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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Docket Number 24-ALJ-15-0008-AP

Appellate Case No.: 2024-001544

Bernard Jackson, #210745.....APPELLANT

v,

S.C. Department of Probation, Parole And
Pardon Services.....RESPONDENT

REPLY BRIEF OF APPELLANT

Bernard Jackson #210745
Pro se Litigant
SCDC
Tyger River Correctional
200 Prison Road
Enoree, SC 29335

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Cases:

Cooper v. S.C. Dept. of Probation, Pardon and Parole Services, 333 S.C. 488, 661 S.E.2d. 106 (2008)

Martin v. Bay, 400 S.C. 140, 732 S.E.2d. 667 (S.C. APP.2012)

Eadie v. H.A. Sack Co., 322 S.C. 164, 470 S.E.2d. 401 (Ct.APP.1996)

Kelsey v. S.C. Dept. of Probation, Parole, and Pardon Services, 441 S.C. 373, 893 S.E.2d. 588 (August 31, 2023)

Compton v. S.C. Dept. of Probation, Parole and Pardon Services, 385 S.C. 476, 685 S.E.2d. 175 (2009)

Furtick v. S.C. Dept of Prob., Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2004)

Deese v. S.C. State Board of Dentistry, 286 S.C. 182, 332 S.E.2d. 539 (1985)

STATUTES

S.C. Code Ann § 24-21-640

S.C. Code Ann. § 1-23-380(4)

S.C. Code Ann. § 1-23-380(A)(6)

S.C. Code Ann. § 1-23-600-(D)

RULES

RULE 57 ALCR

RULE 59 ALCR

RULE 201 SCRE

REPLY

In reply to the Respondents Initial Brief and Designation of Matter received by Appellant on October 14, 2024, Appellant submits that as with the case of Cooper v. S.C. Dept. of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d. 106 (2008), when an appellant is raising the issue that the parole board deviated from the procedure promulgated by the S.C. Legislature in § 24-21-640 of the S.C. penal code and its intent the Administrative Law Court (ALC) has jurisdiction to review Appellant's appeal and rule on the merits of the issues raised therein.

Appellant has demonstrated with clear and convincing material evidence in his Initial Brief and Designation of Matter that he has fully complied with all procedural mandates that would give the ALC jurisdiction to review the merits of his issues raised. R. p. 2, Lines 10 through R. p. 4, Lines 1-10 - Initial Brief. Also see Designation of Matter of Appellant R. p. 6, Lines 14; No. 2; Envelope received by Perry Correctional Institution Mailroom from the S.C.D.P.P.P.S on January 10, 2024, written letter of Notice of Rejection dated January 3, 2024.

The Respondents argue that the Administrative Law Court properly dismissed Appellant's Appeal as untimely, thereby depriving the ALC of jurisdiction to hear the appeal. Respondent's Initial Brief R. p. 4, Lines 20 through R. p. 5, Lines 1-7. However, thr Respondents has presented no evidence to support this position or refute Appellant's claims of timely filing his Notice of Appeal in the Administrative Law Court. Appellant's Initial Brief R. p. 2, Lines 10 through R. p. 4, Lines 1-10. Appellant's Designation of Matter R. p. 6.

JUDICIAL NOTICE

I

Appellant asks this court pursuant to S.C.R.E. 201 to take judicial notice of adjudicative facts about the particular event which lead to the trial and conviction of Appellant's case and may help explain the inaccurate

statements or misrepresentation of the circumstances surrounding the crime that cannot be supported by the record the Respondents may have in Appellant's parole file that is affecting the outcome of the parole hearing and parole eligibility.

In a reply Brief dated June 2, 2024, Appellant objected to the Respondent's version of the facts and statements of events on November 21, 1991, specifically R. p. 1. Lines 4-6 of Respondent's Brief. The inaccuracies reported by Respondents indicates (1) that Appellant fled into the woods and Trooper Titus gave chase, and (2) that Trooper Titus' body was found behind his patrol car a mile and a half from the crash. Appellant requested to review his parole file pursuant to Kelsey v. SCDPPPS, 441 S.C. 373, 893 S.E.2d. 588 (Aug. 31, 2023) holdings but was denied by Respondents further impairing Appellant's chance to be granted parole and triggering his right to adequate due-process in the Liberty interest of his parole eligibility.

Appellant directs this court's attention to the Respondent's Brief now before the court R. p. 2, Lines 4-6 which repeats the inaccurate statements creating a falsity or misrepresentation of the circumstances surrounding the crime that cannot be supported by the record. There judicially noticed facts is generally known in the trial transcript of record, capable of accurate and ready determination by resort to the trial transcript whose accuracy cannot reasonably be questioned and is not subject to any reasonable dispute. Martin v Bay, (S.C. APP. 2012) 400 S.C. 140, 732 S.E.2d. 667. Eadie v. H.A. Sack Co., 322 S.C. 164, 470 S.E.2d. 401 (Ct. APP.1996)

II

ALJ Jurisdiction to Review Respondent's Decision

Appellant further objects to the Respondent's argument that the ALC shall not hear... an appeal involving the denial of parole to a potentially eligible inmate by the SCDPPPS. S.C. Code Ann. § 1-23-600 (D). Furtick v. S.C. Dept. Prob., Parole and Pardon Servs., 352 S.C. 594, 576 S.E.2d. 146 (2004). R. p. 3, Lines 11-21.

