

STATE OF SOUTH CAROLINA
In The Court of Appeals

Bernard Bagley, #175851, Appellant

v.

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

Appellate Case No. 2024-000110
Unpublished Opinion No. 2026-UP-268
Submitted May 1, 2026
Filed June 3, 2026

Thomas, McDonald and Turner, JJ

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR or Rule 219(a)(2), SCACR

PLEASE TAKE NOTICE, that Bernard Bagley, Appellant, pro se, Petition this Court for Rehearing because the proceeding involves a question of exceptional importance, in which the Appellant avers the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) failure for not receiving a report "to grant" or "to include in its determination or decision-making process for consideration to grant parole." For instance, the points of law and facts that were overlooked and misapprehended by the Court consist of an extraordinary reconsideration for a new parole hearing based on scientific developments that the ALC and SCDPPPS applied incorrect legal standard in determination and decision-making process for consideration to grant parole or the routine denial of parole.

The courts affirmed SCDPPPS Notice of Rejection that indicated that it considered the factors outlined in §24-21-640, of S.C. Code (2025) and factors published in SCDPPPS form 1212 that constituted a routine denial of parole after concluding that the Parole Board followed proper procedure and authority under *Cooper v. SCDPPPS*, 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008), stating that if the Board's decision to deny parole is a "routine denial of parole," then the ALC's authority is limited to determining whether the Board followed proper procedure. However, the Appellant avers that when a duly qualified psychiatrist or psychologist report rest on scien-

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SC Court of Appeals

tific advancements, Appellant should be allowed to have a meaningful parole hearing that consider "other" factors in its determination and decision-making process considered relevant in a particular case by the Board. In other words, denial of an extraordinary factors in which evaluates based on the circumstances surrounding the offense, the inmate's attitude toward it, and physical, mental and emotional health, and the inmate's understanding of the cause of his past criminal conduct, i.e. 34 years ago, remorse, and responsibility failed to demonstrate that the Board considered other factors that are material for determine in its decision making process for consideration to grant parole under §24-21-640, S.C. Code:

The Board must carefully consider the record of the prisoner before, during, and after imprisonment, and 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 be 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, required

Appellant asserts required parole consideration factors that must be considered by the parole board prior to an inmate being granted of parole which is a privilege, an act of grace. For the most part, §2421-610, of the S.C. code, which provides, in pertinent part:

Notwithstanding any other provisions of this section or of law, no prisoner who has served a total ten consecutive years or more in prison may be paroled until the Board has received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist.

Appellant contends is a required parole consideration factor that must be considered by the Parole Board prior to an inmate being granted parole which is a privilege, an act of grace. Nevertheless, Appellant argues that mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist as it relates to factors considered in §24-21-640, and the criteria other factors considered relevant understanding the circumstances surrounding the offense has dramatically evolved since his offense. Appellant being granted parole rely on a report from a duly qualified psychiatrist or psychologist if proven, might warrant the satisfaction of the Board in accordance to §24-21-640, and that a new parole hearing is required. Appellant further contends a duly qualified psychiatrist or psychologist report will address evolving scientific understanding to grant parole as to his mental condition and ability to adjust to life outside the prison to the satisfaction of the Board require parole other factor considered relevant as a proper procedure and authority in accordance to Rule 703, SCRE. In the Matter of the Care and Treatment

of Bobbie Manigo, 389 S.C. 96, 697 S.E.2d 629 (2010), expert may base his or her opinion on information, whether or not admissible, made available before a hearing if the information is of the type reasonably relied upon in the field to make opinions.

Also, Appellant avers the Board's abuse of discretion warrant a rehearing based on the admission of exclusion of a report because the error prejudice Appellant as a reasonable probability that the Board's decision-making process or determination was influenced by the lack of scientific developments factors a psychiatrist or psychologist official report if have been obtained may be sufficient material to probably produce a different decision. The Court must take into reconsideration that scientific development of factors presents different considerations to explain the effects of the of the inmate's PTSD diminished culpability at the time of the offense, and impaired judgment regarding the circumstances surrounding the offense, and his attitude toward it, and how this information relates to his present capacity and future risk of reoffending.

Appellant further avers that the report or evaluation is necessary to protect his liberty interest that will provide additional insight regarding his offense, conviction, and sentence for a meaningful opportunity to be paroled as is required under §24-21-640, by the constitutional guarantee to be heard and to a constitutionally proportionate sentence or custody is not violated under the Equal Protection 14th Amendment. SEE: City of Cleburne Living Ctr., 473 U.S. 432 (1985), that requires all persons similarly situated should be treated alike. The Appellant understand and concur it is not a guarantee of eventual release, but an entitlement to a meaningful opportunity for such release based on demonstrated change and rehabilitation. As such, judicial review is required to question whether the Board carried out its responsibility to take into account other factors considered relevant in this particular case by the Board. Appellant asserts that the ~~capious~~ routine parole denials are clouded in ambiguous, boilerplate statements under Cooper that has consistently discriminated against the Appellant in violation of the American Disabilities Act (ADA) and State provisions "prohibits the same conduct" such as routine parole denials to disabled persons may not be excluded from participation in or be "routine" denied the benefits of services, programs, or activities of a public entity, and they may not be subjected to discrimination. SEE: 42 U.S.C.A. §12132. SCDPPPS has failed to make reasonable modifications to its rules, policies, and practices regarding routine parole denials that demonstrate the same conduct to prevent the essential eligibility requirements

for the Appellant to demonstrate a level of rehabilitative progress that would made his parole procedures for release compatible with the welfare of society, and that he not require the severe rigors of his imprisonment, and the greater prospects of a disposition to reform is not presented in a report based on scientific developmets since his incarceration and since 2010. The Court must take into consideration that the Board, SCDPPPS waive immunity because it receive federal funding and have discretionary authority that does not allow the board the discretion the right to be wrong..

