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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

KENNETH SHANE STUART
SCDC# 389211 (PROSE) Appellant
Vs.
SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE, and PARDON SERVICES

PAROLE ELIGIBILITY APPEAL
Case No. 24P0029
Docket No. 24-ALJ-15-0029

RECEIVED

AUG 15 2025

SC Court of Appeals

The Appellant does hereby appeal the final decision of the South Carolina Department of Probation, Parole, and Pardon services dated August 7, 2024 and received on August 13, 20~~24~~²⁴, a copy of which has been included on page 8 of this brief, and based on the following claims:

Claim #1: Parole is a creature of statute and is exclusively in the province of the Legislative Branch of government for which the General Assembly has empowered the Department to administer. To administer Parole, the General Assembly passed SC Code of Law 24-21-640 on April 28, 2010 which reads the Parole Board MUST carefully consider the record of the prisoner before, during, and after imprisonment. The legislative intent of SC Code of Law 24-21-640 is abundantly clear with the Legislature's use of the word, "MUST" throughout the statute, and implies an imperative need or requirement for the Department to follow. On January 11, 2024 the Parole Board issued a "NOTICE OF REJECTION" letter to the Appellant and failed to give it credence; the letter triggered a statutory liberty interest and due process consideration afforded under SC Code of Law 24-21-620, which reads, "upon a negative determination, the prisoner's case shall be reviewed every twelve months thereafter for the purpose of such determination." The January 11th, Notice of Rejection letter has been included on page 5 of this document. There are at least two court cases that have affirmed this law, FURTICK V. SC Dept of Probation, Parole, and Pardon services and the case of Sullivan v. SC Department of Corrections.

In addition, the court case of *HILL v. JACKSON* (64 F.3d 163, 170 4th Cir 1995) holds, "that if a state law creates a right that implicates a person's liberty, the individual possessing this right is entitled to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state created right is not arbitrarily abrogated." There is at least three South Carolina statutes, which indicate that upon a negative determination by the Parole Board, the prisoner's case SHALL be reviewed every twelve months thereafter, for nonviolent offenders under SC Code of Law 24-21-620 (which the Appellant was at that time) or if the prisoner had been classified as a violent offender, they MUST have their cases reviewed every two years for the determination of Parole after receiving a negative determination under SC Code of Law 24-21-645 AND 24-21-650.

Why has the Parole Board, failed to recognize and afford the Appellant the statutory protections included under SC Code of Law, for a parole hearing consideration after issuing a final decision negative determination?

Claim # 2: The Parole Board has ignored the Appellant's, repeated written requests to access, review, and inspect his parole file for errors, omissions, or inaccuracies creating a hinderance and due process issue for him to accurately appeal the Parole Board's final decision negative determination with this appeal. The Supreme Court has already addressed this question in the case of *KELSEY v. SC Department of Probation, Parole, & Pardon services* (441 S.C. 373, 893 S.E. 2d 588 2023 WL 5598698). This further demonstrates the Parole Board's failure to follow state law and recent case law.

How can the Appellant expect to appeal this final decision case without the ability to review or inspect his parole file for inaccuracies and deny him the opportunity to support his argument?

Claim # 3: The Parole Board's Final decision letter to the Appellant has created an ex post facto violation. The Parole Board's methods and procedures changed the Appellant's parole eligibility from an annual review, to permanently denying parole eligibility, indicates that none of the criteria required under SC Code of Laws 24-21-620 and 24-21-640 was considered and reflects a procedural rule so overly intrusive that it substantively affects the review standard, it then becomes an ex post facto violation, *ROLLER v. CAVANAUGH* (984 F. 2d 4th Cir S.C. 1993)

Claim # 4: The August 7, 2024 negative determination letter, concerning Parole eligibility indicates the Parole Board deviated and rendered its finale decision without considering the appropriate criteria published in the department's Form 1212 (criteria for parole consideration) and the factors outlined in SC Code of Law 24-21-640, and has essentially abrogated the Appellant's right to a parole eligibility hearing, under 24-21-620, and infringed on a state created liberty interest under *COOPER v. SC Department of Probation, Parole, and Pardon services* (S.C. 2008 377 S.C. 489, 661 S.E. 2d. 106) and under *COMPTON v. SC Department of Probation, Parole, and Pardon services* (2009).

Claim # 5: The Parole Board failed to carefully consider the record of the Appellant before, during, and after imprisonment which is statutorily required under SC Code of Law 24-21-640. This led to the Board failing to recognize the appellant was under court ordered, home detention under SC Code of Law 24-22-20 which is an offender management program that the S.C. General Assembly vested the power to administer to the SC Department of Probation, Parole, and Pardon Services. As a result of this error, the Appellant is asking the ALC to award him this inactive community supervised portion of his sentence, to prevent this error from occurring in the future.

Principal Brief of Appellant

On September 15, 2020, the Appellant KENNETH SHANE STUART, SCDC# 389211 was arrested and charged with distribution of Methamphetamine, trafficking methamphetamine 28-100 grams, criminal conspiracy and misconduct in office. As a condition of his bond, the Appellant was court ordered to house arrest/home detention, a community supervised control under the offender Management act, from October 2, 2020 until his incarceration in SCDC on October 14, 2022. A copy of this order has been included on page 1 of this document. The Appellant was immediately sentenced to a non violent, seven year sentence for the distribution charged and delayed sentencing on the other three charges. A copy of this particular sentencing charge has been included on page 2 of this document.

