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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
South Carolina Department of Probation, Parole and Pardon Services

Samuel L. Johnson, Administrative Law Judge

Appellate Case No. 2026-001051

Bernard Bagley,

Appellant,

v.

South Carolina Department
of Probation, Parole Services,

Respondent.

BRIEF OF APPELLANT

Bernard Bagley
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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER SUBSTANTIAL EVIDENCE SUPPORT THE ALC'S FINDING THAT A PSYCHOLOGICAL REPORT IS REQUIRED FOR APPELLANT WHO HAS SERVED A TOTAL OF TEN CONSECUTIVE YEARS OR MORE IN PRISON FOR PAROLE DETERMINATION?
- II. WHETHER THE FAILURE OF A PSYCHOLOGICAL REPORT REQUIRED BY S.C. CODE §24-21-610 IS AN ISSUE CAPABLE OF REPETITION; YET EVADING REVIEW BECAUSE THE PAROLE BOARD WILL HAVE REVIEWED BAGLEY'S CASE FOR A PAROLE DETERMINATION BEFORE RECEIVING A REPORT ISSUE CAN BE REVIEWED?
- III. DOES THE PLAIN WORDING OF THE STATUTE §24-21-640 INDICATES THE WORD "PAROLED" REFERS TO AN INDIVIDUAL WHO IS RELEASED TO PAROLE?
- IV. WHETHER THE LEGISLATURE'S USE OF THE WORD "PAROLED" IN §24-21-610 REFERS TO AN INMATE'S RELEASE TO PAROLE?
- V. WHETHER COGNIZABLE ADA CLAIMS AND CORRESPONDING STATE LAWS PROHIBIT THE SAME CONDUCT FINDINGS OF FACT: (1) NATURE AND SERIOUSNESS OF CURRENT OFFENSE; (2) INDICATION OF VIOLENCE IN THIS OR PREVIOUS OFFENSE; AND (3) USE OF DEADLY WEAPON IN THIS OR PREVIOUS OFFENSE, DISABLED PERSONS MAY NOT BE EXCLUDED FROM PARTICIPATING OR DENIED THE BENEFITS OF SERVICES, PROGRAMS, OR ACTIVITIES OF A PUBLIC ENTITY AND THEY MAY NOT BE SUBJECTED TO DISCRIMINATION?
- VI. WHETHER THE PAROLE BOARD IS REQUIRED TO ANALYZE STATUTORY AMENDMENTS RELATED TO APPELLANT'S OFFENSE PRIOR TO DECIDING WHETHER TO GRANT OR DENY PAROLE?

STATEMENT OF THE CASE

On June 19, 2025, the Department (SCDPPPS) Parole Board issued a Notice of Rejection informing Appellant that he was denied parole by a unanimous vote, based upon the nature and seriousness of his offense, an indication of violence in his offense or a prior offense, and the use of a deadly weapon in the offense or previous offense. The Notice of Rejection included the following paragraph:

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

After being denied reconsideration, Appellant filed a Notice of Appeal to the ALC arguing that the Board used the same conduct findings of fact to deny him parole without receiving a report from a duly qualified psychologist or psychiatrist, and

that the Board failed to consider the 1996 amendment to the custody and confinement for murder, along with lessening of the rigors of his imprisonment for murder, and that the denial of parole is arbitrary or capricious which prejudiced him of a meaningful parole hearing.

On August 7, 2025, this matter was assigned to to an ALJ, and on August 29, 2025, SCDPPPS filed the Record on Appeal (NOTE: no transcript to adequately address the application of the ADA). On October 22, 2025, Appellant filed his brief, On November 5, 2025, SCDPPPS filed its brief. On November 20, 2025, Appellant filed his reply brief.

Appellant challenges SCDPPPS cognizable Title II ADA claims and corresponding State laws in which SCDPPPS has violated and prohibits the same conduct findings of fact as an anti-weaponization routine parole denial to continue to exclude the Appellant from participating and denying the benefits of SCDPPPS own life term on parole program under §24-21-670, S.C. Code of Laws, and §24-21-660 of S.C. Code; restoration and redemption JumpStart Programs; Veterans Affairs Benefits, and the V.A. Vocational Rehab. Higher Educational Programs, an issue capable of repetition, yet evading review because the Board will have reviewed Bagley's case for a parole determination before receiving a psychological evaluation report issue can be reviewed.