In essence, Cooper authorize unconstitutional conduct for the Board under the guise that they follow the procedure or clearly states in its order denying parole that it considered the factors outlined in §24-21-640 and the criteria factors published in its form, the decision will constitute a routine denial of parole. As such, Cooper's ruling denies due process principles to meaningful access to court for prospective relief for a new parole hearing..The Appellant contends that the Board, with all do respect procedure under Cooper and the routine denial of parole is performed in bad faith and a gross misjudgment because it has violated Title II of the ADA and S.C. Constitution Article XII, §2, Rehabilitative Services, as well as S.C. Constitution Article 1, §22, Procedure before administrative agencies; judicial review, in pertinent part, nor shall he be deprived of liberty or property. The Court have inadvertently overlooked and misapprehended the fact that SCDPPPS have not accomodated the Appellant with a report from an expert or duly qualified psychiatrist or psychologist under Title II, nor have the Board modify its rules, policy and procedure to accommodate for the same, instead, the Board just automatically routine deny parole wearing the sovereign immunity which has been waived by being a public entity, and receiving federal funding. Upon the Court's findings, it will show that the Appellant is not being allowed scientific developments that would counterattack the Board's retribution, or provide insight that will no longer require retribution in his case. In addition, the Court findings will show that there exist a connection between the protected activity, i.e. parole eligibility and redress of the same and the adverse routine parole denial. Nevertheless, the Board has excluded the Appellant from its own life term parole (rehabilitation) program; JumpStart Restoration Program; and the Veterans Affairs Programs, all public benefit programs, in which the Board has denied and excluded him from in violation of Title II of the ADA, a prisoner with disabilities history and impairments.

Appellant further contends, that the Court's finding will show that this matter just require the Board to modify its rules, procedures, policies, and practices that would accommodate a report from a duly qualified psychiatrist or psychologist with scientific developments that will include other factors considered relevant that may appear to the satisfaction of the board, and to prevent the principle of retribution routine parole denial and automatically denying parole under Cooper which authorize bad faith and unconstitutional conduct by the Board's own "routine parole denial" which the ADA and South Carolina provisions "prohibit the same conduct:"

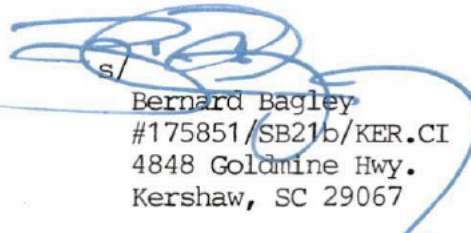
Disabled persons may not be excluded from participation in or be routine denied the benefits of services, programs, or activities of a public entity, and they may not be subjected to discrimination.

Appellant also, includes, reprisal, and retribution.

CONCLUSION/RELIEF

Appellant respectfully states that there exist a question of exceptional importance of law and facts in the foregoing that were overlooked and misapprehended by the Court which require a RETURN to the Petition from the Respondent. In addition, the Appellant request the Court to grant the Petition pursuant to Rule 221(a), SCACR, or Rule 219(a)(2), SCACR en banc, and to remand for additional briefing, or for prospective relief for a new parole hearing.

Respectfully submitted,


s/
Bernard Bagley
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June 5, 2026

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM S.C. ADMINISTRATIVE LAW COURT
S.C. Department of Probation, Parole and Pardon Services

Crystal Rookard, ALJ
Appellate Case No. 2024-000110
Unpublished Opinion No. 2026-UP-268

Bernard Bagley, #175851,

Appellant,

v.

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

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Petition for Rehearing on all parties by depositing a copy of the same in the U.S. Mail, postage pre-paid, on June 5, 2026, addressed as follows:

SCDPPPS Office of General Counsel
Matthew C. Buchanan, General Counsel
P.O. Box 207
Columbia, SC 29202

S.C. Administrative Law Court
Crystal Rookard, ALJ
Edgar A. Brown Bldg.
1205 Pendleton St., Suite 224
Columbia, SC 29201

s/

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June 5, 2026

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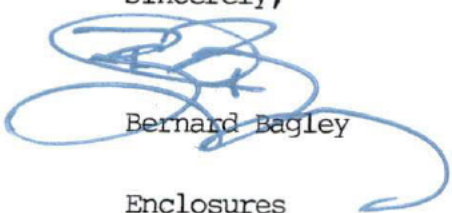
RE: Bagley v. SCDPPPS, Appellate Case No. 12024-000110

Dear Ms. Kitchings:

Enclosed for filing and review is my Petition for Rehearing dated June 5, 2026,
and my Certificate of Service for the same.

Thank you for your consideration.

Sincerely,



Bernard Bagley

Enclosures

cc: Matthew C. Buchanan, SCDPPPS GC
Crystal Rookard, ALJ

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MAIL ROOM