A copy of SCDC's orientation packet cover sheet and pages 9 thru 11 (Criteria for parole consideration has been included on page 3a - 3d of this document, which was provided to the Appellant by SCDC. After serving fourteen months of his sentence, the Parole Board determined the Appellant was eligible for parole consideration and issued a Notice of Hearing (included on Page 4), to commence on January 11, 2024. The Appellant appeared before the Parole Board via teleconference, presented his case, and received a verbal negative determination. The Parole Board's written negative determination was received via mail, dated January 11, 2024, in a notice titled NOTICE OF REJECTION, and included on page 5. The NOTICE OF REJECTION reads, "that based on a conclusion of law and after a careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or criminal record, as described in the findings of fact;

(2) the factors published in Department Form 1212 (criteria for parole consideration);
(3) the factors outlined in section 24-21-640 of the South Carolina Code of Laws,
and (4) actuarial risk and needs assessment factors pursuant to section 24-21-10 (F)(1)
of the South Carolina Code of Laws, the Parole Board had determined that your parole must
be denied. You will be notified 30 days prior to your next scheduled parole consideration
date. FINDINGS OF FACT 01 Nature and Seriousness of Current Offense, Vote Count:
Unanimous TO REJECT. Signed by Valerie Suber, associate deputy director for paroles,
pardons, and release services. "The NOTICE OF REJECTION and negative
determination letter triggers a statutory, due process protection which reads,
"case shall be reviewed every twelve months thereafter for the purpose of such
determination," for parole eligibility under SC Code of Law 24-21-620. The
language within the statute, creates an entitlement, Board of Pardons v. Allen
(s. ct of U.S., 487 U.S. 369, 107 S. Ct 2415, 1987), to a twelve month Parole eligibility
review. There are two S.C. Supreme Court cases that have ruled, upon a negative
determination of an inmates case for parole eligibility will be reviewed by the
Parole Board every twelve months, FURTICK v. South Carolina Department of
Probation, Parole, and Pardon services (2003) and ~~it~~ under SULLIVAN v. South
Carolina Department of Corrections (2003). Also, the criteria for parole
consideration provided to inmates, within the R&E orientation packet reads,
"applicable legal exceptions may allow for a one year hearing," after the rejection
for parole, and the Parole Board's use of the statement on the January 21st
Notice of Rejection letter which reads, "You will be notified 30 days prior to
your next scheduled parole consideration date", implies and creates an entitlement
to a due process hearing guaranteed under SC Code of Law 24-21-620.

The Appellant's NOTICE OF HEARING and dated December 7, 2023 has been included on
page 4 of this brief.

On April 3, 2024, the Appellant was concurrently sentenced to ten years for the remaining three charges, from the original plea hearing that occurred on October 14, 2022. A copy of those three sentencing sheets have been included on page 6 of this document. In April and July of 2024, the Appellant mailed written requests to the Parole Board, asking to review and inspect his parole file in an effort to ensure there were no errors, omissions, or inaccuracies and to support this appeal. These requests should be in the Appellant's parole file, but the Parole Board have ignored. The Parole Board is required to give putative parolees access to their files under state law and affirmed by the case of *KELSEY V. SC Dept Probation, Parole, and Pardon services* (August 30, 2023). A copy of the request to staff, that was mailed to the Board asking to review his file, has been included on page 7 of this document.

The Parole Board issued a final decision negative determination letter to the Appellant, dated August 7, 2024, as a result of the Appellant's inquiry about parole eligibility and has been included on page 8 of this document. The letter read, "Dear Mr. STUART: I have been asked to respond to your request regarding your parole eligibility. A review of your current sentences show that you have been convicted of Trafficking of Methamphetamine 28 grams to 100 grams. This offense is a B-class felony pursuant to SC Code of Law 16-1-90(B). Under SC Code of Law 24-13-100, a no parole offense is any class A, B, or C felony. For this reason you were listed as not eligible for parole. This is the agency's final decision in this matter, which is appealable to the SC Administrative Law Court. I hope this addresses your concerns. Sincerely (signed) Matthew Buchanan General Counsel."

The Parole Board failed to follow its own procedures and apply the criteria which is required under SC Code of law 24-21-640 and is reflected on the final decision letter. The Board deviated from the statutory requirements of 24-21-640 and rendered its decision without the consideration of the appropriate criteria, essentially abrogating the Appellant's parole eligibility and infringing on a state created liberty interest,

warranting a minimal due process protection. In the case of *COMPTON V. South Carolina Department of Probation, Parole, & Pardon services* (2009), the court emphasized that this result could have been avoided in the future if the Parole Board had clearly stated in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212, and that if the Parole Board complies with this procedure, the decision would constitute a routine denial of Parole and the ALC would have limited authority to review the decision. The Appellant's final decision letter denying him of a parole eligibility hearing clearly shows the Board acted arbitrarily, capriciously, and erroneously depriving him of a state created liberty due process hearing under required under SC Codes of Law 24-21-620, 24-21-645, and 24-21-650. In comparison, the January 11, 2024 Parole denial letter clearly follows a conclusion of law, it follows the criteria set by statute and case law and issued a NOTICE OF REJECTION based on facts. There is a greater emphasis with denying parole than permanently issuing a final decision of no parole. The August 7th final decision letter failed to follow SC Code of Law 24-21-640 (which was last amended in 2010) and basing its decision solely upon SC Code of Law 24-13-100 (which was last updated in 1995). SC Code of Law 24-13-100 was partially repealed by implication under the case of *BOLIN V. South Carolina Department of Corrections* (2014-000461) and the General Assembly failed to include a severability clause, like it did under the Act amending SC Code of Law 24-21-640. The lack of a severability clause or saving clause with SC Code of Law 24-13-100 should repeal or at least diminish the controlling effect. The case of *PIERCE V. STATE* (338 S.C. 139 Supreme Ct of SC 1/10/2000) holds that a criminal defendant may not be convicted under a repealed statute when the repealing act does not contain a saving clause, and the judicial principal applies.

