

William Smith
AKA. William Kinard

V

South Carolina DEPT of
Parole, Probation, Pardon
Release Service

IN THE General Session Court
Fourth Judicial Circuit Court

Docket NO 24-ALT-15-0013-AP

Brief to the Appeal to Final Order

Brief to Appeal to the Final Order
Summary Argument

Appellant SEND Brief to Appeals, South Carolina Dept
Probation, Parole and Pardon Release Service
and to the Honorable S. Phillip LENSKI Administrative
Law Judge, decision to Affirm the routinely Denied
OF Parole which was reasonable, because in actuality
and Perplexity claim Parole before the Court was
Mischaracterize by the State thereby An honest
Mistake of the ALC decision to Refact the full
Crimment of Appellant which should Request a Reversal
OR a Ruling for abuse of discretion.

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S.C. SUPREME COURT

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Case law. Applicable law and standard of Review

① Russell v. Cooper, 263 S.C. 526, 211, SE2d 655 (1975) quotation.

② Morrissey v. Brewer 408, U.S. 471, 92 S.Ct. 33 L.Ed2d 484 (1972) 2593

S.C. Const: Art 1 Section 3:

U.S. Const. 14th Amendment

Statutes: 17-27-20(A)(5)(B) S.C. Code Ann Statutes.

And 24-21-680 S.C. Code Ann.

③ State v. Allen, 370 S.C. 88, 634 SE2d 653 (2006)

④ ^{U.S.} State v. Burn 287 U.S. 216 (1932)

⑤ State v. White 218 S.C. 130 61 SE2d 754 (1950)

⑥ State v. Crumck, 355 S.C. 355, 585 S.E2d 288 (2003)

⑦ Kerr v. State, 345 S.C. 183, 547 SE2d 494 (2001)

Appellant South Carolinus Constitution and
Federal Constitution under the due process clause
In violation because his parole was unlawfully revoked
Appellant original standing in ALC is simply:
pursuant to Statute 17-27-20(A)(5)(B) S.C. Code Ann
Appellant William Smith has not Broken, Any, State
Federal or local law, And has Not Been convicted
Of Any New Crime or Plea guilty or Been found
guilty for Any Crime in the Court of law.
And All charge the S.C. Parole Board use to Revoke
his parole, for Being arrest for on 8-9-22, has Been
Dismiss by the Marlboro County Solicitor on 1-10-24.
Appellant stated and raised 17-27-20(A)(5)(B) allowing
the court to modify or Reverse the decision of the
agency, because substantial right of Appellant have
Been prejudiced according to 1-23-380(5) however
the court fail to view and Review this original standing
of Appellant. Please see Exhibit (A) Final order. 4pg date
(Sep 5, 2024.) where there is No Finding of fact nor conclusion
of law regarding Appellants standing as to 17-27-20
(A)(5)(B) which state
(A.) Any person who has been convicted of or sentence
for a crime and who claim,

(5) That his Sentence has expired, his probation or parole conditional Release Unlawfully Revoked or he is otherwise unlawfully held in Custody or other restraint.

The Respondent and the Court only classified this case as "Because the record reflects that the Parole Board routinely denied the Appellant parole, after complying with the necessary procedure, the Court may not interfere with the Department's determination" This is mischaracterized by far as the law and fact of this case quoting 24-21-640 However failing to cite 24-21-680.

The Final order page 3 state "Here, the Board order plainly reflect that it consideration all the appropriate factors - including those set forth in Section 24-21-640. The Department's own Criteria for parole consideration, and an actuarial risk and need assessment before making its decision to deny the Appellant parole. This, as a routine denial of parole, the Court ability to further Review this matter is limited. Quotation 24-21-640

Appellant submits that the order misses the mark because it failed to explain the Appellant did or did not violate parole pursuant to 24-21-680 S.C. Code Ann (Violation of Parole) see State v. Crutch 355 S.C. 355, 585 S.E2d 288 (2003).

(1) When a parolee violates the terms of his parole; the parole agent must issue a warrant or citation of his parole of the reason, charging the violation of the parole and a final determination must be made by the parole board as to whether the prisoner's parole should be revoked. The board shall be the judge as to whether or not a parole has been violated. SEE S.C. Code Ann Section 24-21-680 See Sander v. MacDowall, 244 S.C. 160, 161, 135 S.E2d 837 (1964).

Here these procedure and liberty interest of Appellant was violated and denied because there had been no determination as to whether Appellant's parole should ~~have~~ be revoked.

But rather as the final order state a routine denial of parole "was mistakenly ruled upon which was not Appellant statutory. Sections 17-27-20(A)(5)(B) very clearly point out to probation and parole issue being unlawfully revoked

Which the proper statute to Review such claim would be 24-21-640 S.C. Code Ann and the record is clear that All the charge was dismissed See pg 1 of Exhibit (A) and there is also no determination as to Appellant's Parole being Revoked - skipping this whole process and stating a routine denial of parole clearly proves that Appellant did not Violate his parole, he was not convicted of Any New crimes however Appellants procedure due process Right is Violated See U.S. Constitution Amendment 14; S.C. Constitution Article 1 § 3 No person shall be deprived of life, liberty or property with out due process of law). Appellant Here, All charge are Dismiss and the S.C. Dept of Parole, Probation, and Pardon and Release Server clearly deprived Judicial Review outline in 17-27-20 (A)(5)(B) S.C. Code Ann and procedure outline in 24-21-680 S.C. Code Ann and failed to conclusively state that Appellant did not Revoke his parole which is a violation of due process because Appellant parole is unlawfully Revoked. Regardless of the Parole Board State it If, it is not according to the procedures of Parolee Violation, the terms of his Parole; the Board routine denial of parole is in fact an unlawfull Revoked of parole without Applying 24-21-680

S.C. code ann Violation of parole, In this case
It was no violation, No New crime committed
No New conviction of Any New crime By Any
Court, No State or Federal or local law Broken
there fore parole Should Be Reinstated.