Appellant avers that the Furtick court pertained to determining whether Furtick is entitled to review of the SCDPPPS decision as to whether Furtick has a Liberty interest in gaining access to the parole board. The Responent's reliance on Furtick holding is misplaced here and unpersuasive because as the court is aware, Appellant is parole eligible as soon as January of 2026. To demonstrate compliance under Cooper and Compton requirements, the parole board/decision maker should state the reasons for its determination [and] indicate the evidence it relied on. To permit a routine denial to satisfy reasons presented and aired would invite arbitrariness and nullify the right to notice and hearing. (Emphasis original). It must be recognized that "the need for fairness is as urgent in the parole process as elsewhere in law." It is fundamentally unfair to take away the freedom of potential parolees under conditions which encourage arbitrary actions by failing to afford even the most minimal protections of due-process. Moreover, procedural formality may not shield arbitrary action. Impartiality and a chance to see supporting facts may be expected to prevent arbitrary action as well as explain the good faith factual errors which this court can now see that is in the record of Responent's Brief. R. p. 2, Lines 4-6.

Appellant asserts that the sense of fair treatment and contributions to the rehabilitative efforts is critical to the elements of due-process. It is a necessary ingredient where the risk of arbitrary action by the board in their "absolute discretion" is great and overlooks the real problem of that "absolute discretion" within agency rules, regulations, practices and decision making process. The obscurity is that while Appellant was sentenced to Life imprisonment for a crime committed at the age of 18 years old, the possibility of parole attached by State statute because the crime was committed before the enhancement of Life without parole eligibility statute for similar or same types of crimes; (1996).

Routine denials suggest that Appellant may never be released on parole due to circumstances of the crime since their is no presumptive parole. §24-21-640. The board can say in 2026 and until whenever that pursuant to these statutes and Cooper, Compton and Furtick holdings that it has complied

with South Carolina Law.

Appellant avers that this practice of withholding information that is in the parole file from potential parolees and resting on their "absolute discretion" and Cooper and Compton ruling must cease because the appearance of arbitrariness and/or an abuse of discretion or an unwarranted exercise of discretion come into view.

Appellant has demonstrated irregularities in the procedure of the parole board pursuant to the Administrative Procedures act (APA) and S.C. Code Ann. §1-23-380(4). Appellant has also demonstrated with substantial evidence that he has filed his Notice of Appeal timely thus triggering the reviewing tribunal jurisdiction and authority to reverse or modify the decision of the board because substantive rights of Appellant have been prejudiced due to the administrative findings, inferences, conclusions or decisions that was arbitrary, or capricious or may be characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. Code Ann. §1-23-380 (A)(6).

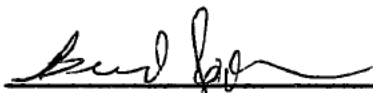
The ALJ's decision to dismiss Appellant's Appeal as untimely is arbitrary and without rational basis, and is based alone on one's will and not upon any course of reasoning and exercise of judgement in light of all the facts and evidence in record, and was made at pleasure without adequate determining principles of Rule 59 or the fixed rules and standards implicating the allotted thirty day timeframe from the date of written receipt of the agency's decision. Deese v. South Carolina State Board of Dentistry, 286 S.C. 182, 332 S.E.2d. 539 (1985).

CONCLUSION

Based on the reliable, probative and substantial evidence on the whole Record which Appellant has presented and shown, the ALC's decision dismissing Appellant's appeal is clearly erroneous. The Respondents^{want} the court^{to} also ignore the evidence and facts which appellant has presented and shown, and give a blanket stamp of approval to the arbitrary and capricious decision making of its parole board because as they assert, its discretion (power) is absolute (unquestionable and unaccountable). Appellant prays the court grant his Appeal

and reverse the decision of the ALC and order the ALC to address the merits of his issues raised, or pursuant to Rule 210 SCACR allow oral arguments to be conducted remotely or in person, and order the record to be supplemented and require copies of all or any part of the trial transcript from May 9, to May 22, 1994 to be sent up for inspection and consideration pursuant to Rule 212 (a) SCACR.

Respectfully Submitted,

/s/ 
Bernard Jackson

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v,

S.C. Department of Probation, Parole And
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PROOF OF SERVICE

I, Bernard Jackson, #210745, hereby certify that I have served the REPLY Brief of Appellant in the above captioned appeal to the Respondent's Counsel of Record, Octavia Y. Wright, and the Administrative Law Court by depositing a copy of the same in the U.S. mail, postage prepaid and addressed as follows:

Octavia Y Wright
Ass. General Counsel
P.O. Box 207
Columbia, SC 29202

Administrative Law Court
Edgar A. Brown Building
1205 Pendleton ST. STE 224
Columbia, SC 29201

1/s/ 
Bernard Jackson #210745
Pro se litigant

On this 28 day of October, 2024

Bernard Jackson #210745
Tyger River Correctional Institution
Unit 10-Room #211
200 prison Road
Enoree, SC 29335

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October 28, 2024

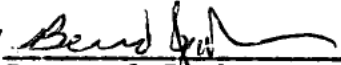
The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Bernard Jackson v. SCDPPPS
2024-001544

Dear Ms. Kitchings:

Please find enclosed the REPLY Brief along with Proof of Service in the above referenced case.

Sincerely,

/s/ 
Bernard Jackson
#210745
pro se litigant

Cc: Octavia Y. Wright
Ass. General Counsel

Bernard Jackson, #210745
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The Honorable Jenny Kitchings
Clerk of Court, SC. court of Appeals
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