"In order to trigger the NO Parole language in the Parole statute, a defendant must not only have a separate hearing but he or she must also have a separate conviction," STATE V. JINGLE (2008), BARTON V. SC PPP, & MAJOR V. SC PPP.

The S.C. Legislature created the Parole Board within certain perimeters and did not intend for the Board to render decisions without any means of accountability. The final decision letter failed to give credence to SC Code of Law 24-21-640, and the Board failed to follow its own procedures, required in the statute, COOPER V. South Carolina Probation, Parole, & Pardon services (2008).

The Parole Board's final decision letter to the Appellant, has created an ex post facto violation. The Board changed the Appellant's parole consideration from once a year to permanently denying him a parole eligibility hearing. This violation created a liberty interest that triggers a due process requirement.

JERNIGAN V. STATE (2000), JONES V. GARNER (1999) and STEELE V. BENJAMIN (2004) all address this ex post facto concern. In addition, the Parole Board's permanent denial of the Appellant's parole eligibility hearing, reflected on the final decision letter, indicates none of the criteria required by SC Code of Law 24-21-640 was considered and reflects a procedural rule so overly intrusive that it substantively affects the review standard, it then becomes an ex post facto violation, ROLLER V. CAVANAUGH (984 F. 2d 4th Cir S.C. 1993)

"The Parole Board must carefully consider the record of the prisoner before, during, and after imprisonment," under SC Code of Law 24-21-640.

As a result, the Board failed to recognize and apply the appellant's court ordered home detention which was from October 2, 2020 and concluded on October 14, 2022. The Home Detention Act vests the power to the SC Department of Probation, Parole, and Pardon Services to administer. While on home detention, the Appellant was under community supervision, which should have been applied to the Appellant's parole eligibility time and minimized the effects of SC Code of Law 24-13-150 (which requires an inmate serve 85% of his sentence before being eligible for parole). The SC Supreme Court has held that the term of a sentence, upon which parole eligibility is to be calculated includes both the active portion of a sentence and the inactive portion. The inactive portion of of the Appellant's sentence was served at home, PICKLESIMER V. STATE (254 S.C. 596, 176 S.E. 2d 536 S.C. 1970). As of October of 2024, the Appellant has served approximately two years active sentence and is requesting this court to recognize and award the Appellant the inactive portion of his sentence, to better conform to SC Code of Law 24-21-640. This would eliminate any confusion the Parole Board may have in the future. "The eligibility to be considered for Parole only occurs once on any given sentence and is strictly defined by statute. Once a prisoner has become eligible for Parole (as the Appellant has) he is entitled to be heard for Parole and the Parole Board must consider his case," (26 S.C. JURIS Probation, Parole, & Pardon § 13 & 18). SC Code of Law 24-21-560, requires no-parole offenders to participate in a community supervision program, for which the Appellant has already completed, just before starting his incarceration. An incarceration beyond the termination of one's sentence would create a Due Process ~~case~~^{issue} and ^{an} Eighth Amendment issue, under GOLSON V. Department of Corrections (No 80-7344, 90-7345, 1990 141470, at 4th Cir Oct 2, 1990).

Conclusion

Parole is a privilege, and not a right. The Appellant is not asking the court to grant him parole but rather to act within their lawful authority and grant him the right to a parole hearing required by statute, which was triggered on January 11, 2024 with a negative determination for Parole. SC Code of Law 24-21-620 applies to the Appellant, on January 11, 2024 and reads, "upon a negative determination, the prisoner's case shall be reviewed every twelve months thereafter for the purpose of such determination." "In interpreting a statute, the court will give words their plain and ordinary meaning, and will not resort to forced construction that would limit or expand the statute." STATE V. JOHNSON (396 S.C. 182, 188, 720 S.E. 2d 516, 520 Ct. App. 2011).

MOTION TO GRANT the Appellant a DUE Process, Parole consideration hearing every twelve months thereafter, after January 11, 2024.

In the negative determination final decision letter dated August 7, 2024, it is abundantly clear the Parole Board never applied the ~~statutory~~ mandatory criteria for denial of Parole eligibility, required under SC Code of Law 24-21-640 in its final decision letter to the Appellant, rendering this final decision unlawful and deficient. The Parole Board's method and procedure with issuing this final decision letter regarding parole eligibility, reflects they acted arbitrarily, capriciously and deprived him of a state created liberty interest under this section of law.

MOTION TO FIND the August 7, 2024 final decision letter defective and unlawful and remand the parole eligibility to the Board either annually as determined by SC Code of Law 24-21-620 or at a minimum bi-annually in accordance with SC Code of Laws 24-21-645 OR 24-21-650.