FACTS

Appellant recalls the Board's chairman inquired about his mental health and the use of drugs, in which the Appellant informed the Board that the Veterans Affairs prescribed him several different pain medications, and that his employer's insurance authorized payments for pain medications (Kaiser Permanente). Also, he answered the inquiry about his mental health; however, there is no transcript to adequately address the application of the ADA, in which the Appellant has been denied access to court on the basis of the transcript ~~on for~~ the Record on Appeal, or for an Appendix.

In addition, Appellant states that he has a liberty interest under Title II of the ADA that is triggered by the Board findings of fact that prohibits the same conduct to exclude him from participating and deny him the benefits of services, programs, and activities by SCDPPPS, in which the Board does not have sovereign immunity from because of automatically denying parole on the basis of conduct of findings of fact as an weaponization routine parole denial.

Appellant further states, the foregoing reasons are why a psychological report is vital to determine the Appellant's parole eligibility based on scientific developments to prevent the Board applying incorrect legal standards during its decision-making procedure and determination regarding the same conduct listed in the findings of fact and conclusion of law. A psychological report will clarify framework for parole eligibility in accordance to §24-21-640, and SCDPPPS criteria.

Section 24-21-610 psychological report provide additional information to compliment the actuarial risk and needs assessment factors pursuant to §24-21-10(F)(1), of S.C. Code of Laws.

ARGUMENTS

I. SUBSTANTIAL EVIDENCE DO NOT SUPPORT THE ALC'S FINDING THAT A PSYCHOLOGICAL REPORT IS REQUIRED FOR APPELLANT WHO HAS SERVED A TOTAL OF TEN CONSECUTIVE YEARS OR MORE IN PRISON FOR PAROLE DETERMINATION.

Appellant avers that the ALC and this Court have subject matter jurisdiction over ~~his appeal~~ regarding parole eligibility and denial of parole eligibility during his parole hearing in June 2025. Appellant further avers that a liberty interest is implicated that entitled him prospective relief of a new parole hearing. SEE: Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), ALC has jurisdiction to review inmate appeals involving state-created liberty or property interests.

NOTE: Appellant verbatim incorporate herein the Statement of the Case and Facts to support this argument.

Appellant contends ~~that there is~~ substantial evidence that the ALC's finding that whether the parole board failed to receive a psychological report on the basis that he has served a total of ten consecutive years or more in prison for parole eligibility determination, as required in accordance to §24-21-610, S.C. Code of Laws. The statute plain language does not prior to an inmate's release on parole, nor is there an amendment to substantiate the same.

There is no legislature's use of the word "paroled" in §24-21-610 does not refers to an inmate's release on parole, because the word "paroled" is preceded with an verbal auxiliary "may be" which is used to indicate possibility or probability. An intransitive verb, or modals (helping verbs) used with the base form of a main verb to express whether an action is likely, possible, permitted, or permission and requests in an active voice as stated in §24-21-640, S.C. Code of Laws, "no such prisoner may be paroled until it appears to the satisfaction of the board, etc.," in which, does no state "release on parole."

Appellant asserts that the word "paroled" plain language or wording in §24-21-610, nor in §24-21-640 refers to an individual who is released on parole. The word "be" is infinitive (present). Nevertheless, "may be paroled" is an active voice. For example, the glasses may be adjusted carefully by an optometrist. (Active Voice). NOTE; When a verb expresses an action performed by its subject, the verb is said to be in the active voice. On the other hand, a verb is in the passive voice when it expresses an action performed upon its subject or when the subject is the result of the action. In Cannon v. SCDPPPS, 371 S.C. 581, 641 S.E.2d 429 (2007), the word "paroled" in its statute requiring DNA samples from offenders who "were paroled" on or after July 1, 2000 is in the Passive Voice." (Active Voice: No employee may be promoted until a negative drug test result is received).)