The Appellant points to Russell V Cooper, 263 S.C. 526, 211
S.E 2d 655 (1975) held that where it was conclusive from
the record and the admission of Petitioner that he had committed
Acts Constituting a violation of his Louisiana Parole, the
Failure to grant him a preliminary parole violation hearing
did^{nt} deny petitioner due process, quoting Morrissey V Brewer
408 U.S. 477, 92 S. CT. 2593. 33 L.Ed 2d 484 (1972)

In Russell V. Cooper, it was held that No preliminary hearing
is necessary where the parolee has admitted that he
violated the term of his parole, Further, the Court
held "that preliminary hearing are not required when
Subsequent revocation of parole is based on the Parolees
Conviction of a crime" furthermore, that A parolee
is not entitled to a preliminary hearing, as set out in
Morrissey, where the violation of parole with which
has been charged is supported by a Criminal conviction
In an independent Criminal Proceeding

In Morrissey V Brewer, the established that parolees have protectible liberty interest in the Conditional freedom of their parole, and because the loss of that Freedom May be said to be grievable under the Fourteenth Amendment. Parolees are entitled to both a preliminary and a final Revocation hearing before their parole May be revoked. First the parolee, Mosh, Be convicted of a new crime in the court of law, Not a violation for Being arrest. A person is innocent until he is found guilty in the court of law or if the parolee plea guilty. The court has identified two important stages in the process of Parole Revocation

- ① the arrest of the parolee on a parole violation warrant and the preliminary inquiry in the nature of a preliminary hearing, the Board Did Not wait to see if the Parolee was innocent or guilty By the court of law from his arrest, ② Before they had a final revocation hearing.

Here, the Final order on pg 1. Clearly State " unanimous decision to deny the Appellant parole is also clearly a due process violation under Morrissey standard he has, No Broken No State, Federal or local laws and has not Be convicted of Any Crime in the court of law from the 8-9-22 Arrest. All Charge have Been Dismiss on 1-10-24 By the Solicitor of Marlboro County.

At these above mentioned hearing Appellant could be afforded the opportunity to be heard and show he did not violate the conditions of his parole and therefore determination for revocation would not exist because All the actual case from his arrest on 8-9-22. has been dismissed, and he has not be convicted of Any crime from this 8-9-22. arrest, and unlike in Russell v. Cooper, where the Appellant Russell admitted to the crimes and offense committed, while he was on parole. All the need for Morrissey v. Brewer and Also SEE, State v. Allen, 370 S.C. 88, 634 SE2d 653 (2006) where evidence was sufficient to support finding that probationer violated condition of probation. See, Burn v U.S. 287 US. 216 (1932) (Federal probation and parole being essentially similar to State) See State v White, 218 S.C. 130 61 SE2d 754 (1950) held that the evidences established parolee violation of his parole by failing to avoid disreputable person and places. In while the Court stated "IT Follow that the authority of the court of general Session to Revoke such suspension of Sentence May Not be Capriciously or Arbitrarily exercised.

But should always be predicted upon an Evidentiary
Showing of Fact tending to establish Violation of the
Conditions. (Like if one is Found guilty in court of law
Here, Section 24-21-680, was never established see)

State v Cronk 355 S.C. 353, 585 SE 2d 288 (2003)

The Appellant was arrested, the charge from the arrest is
The Reason the Violator his parole, and he was
Not found guilty in the Court of law, he has
Not Broken Any State, Federal or Local Laws, and
When, the Solicitor Dismissed the charge from
his arrest, the Violator, become Dismiss.

and therefore pursuant to 17-27-20(A)(5)(B)

Appellant present Status of Custody is an unlawfully
Revoked of parole pursuant to 17-27-20(A)(5)(B)

Therefore, the Circuit Court should reverse the
decision of the South Carolina Department of
Probation, parole and pardon Release Secure
and Reinstated parole, according to

Kerr v State, 345 S.C. 183, 547 SE2d 494 (2001)
OR. Reverse the decision of (SCDPPP) to conclude whether
Appellant violated parole according to 24-21-680
Because the reason they use, all the charge and
Case has been dismissed by the Solicitor on
1-10-24. And he has not Pleas guilty and
has not been found guilty by the Court of law
And, the proof of Evidence show he is innocent
And has not broken any State or Federal or local
law, to have his Parole Violate, for any crime
OR. Reverse the decision of the ALC, and (SCDPPP)
and Reinstate parole. This is a liberty issue, the
A.L.C. can hear and view fact of case.

Respectfully Submitted
William Smith 161838
AKA William Kward
990 W Wacky Hwy
Bishopville S.C.
29010

9-10-2024

William Smith #161838
AKA. William Kinard
Appellant

V

S.C. Department of Parole
Probation and Pardon Release
Service.

Docket NO: 24-ALJ-15-0013-AP

CERTIFICATE OF SERVICE

William Smith #161838
AKA William Kinard
LEE Corr Inst - F3A2134
990 Wisacky Hwy
Bishopville S.C. 29010

Certificate of Service

I Hereby that I William Smith #161838 AKA. William Kinard on this Day 10-10-2024 City of Bishopville S.C. 29010 Served a copy of the Foregoing Copy of Brief to Appeal the was File From the Administrative Law Court Final Order to Appellant Parole Appeal. All Parties to this Matter Served by depositing same in the U.S. mail Postage Agency Served.

① South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C.
29211

② South Carolina Administrative Law
Court
Edger A Brawn Building
1205 Pendlen Street, Suite 224
Columbia, S.C.
29201

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