Conclusion

Case No. 24P0029

Docket No. 24-ALJ-15-0029

The Parole Board has erroneously denied the Appellant access to review and inspect his parole file for errors, omissions, and inaccuracies creating a hinderance and Due Process situation for him to appeal this case. *KELSEY V. SC Dept of Probation, Parole, & Pardon services.*

MOTION to grant the Appellant access to review his parole file.

The Parole Board failed to consider the Appellant's record before imprisonment required under SC Code of Law 24-21-640, which he has demonstrated within this brief. The Appellant was under home detention, a program for which the General Assembly vested the power to Administer to the SC Dept of Probation, Parole, Pardon services, provided he follows SC Code of Law 24-13-40, which reads in part; House Arrest credit for time may be given provided that: (1) prisoner at the time wasn't an escapee from another institution, (2) the prisoner was serving time for one offense and was awaiting trial and sentence on a second offense, (3) when the prisoner commits a subsequent crime while out on bond, and (4) has had bond revoked on any charge prior to trial or plea. The Appellant contends none of the those criteria apply to him and is eligible for credit spent on house arrest.

MOTION to GRANT the Appellant the time he served while on home ~~det~~ detention, before his incarceration, and for time from October 2, 2020 until October 14, 2022, towards his current sentence.

MOTION to Find the August 7, 2024 final decision letter defective and unlawful, by violating the Appellant's Due Process Parole eligibility with an ex post violation, and remanding the parole eligibility to the Board to review either annually or biannually in accordance with SC Code of Law 24-21-620 or 24-21-645 or 24-21-650.

A11.

STATE OF SOUTH CAROLINA
In the Administrative Law Court
Docket Number 24-ALJ-15-0029

PROOF OF SERVICE

mailed via U.S. mail to:

The Honorable Crystal M. Rookard
Judge, Administrative Law Court
1205 Pendleton Street, suite 224
Columbia, SC 29201

mailed via U.S. mail to:

Matthew C. Buchanan, General Counsel
293 Greystone Blvd.
Po Box 207
Columbia, SC 29202

December 29, 2024 (Prison Mail Box Rule)



Kenneth Shane Stuart
SCDC 389211

Waterlee River Correctional Inst
Po Box 189
Rember, SC 29128

STATE GRAND JURY OF SOUTH CAROLINA
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
 Plaintiff,)
 V.) **INDICTMENT NOS.: 2020-GS-47-16, 2020-GS-47-17**
) **WARRANT NO.: 2020A4700100024**
)
 KENNETH SHANE STUART)
)
 Defendant.)

FILED

OCT 02 2020

JAMES R. PARKS
CLERK, STATE GRAND JURY

ORDER SETTING BOND

This matter came before the Court on October 2, 2020, for the purpose of setting bond. The defendant is charged with the following offense(s):

- TRAFFICKING METHAMPHETAMINE 10 GRAMS OR MORE
- CRIMINAL CONSPIRACY
- DISTRIBUTION OF METHAMPHETAMINE (2 COUNTS)
- MISCONDUCT IN OFFICE
- TRAFFICKING METHAMPHETAMINE GREATER THAN 400 GRAMS

After hearing from the defendant and the State, the Court finds it appropriate, and it is therefore Ordered, that:

- Bond is denied at this time with leave for defense counsel to file a written motion for bond.
- A Personal Recognizance Bond in the amount of \$ _____ is set at this time.
- A Surety Bond in the amount of \$ _____ is set at this time; and, the defendant is allowed to post 10%.
- A Surety Bond in the amount of \$75,000 is set at this time; and, the defendant is not allowed to post 10%.
- Bond is reduced from _____ to _____ and does/does not include other pending charges.
- Bond is concurrent/consecutive with existing bond in the amount of \$ _____.

It is hereby ordered that Bond is set with the following conditions (**Defendant to initial by each paragraph below**):

La.

- BSS 1. The Defendant is not to leave the State of South Carolina.
- BSS 2. The Defendant, at the request of the State, and at his/her own expense shall be subject to drug tests. Upon notification of a test, the Defendant shall appear at a facility designated by the State for drug testing.
- BSS 3. The Defendant shall have no contact with any co-defendant, either directly or indirectly, without the prior permission of the Court.
- BSS 4. I do/do not have a passport.
- BSS 5. The Defendant shall not sell or encumber any property, personal or real, during the term of his/her bond, without the prior written permission of the South Carolina Law Enforcement Division.
- BSS 6. The Defendant shall, within ten days of the date of this Order, advise the Clerk of Court, State Grand Jury in writing whether he/she intends to represent himself/herself, to retain counsel, or whether he/she desires to have counsel appointed, assuming that he/she meets the indigency requirements. If the Defendant desires to have counsel appointed, he/she should be screened for an appointment by the Clerk's Office of the State Grand Jury.
- BSS 7. The Defendant shall appear at all scheduled hearings and at the trials of the above criminal charges and/or indictments.
- BSS 8. The Defendant shall keep the Clerk of Court advised of his/her home address and telephone number so that notices of court hearings and trials may be sent to the appropriate location.
- BSS 9. The Defendant understands that any future violation of any Federal, State, County, or Municipal Law will be considered a violation of the conditions of this bond and grounds for revoking bond.
- BSS 10. The Defendant understands that he/she has the right to be present at the trial of his/her case that it is his/her responsibility to maintain contact with his/her attorney and the Clerk of Court in order to know the date that the trial of his/her case is scheduled for. The Defendant further understands that this Order acts as a notice of his/her right to be present at trial, and that the trial will proceed in his/her absence upon a failure to attend the Court.

