light-years difference in racial tension and/or discrimination.

Because there was no actual witness to the altercation between Deputy Orr and the Appellant, and even when Mr. Orr was not the initial officer who stopped me after the alleged robbery, and even if Mr. Orr did not pull me over in a traffic stop, but rather I pulled over

willingly without a blue light summons nor was I directed to, but the Appellant initiated the pull over to surrender because he was overwhelmed with guilt and had no desire to even attempt a chase or to resist arrest.

If the Appellant had pre-conceived ideas to murder Mr. Deputy Orr, he never would have handed the Deputy his driver's license and car registration.

Mr. Orr, after receiving the Appellant's paperwork, progressed into a highly provocative, racially motivated manner and conversation that led up to the Appellant believing that Mr. Orr was not going to arrest him, but rather kill him in an unlawful manner due to racial conflict.

Regardless as to how deeply true this scenario is when describing some of what happened in 1973; who within the deputy's own sheriff's department would have even been foolish enough to even attempt to assist the Appellant in proving that the Appellant actually tried to surrender and everything back-fired and things only escalated.

1. The Appellant was guilty of Armed Robbery. 2. Although the kidnapping happened unwanted and by total accident, it did happen, and the Appellant cried like a baby while in the process. 3. The Appellant is black and from out-of-state and killed a white man.

The prosecutor had a field day when it came to developing any story he wanted as to how everything went down, regardless as to how close he was to the truth or how far he got away from the truth.

Who was going to defend me? My Court appointed attorneys were both personal friends of Deputy Orr; one lived two doors away from Mr. Orr. Both attorneys were also campaigning for political office within the same county I was being tried in.

The Appellant respectfully asks The Honorable Court to examine the Appellant's Reply Brief exhibits to the Administrative Law Court (pages 4-throu 9) dated May 19, 2009. (R.pp.97-102).

The letters in question come from the actual victims and (page 9)(R.p.102) expresses how even the victim was shaken by the lack of honesty and fairness within the Appellant's trial.

The Appellant finds no pleasure in debating the condition of the fallen officer when speaking about Mr. Orr; however, it was also a tactical exaggeration to imply that the Appellant shot Mr. Orr in the back of the head.

The fact is Mr. Orr was shot facing the Appellant with his gun pointed at the Appellant; the bullet that ended up in Mr. Orr's head ricocheted off Mr. Orr's left shoulder, then into his neck and ricocheted up into back portion of his head.

Bottom Line: The shooting was a terrible devastating event, but in the eyes of the Lord and in that hall of justice, Mr. Orr did provoke the shooting, and handing Mr. Orr the driver's license was an act of surrendering, not resisting.

REPLY BRIEF – RESPONSE TO RESPONDENT'S INITIAL BRIEF –

ARGUMENT NO. II

The ALC has not erred in determining that there exists no expectation of being released on parole, so the Appellant was not denied a liberty interest.

The Appellant presented a thorough in-depth case in his initial Brief to explain how the liberty interest for the Appellant was created.

However, the Appellant will add the following information that comes from the Respondent's use of Roller v. Gunn 107 F. 3d 227 (1997), from their brief to the Honorable Court of Appeals (page 7, first paragraph).

After the Appellant researched Roller v. Gunn, (Const. Law 203) Pardon and Parole Key 42.1 stated:

“States adoption of limited change in parole procedures to relieve state from costly and time consuming responsibilities of scheduling parole hearings for prisoners who have low probability of being released does not violate ex post facto clause – unless prisoner can show with assurance that he would have received parole under old system.” Id.

Therefore, the statements constantly made by the Respondent written within both their brief’s (First Brief to Admin. Law Court – Feb 19, 2009, page 5 – complete bottom last paragraph and Initial brief to the Court of Appeals, page 5 – bottom last paragraph).

The Appellant is stressing the point that the Administrative Law Judge is siding with the Respondent that the past parole board’s action (which represents the old system) isn’t relevant!