Also, §24-21-610 language does not contain that the psychological report is obtained as required prior to release of those inmates granted provisional parole by the Board. The language in §24-21-610 does not apply an amendment of the same. The Parole Board's unauthorized construction is arbitrary or capricious and abuse of discretion that denied Appellant parole eligibility during his June 2025 hearing.

In *Buchanan v. SCDPPPS*, 442 S.C. 393, 899 S.E.2d 600 (2023), the Board received a psychologist report in the preparation for his parole, in which he was denied parole rather than granted parole. Buchanan's psychological evaluation was applied during his hearing and not during a provisional parole, nor prior to the release on parole. Instead, the Board required and obtained and review his psychological report prior to deciding whether to authorize or deny parole under §24-2-610.

II. THE FAILURE OF A PSYCHOLOGICAL REPORT REQUIRED BY S.C. CODE §24-21-610 IS AN ISSUE CAPABLE OF REPETITION, YET EVADING REVIEW BECAUSE THE PAROLE BOARD WILL HAVE REVIEWED BAGLEY'S CASE FOR A DETERMINATION BEFORE RECEIVING A REPORT ISSUE CAN BE REVIEWED.

NOTE: Appellant verbatim alleges and incorporate herein the Statement of the Case, Facts, and Argument 1 to support this argument.

Appellant asserts that the Parole Board was required to obtain and review a psychological report on him prior to deciding whether to authorize or deny parole under §24-21-610, S.C. Code of Laws, to establish parole eligibility term during his June 2025 hearing. Appellant further asserts that the Board's action violates express or implied legislative policy of other factors considered relevant in a particular case, the statutory criteria to all of relevant evidence, under §24-21-610.

Appellant also asserts that the psychological report required by §24-21-610 can establish scientific development that was not available to the Appellant a connection between the circumstances surrounding his offense, and mental condition, and recidivism regarding his parole eligibility. A psychological report will demonstrate Appellant's likelihood of success on parole.

The Court should be asking the question why the Board do not want to require a psychological report in its decision-making procedure for parole eligibility determination? Is it because of retribution rather than grace?

Appellant avers that the Board inquired about his mental health and pain killer use during the hearing without considering a psychological report and his age regarding current dangerousness. In addition, Appellant avers if the record does not contain sufficient evidence or substantial evidence that there is substantial likelihood he will commit another offense is released on parole, denial of parole eligibility on June 18, 2025 must be found to have been arbitrary and capricious.

Nevertheless, this issue is capable of repetition, yet evading review because the Board will have reviewed Appellant's case for a determination before receiving a psychological report issue can be reviewed. SEE: *Hayes v. State*, 413 S.C. 553, 777 S.E.2d 6 (2015), an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review, and where the terms of a statute are clear, the court must apply those terms according to their literal meaning.

NOTE: Appellant's future eligibility term is in June 2027.

III. THE PLAIN WORDING OF THE STATUTE §24-21-640 DOES NOT INDICATE THE WORD "PAROLED" REFERS TO AN INDIVIDUAL WHO IS RELEASED TO PAROLE.

Appellant avers verbatim and incorporate herein the Statement of the Case, Facts, Arguments 1 and 2 to support this argument.

Here,, the Appellant avers that the plain wording of the statute §24-21-640 does not indicate the word "paroled" refers to an individual who is released to parole because the interpretation of the meaning differ then that in Cannon v. SCDPPPS, 371 S.C. 581, 641 S.E.2d 429 (2007), which states "offenders who were paroled" and/or "released to parole." On the other hand, "paroled" in §24-21-640 and §24-21-610 are similar in nature and interpretation. The Appellant avers the psychological report required by §24-21-610 is a required parole consideration factor that must be considered by the Parole Board prior to an incarcerated person is paroled, along the same line the record of the prisoner before, during, and after imprisonment, no such prisoner may be paroled until it appears to the satisfaction of the board that the record required by §24-21-640 is a required parole consideration factor that must be considered by the Parole Board prior to an incarcerated person is paroled.