135 11. Bond shall be secured by sufficient surety in the form and matter prescribed and approved by the Clerk of Court. The underwriting insurance company, if any, shall list the collateral for the bond with the Clerk of Court in addition to providing an appropriate power of attorney between the bondsmen and the insurance company. Bond shall be secured by sufficient surety in the form and matter prescribed and approved by the Clerk of Court.

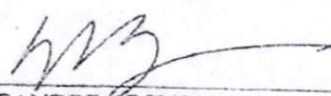
135 12. House Arrest. The Defendant shall not leave his residence, with the exception of the following: Work, attorney appointments, church attendance or medical appointments.

135 13. GPS Electronic Monitoring*. The Defendant is ordered to be on GPS/Electronic Monitoring at his/her own expense. Defendant must be connected to the device upon their release from jail. The company must be approved by the Clerk's Office for the State Grand Jury. Defense can request GPS removal in 90 days after device placement.

135 14. No contact with any Chester County employees with the exception of emergency situations.

135 15. Defendant must be mentally assessed by a medical professional agreed upon by the State and Defense.

IT IS SO ORDERED

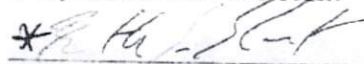


DEANDREA BENJAMIN
PRESIDING JUDGE
FIFTH JUDICIAL CIRCUIT

10-2, 2020

I have read and understand the terms and conditions of my release under this Order.

(Date)

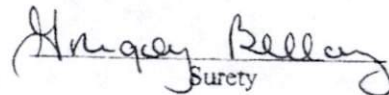


Defendant

I have read and understand the terms and conditions of this Order.

(Date)

10-02-2020



Surety

(Date)

Surety

*If you have questions about your bond, please call the Clerk of Court's Office for the State Grand Jury at 803-734-0497

SEE ATTACHED ORDER
CRIMINAL CHARGING DOCUMENT NO.

BAIL PROCEEDING
FORM II

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

KENNETH SHANE STUART
NAME OF DEFENDANT

Offense Charged: SEE ATTACHED ORDER

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- The release of the defendant on recognizance will not reasonably assure his appearance as required.
- The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: _____
[Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check all that apply):

CASH IN LIEU OF BOND

The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of 25,000

3. That the defendant shall appear at (check one):

the term of COURT OF GENERAL SESSIONS beginning on _____ at _____ o'clock, _____ at Call of the Court and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

the session of MAGISTRATE COURT beginning on _____ at _____ o'clock, _____ at _____ If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

INITIALS OF DEFENDANT

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

SIGNATURE OF JUDGE

DATE

10-2-2020

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

* 997 Mallard CR Rd Ch
 ADDRESS
 * Chester, SC 29706
 CITY STATE ZIP
 * 251 730 381
 SOCIAL SECURITY NUMBER
 * 803 374 7202
 TELEPHONE
 007043954
 DRIVER'S LICENSE OR ID NUMBER
 * [Signature]
 SIGNATURE OF DEFENDANT
 * Oct 2020
 DATE
 ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

a. Placement in custody. The defendant is placed in the custody of _____
 NAME OF PERSON OR ORGANIZATION

who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

 SIGNATURE OF CUSTODIAN (IF APPROVED) DATE

b. Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

c. Part-time Release. The defendant will be released from custody from _____ o'clock, _____ to _____ o'clock, _____
 on _____ on condition that he return to the custody of _____
 DATE(S) TIME AM/PM TIME AM/PM

at _____ as designated.
 LOCATION NAME OF PERSON OR ORGANIZATION

d. Other Conditions. The defendant will comply with the following other conditions of release:

APPEARANCE RECOGNIZANCE WITH SURETY

On the 2 day of Oct, 2020, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of 75,000, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

State Capital Bonding
 NAME OF SURETY BONDSMAN COMPANY TELEPHONE
 1708 Main Street
 ADDRESS 803-260-3184 Gregory Bellamy
 bellamyg98@aol.com
 CITY/STATE/ZIP
 Palmetto Surety Corp
 NAME OF INSURANCE COMPANY
 109 Buyer Landing Drive
 ADDRESS OF INSURANCE COMPANY
 Charleston SC 29497
 CITY/STATE/ZIP

[Signature]
 SIGNATURE OF SURETY BONDSMAN

 SIGNATURE OF JUDGE

 DATE

1e.

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

HENRY McMASTER
Governor



JODI D. GALLMAN
Acting Director

293 Greystone Boulevard
Post Office Box 207
Columbia, South Carolina 29202
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

December 7, 2023

Mr. Kenneth Stuart #00389211
Wateree River Correctional Institution
P.O. Box 189
Rembert, SC 29128-0189

RE: NOTICE OF HEARING

Hearing Date: Thursday, January 11, 2024 Arrival Time: 7:45 AM
Location: Wateree River Correctional Institution
P.O. Box 189
Rembert, SC 29128-0189

Dear Mr. Stuart:

This is to inform you that your parole hearing is scheduled for the above date. Your hearing will be held at the above location. Family members or supporters should report at the above noted time. Your hearing will be by way of videoconference, which means that the Board will review your case on a television monitor.