When the Appellant originally addressed the Administrative Law Court with statistics concerning what were true state wide parole habits and customs of the 1952 to 1975, parole results, the Respondent’s response was clearly and adamantly to the Court on Record, that numbers didn’t matter, they bear no weight, and what happened and the factors of percentages are irrelevant, as put directly on record by the Respondent.

Therefore, it is already on record within the Respondent’s original Brief before the Administrative Law Judge – Honorable John D. McLeod.

That the respondent did not refute the Appellant’s submitting of evidence nor his research and assessment of the facts, whereby those statistics have become solid evidence of fact.

Because the Appellant was convicted in 1973, he falls under the (old system); reference to Roller v. Gunn 107 F.3d 227 (1997), statement: if prisoner can show with assurance that he would have made parole under (old system).

Within Appellant's original brief to the Administrative Law Court on December 30, 2008, (page 3 – last entire paragraph), gives direct assessment that all prisoners during the 1952 to 1975 with life sentences regardless of type:

As long as they had parole eligibility statutes, were granted parole within an 8 to 15 year span max.

Because these statistics are very accurate and Roller v. Gunn, supra, suggests that the old system is relevant if the claim shows that all prisoners were being released.

Henceforth, the Honorable Administrative Law Judge and Respondent is in error to think that the responsibility and action of the past parole board's habits and customs doesn't also relate to their present responsibilities.

REPLY BRIEF – RESPONSE TO RESPONDENT'S INITIAL BRIEF –

APPELLANT'S ARGUMENT NO. III

There exists no violation of ex post facto in the denial of the Appellant's parole.

The Appellant continues to adamantly point out to the Respondent and to the Honorable Court of Appeals that the core issue on appeal for the argument is:

Did the Respondent incur upon the Appellant a progressive series of legislative penal code amendments that substantially added disadvantaging factors to the Appellant's chances of making parole, and does that constitute a violation of the ex post facto clause?

The Respondent changed the wording in their argument to submit an argument that has nothing to do with the core principle of the Appellant's true argument!

The majority of the elements of this issue come from the basic understanding of all the numerous changes effecting the S.C. States penal system and parole board; through the

enactments of laws within the (1976) S.C. Code Ann., covering the penal system and all the way up to the changes coming from the massive (1986) Omnibus Crime bill No. 462.

However, the Appellant will again in a formal question to the Court ask; is it appropriate and legally permitted, to allow the Respondent to deliberately ignore a valid important appeal issue, raised within a formal brief? Refuse to address the issues therein. See Respondent's Brief dated February 19, 2009.

Please note the Respondent's Table of Contents.

Then note the Respondent's page iii which states, "The Statement of Appellant's Issue on Appeal."

Nowhere within the Respondent's Brief does the Respondent formally argue the Appellant's issue No. 2.

Now, the Appellant respectfully asks the Honorable Court to review the Honorable Judge John D. McLeod's, July 28, 2009, Order to Dismiss and Remand in Part. See page 2 of Respondent's Brief – Issue on Appeal (Number 2).

Did the denial of parole to Appellant constitute an ex post facto violation?

In reference to the Appellant's Original Brief to the Administrative Law Court; This is not the argument presented to the Honorable Judge McLeod, and neither is it the argument the Respondent debated.

So the Appellant raises the issue of default and wonders why the Administrative Law Court can argue and dismiss the Appellant's issue No. 2 when the Respondent refused to address the principle issue themselves and deleted it from argument.

Now within the Respondent's Brief dated October 19, 2009:

The Respondent makes a mere attempt to address the Appellant's issue No. 2; but yet still blatantly changes the wording and the context of the meaning of the Appellant's original presented issue, and then goes on to use cases of law on subjects that don't cover the specifics of the 1976 Code of Law – Penal Code Amendments or the 1986 Omnibus Crime bill No. 462, which truly provides the base of where the Appellant's issues come from.

CONCLUSION

The Pro-Se Appellant does in fact wish to have his appeal issues remanded and have a just remedy administered, however, it is respectfully requested that an Oral hearing be granted before the Honorable Court of Appeals, because the issues and the possible remedies concerning this case are far reaching, highly complex and circumstantially rare.

Respectfully submitted

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June __, 2010