You can have a total of three (3) visitors or family members appear with you and you may retain an attorney at your own expense. It is your responsibility to notify visitors or family members of the date and time they will need to be at your hearing. Also, you must notify your attorney if he or she has not requested in writing such notifications from this agency.

Please find enclosed parole hearing information sheet. It may be necessary to provide your family members or visitors a copy.

Sincerely,

A handwritten signature in black ink, appearing to read "Valerie Suber".

Valerie Suber
Associate Deputy Director for Paroles, Pardons and Release Services

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

HENRY McMASTER
Governor



JODI D. GALLMAN
Acting Director

293 Greystone Boulevard
Post Office Box 207
Columbia, South Carolina 29202
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

January 11, 2024

Mr. Kenneth Stuart #00389211
Wateree River Correctional Institution
P.O. Box 189
Rembert, SC 29128-0189

RE: NOTICE OF REJECTION

Dear Mr. Stuart:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

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

FINDINGS OF FACT:

01 Nature And Seriousness Of Current Offense
Vote Count: Unanimous To Reject

Sincerely,

A handwritten signature in black ink, appearing to read "Valerie Suber".

Valerie Suber
Associate Deputy Director for Paroles, Pardons and Release Services

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

HENRY McMASTER
Governor



JODI GALLMAN
Acting Director

293 GREYSTONE BLVD
POST OFFICE BOX 207
COLUMBIA, SOUTH CAROLINA 29202
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov

August 7, 2024

Kenneth Shane Stuart SCDC #389211
Wateree Correctional Institute
P.O. Box 189
Rembert, SC 29128

Dear Mr. Stuart:

I have been asked to respond to your request regarding your parole eligibility. A review of your current sentences show that you have been convicted of trafficking of methamphetamine, 28 grams to 100 grams. This offense is a B-class felony pursuant to S.C. Code 16-1-90(B). Under S.C. Code 24-13-100, a "no parole offense" is any class A, B, or C felony.

For this reason, you were listed as not eligible for parole. This is the agency's final decision in this matter, which is appealable to the South Carolina Administrative Law Court.

I hope this addresses your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Buchanan", written over a horizontal line.

Matthew Buchanan
General Counsel



8.

"Nation's First Probation Agency accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA)."



STATEMENT OF THE CASE

The Appellant argues and replies in opposition to the brief from the Respondent, dated December 4, 2024. To administer parole, the S.C. General Assembly passed S.C. Code of Law 24-21-640, which reads in part, "the parole board must carefully consider the record of the prisoner, before, during, and after imprisonment." The Parole Board's method and procedure, with applying this law, issued a defective final parole eligibility determination letter and acted arbitrarily, capriciously, and erroneously depriving the Appellant of a state created liberty due process hearing entitled under SC Code of Laws 24-21-620, 24-21-645, and 24-21-650, by failing to include any findings of fact or conclusions of law, under *COMPTON V. SC Dept of Probation, Parole, and Pardon services*

The Appellant argues the mootness of granting him access to his parole file, simply does not apply, as the Appellant is required under SC Code of Law 24-13-150 to ^{participate} in a community supervised program, which is equivalent to parole for other offenders. This argument would be moot, in the event the ALC grant the Appellant relief and award him credit from the Department's community supervision home detention program towards his sentence and parole eligibility.

The Parole Board, without following law arbitrarily switched the Appellant's parole review from annually to permanently denying a due process eligibility hearing afforded under the due process clause, creating a violation of the ex post facto law. The Appellant argues for relief.

KENNETH STUART, scdc# 389211 v. S.C. Dept of Probation, Parole, and Pardon Services
Docket Number 24-ALJ-15-0029

Answer to Argument #1

The Appellant understands the definition of a no-parole offense as defined by SC Code of Law 24-13-100, which has been found unconstitutional and recognized as repealed by implication under *BOLIN v. South Carolina Dept of Corrections*, SC App Feb 24, 2016. Had the Parole Board clearly stated in its final order, dated August 7, 2024, that it had considered the factors outlined in section 24-21-640, and considered the fifteen factors published in Form 1212, and had included SC Code of law 24-13-100 as one of the reasons for permanently denying the Appellate a parole eligibility hearing, then this case would be moot. However, the method and procedure, for issuing a defective final determination letter, reflects the Parole Board acted arbitrarily, capriciously, and erroneously depriving the Appellant of a state created liberty, due process parole eligibility hearing entitled under SC Code of law 24-21-640, 24-21-645, and 24-21-650. The Parole Board failed to comply with SC Code of law 24-21-640, by failing to include any findings of fact or conclusions of law. *COMPTON v. S.C. Dept Probation, Parole, and Pardon services* (2009).

Answer to Argument #2

The Appellant argues that the ~~months~~ mootness of granting him access to his parole file, simply does not apply with this case. SC Code of Law 24-13-150 requires an inmate who has been convicted of a no-parole offense to serve eighty-five percent of his sentence before he is eligible for early release, discharge, or community supervision for which the Appellant will be eligible in the future. "The Supreme Court stated in *JACKSON v. STATE*, supra the community supervision program in SC Code of law 24-13-560 serves essentially the same function for persons convicted of no-parole offenses as parole does for other inmates," 2019 WL 3049589 (S.C.A.G.) June 28, 2019. This ^{argument} ~~case~~ would be moot, in the event the ALC grants the Appellant relief and award him credit for time he spent on home detention from October 2, 2020 until his incarceration on October 14, 2022. The Appellant re asserts none of the criteria in SC Code of Law 24-13-40 apply to his case and he is entitled to this missing credit towards his current sentence and parole eligibility.

KENNETH STUART, scdc#389211 v. S.C. Dept of Probation, Parole, and Pardon Services
Docket Number 24-ALJ-15-0029

Answer to Argument #3

The Respondent's statement, in argument #3 on page 4, clearly demonstrates the Parole Board failed to follow the statutory requirements under SC Code of law 24-21-640, which reads, "3. Once Appellant was determined to be ineligible for parole, S.C. Code § 24-21-640 does not apply." SC Code of Law 24-21-640, the first sentence reads, "The Parole 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." The Respondent determined the Appellant was ineligible for parole and failed to afford him the statutory protections the Legislature intended when it passed this law on April 28, 2010. "The Legislature is presumed to intend that its statutes accomplish something," STATE V. LONG (363 S.C. 360, 364, 610 S.E. 2d 809, 811 (2005)). The Legislative intent is controlling with the passage of SC Code of law 24-21-640 and includes the word, "must" approximately ten times within this law. "The true aim and intention of the Legislature will be deemed controlling over the literal words, which may be used in the statute." GREENVILLE BASEBALL CLUB V. BEARDEN (200 S.C. 363, 20 S.E. 2d 813 (1942)).

The Parole Board, without following statutory law, arbitrarily switched the Appellant's parole review from annually to not considering parole at all, permanently denying the Appellant a due process parole eligibility hearing afforded under the due process clause, creating a violation of the ex post facto law, STEELE V. BENJAMIN (S.C. App 2004).

The South Carolina Court of Appeals

KENNETH STUART, SCDC# 389211- PRO SE,
APPELLANT

)
) Appellant Brief

V.
South Carolina Department of Probation, Parole
and Pardon services,
RESPONDANT

)
) Appellant Case No:

) 2025-000392 **RECEIVED**

)
) APR 09 2025

)
) SC Court of Appeals

STATEMENT OF THE CASE

The Appellant Appeals the Administrative Law Court's order issued by the Honorable Judge Crystal M. Rookard on January 28, 2025, regarding docket no. 24-ALJ-15-0029-AP between the Appellant and the Respondant. The Appellant filed a notice of appeal on February 24, 2025 with the South Carolina Court of Appeals. The Court of Appeals granted the Appellant's appeal and motion to proceed forma pauperis in an order filed on March 11, 2025 and due to the prison mail system, the Appellant received this order on March 13, 2025. The Administrative Law Court clearly erred, when it affirmed the Respondant's position and against the Appellant, in view of the reliable, probative, and substantial evidence of the whole record.

Background

The Appellant was arrested on September 15, 2020 and held at the Alvin S. Glenn Correctional Institution until he made bond and court ordered to community supervised home detention from October 2, 2020 until being incarcerated on October 14, 2022. On October 14, 2022 the Appellant at the advice of his paid attorneys, pled guilty to trafficking methamphetamine 28-100 grams First offense, distribution of methamphetamine, conspiracy and misconduct in office, and was only sentenced for the distribution charge for a seven-year nonviolent sentence. The attorney general's office delayed the Appellant's sentencing on the remaining three charges, 18-months later on April 3, 2024, during a different term of court.

The Appellant, while incarcerated for the distribution of methamphetamine conviction and before the imposition of the trafficking sentence, received a parole hearing on January 11, 2024 but the board denied him parole.

The South Carolina Court of Appeals

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APR 09 2025
SC COURT of Appeals

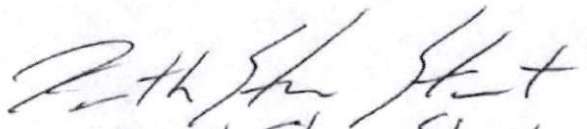
KENNETH STUART, sdc# 389211-PROSE,)
APPELLANT)
V.)
South Carolina Department of Probation,)
Parole, and Pardon services,)
RESPONDANT)
)

Appellant Brief
Appellant Case No:
2025-000392

The mattress doctrine would apply, in the event the Appellant's motion for relief and award him missing credit from the community supervision home detention program towards his sentence and parole eligibility. The Appellant successfully completed community supervised court ordered home detention from October 2, 2020 until October 14, 2022, the day he was incarcerated into SCDC. The Appellant's attorneys failed to ask the court to include this missing time and apply it towards his sentence. The term of court has now passed and the Appellant has asked the FLC to award this credit. The court never ruled upon this argument/motion. The Appellant has filed two complaints with the office of disciplinary counsel, for this alleged ineffective counsel complaint.

Appellant MOTION

The Appellant motions to have the Administrative Law Court's decision set aside, and to have a due process parole eligibility hearing, and for the court award him the missing credit time for the community supervised home detention portion of his sentence.

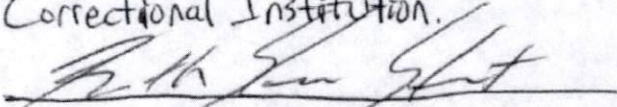

Kenneth Shane Stuart
sdc# 389211

THE SOUTH CAROLINA COURT OF APPEALS

KENNETH STUART, SCDC # 389211 - PRO SE,)
APPELLANT)
V.)
South Carolina Department of Probation,)
Parole, and Pardon Services,)
RESPONDANT)

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APR 09 2025
SC Court of Appeals
Appellate Case No:
2025-000392
Appellant Brief

I, KENNETH SHANE STUART, SCDC # 389211, certify that I have served the Appellant Brief to the following addresses, by depositing a copy of the document in the United States mail, postage paid via the prison mail box of Waterlee River Correctional Institution.


KENNETH SHANE STUART

4-APRIL-2025
DATE

S.C. Court of Appeals
Po Box 11629
Columbia, SC 29211

The Honorable Crystal M. Rookard
Judge, Administrative Law Court
1205 Pendleton St, suite 224
Columbia, SC 29201

S.C. Dept of Probation,
Parole, and Pardon services
Yo Matthew C. Buchanan
Po Box 207
Columbia, SC 29202

The South Carolina Court of Appeals

KENNETH SHANE STUART, Pro SE)
Appellant) Designation of Matter
V.)
South Carolina Department of) App Case No. 2025-000392
Probation, Parole & Pardon services,)
Respondant)

This Designation of Matter answers the court of appeal's notice of deficiency issued on April 15, 2025 and received by the Appellant on April 18, 2025, in accordance with Rule 209.


The Appellant requests South Carolina Administrative Law Court provide the following documents, which were part of the record to be included and considered by the Court of Appeals; the principal brief of the Appellant (pages A1 - A11), circuit court order of bond of the Appellant (pages 1a - 1e), the Appellant's notice of hearing for parole dated December 7, 2023 (page 4), the Appellant's notice of rejection dated ~~11~~ January 11, 2024 (page 5), the Appellant's final decision letter dated August 7, 2024 (page 8), and the Appellant's reply in opposition three page document, and

The following South Carolina Code of Laws were cited within the record and presented to the ALC; 26 S.C. Juris Probation, Parole, & Pardon § 13 & 18, 24-21-640, 24-13-100, 24-13-150, 24-21-620, 24-21-645, 24-21-650, 24-22-20, 24-13-40, 24-21-10(F)(1), 16-1-90 (B) and 24-21-560, and

The South Carolina Court of Appeals

KENNETH STUART, Pro SE,)
Appellant) Designation of Matter
V.)
South Carolina Department of) App Case No. 2025-000392
Probation, Parole, & Pardon Services,)
Respondant)

The following Court Cases were cited within the record and presented to the ALC; Furtick v. S.C. Department of Probation, Parole, & Pardon (SCDPPP) (2003), Hill v. Jackson (4th Cir 1995), Kelsey v. SCDPPP (2023), Roller v. Cavanaugh (4th Cir 1993), Cooper v. SCDPPP & P (S.C. 2008), Compton v. SCDPPP & P (2009), Board of Pardons v. Allen (S.Ct of U.S. 1987), Sullivan v. South Carolina Dept of Corrections (2003), Bolin v. SCDC (2014), Pierce v. State (S.C. Supreme Court 2000), State v. Dingle (2008), Barton v. SCDPPP, Major v. SCDPPP, Jernigan v. State (2000), Jones v. Garner (1999), Steele v. Benjamin (2004), Picklesimer v. State (S.C. Supreme Ct 1970), Golson v. Dept. of Corrections (4th Cir 1990), and State v. Johnson (S.C. Ct of App 2011).

Kenneth Stuart, 389211, Appellant


April 19, 2025

The South Carolina Court of Appeals

Kenneth STUART, 389211 PROSE,)
Appellant) Motion of Consideration
V.)
S.C. Dept PP&P) App Case No:
Respondant) 2025-000392
)

On May 20, 2025 the SC. Dept PPP provided this court with the Appellant's principal brief or Initial Brief, which were labeled A1 through A11, referencing Case No. 24P0029 & Doctet No 24-AJ-15-0029.

The principal brief or initial brief starts on page A4 of this document for consideration before this court

The enclosed document labeled "INDEX" was provided to the Respondant on December 29, 2024 and a copy of this document has been included with this motion

The INDEX clearly identifies pages A1-A11 as the principal Brief of the Appellant.

The Appellant motions this court to consider this document, in regards to a deficiency notice mailed to the appellant on June 5, 2025.

JUNE 11, 2025


Kenneth Shane Stuart

The South Carolina Court of Appeals

KENNETH STUART, SCDC# 389211

Pro. SE, Appellant

V.

S.C. Department of Probation, Parole
and Pardon Services, Respondant

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)
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Proof of Service

Appellate Case No.

2025-000392

INDEX PAGE

I, KENNETH STUART, SCDC# 389211, certify that I have served the Index Page to the following addresses, by depositing a copy of this document in the United States mail, postage paid via the prison mail box of Wateree River Correctional Institution.



Kenneth Stuart

11 August-2025

DATE

SC. Court of Appeals
Po Box 11629
Columbia, SC 29211

S.C. Dept Probation, Parole, Pardon
Po Box 207
Columbia, SC 29202

Judge, Crystal M. Rookard
Administrative Law Court
1205 Pendleton St, suite 224
Columbia, SC 29201

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AUG 15 2025

SC Court of Appeals

Kenneth Stuart ex #389211
Waterce River Correctional Inst.
Po Box 189
Rembert, SC 29128

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AUG 15 2025

SC Court of Appeals

South Carolina Court of Appeals
Po Box 11629
Columbia, SC 29211

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