Appellant further asserts that the Respondent's meaning or ALC's meaning does not convey the plain wording of the statute 24-21-610, nor does the meaning creates the picture of a standard tense. SEE: Hinton v. SCDPPPS, 357 S.C. 327, 592 S.E.2d 335 (2004), penal statutes are strictly construed against the State and in favor of the defendant. Hinton quoting State v. Lewis, 141 S.C. 207, 211, 139 S.E. 386, 389 (1927).

IV. THE LEGISLATURE'S USE OF THE WORD "PAROLED" IN §24-21-610 DO NOT REFER TO AN INMATE'S RELEASE TO PAROLE.

Appellant contends verbatim and incorporate herein the Statement of the Case, Facts, Arguments 1,2, and 3 to support this argument.

Appellant avers that the issue of interpretation of a statute is a question of law, and if a statute's language is plain, unambiguous, and conveys a clear meaning, "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." SEE: Hodges v. Rainey, 341 S.C. 79,85, 533 S.E.2d 578, 581 (2000). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation.

In this matter the Respondent has imposed another meaning to expand the statute's operation for its benefit to refer an inmate's release to parole, whereby §24-21-610, S.C. Code of Laws required a psychological report for a meaningful eligibility for parole that creates a liberty interest, in which the Appellant concurs it does not create a liberty interest in parole. However, §24-21-610 provides the procedure to follow when the Board determines to grant and not grant parole for a potentially eligible inmate: "..., no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first 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." It is important that the Appellant receive some form of administrative review of the SCDPPPS's permanent denial of parole eligibility because of deprivation of minimal due process. In other words, SCDPPPS is arbitrary or capricious due to insufficient minimal due process for the Appellant to be heard or review by a report from a duly qualified psychologist, a meaningful opportunity to obtain release based on demonstrated change, rehabilitation, and preparation for the parole hearing, and to consider scientific developments to provide a meaningful opportunity for release. SEE: *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), expert's written evaluation.

- V. COGNIZABLE ADA CLAIMS AND CORRESPONDING STATE LAWS PROHIBIT THE SAME CONDUCT FINDINGS OF FACT: (1) NATURE AND SERIOUSNESS OF CURRENT OFFENSE; (2) INDICATION OF VIOLENCE IN THIS OR PREVIOUS OFFENSE; (3) USE OF DEADLY WEAPON IN THIS OR PREVIOUS OFFENSE, DISABLED PERSONS MAY NOT BE EXCLUDED FROM PARTICIPATING OR DENIED THE BENEFITS OF SERVICES, PROGRAMS, OR ACTIVITIES OF A PUBLIC ENTITY AND THEY MAY NOT BE SUBJECTED TO DISCRIMINATION.

Appellant asserts verbatim and incorporate herein the Statement of the Case, Facts, Arguments 1,2,3, and 4 to support this argument.

Appellant also asserts that the Board's chairman and SCDPPPS parole examiner official inquired about drug use and mental health issue prior to the hearing and during the hearing (No transcript to adequately made available by the Respondent for the application of the ADA). In addition, Appellant asserts that the ALC have subject matter jurisdiction regarding ADA accommodations requests from incarcerated persons for the preparation for the parole hearing by conducting a psychological evaluation as required under Eligibility for Parole §24-21-610, to provide a meaningful opportunity for release and to be heard.

The Appellant avers that he has a right to have a psychological report under §24-21-610, as required in accordance to Title II of the ADA, which prohibits "public entity" from discriminating against "qualified individual with a disability" on account of that individual's disability, applied to incarcerated people in state prisons. SEE: *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206 (1998), Appellant states that he is an eligible incarcerated person that have made numerous request for life on parole program participation, in which conditions of participation on parole is that the inmate "agree to be bound by" certain "terms and conditions." SEE: SCDPPPS Criteria for Parole Consideration Form 1212, and §24-21-670, Term of Parole, §24-21-660, Effect of Parole. SEE: *Sanders v. MacDougall*, 244 S.C. 160, 135 S.E.2d 836 (1964), every paroled prisoner remains in the legal custody of the Board and may at any time be imprisoned on its order.

Appellant also states that the parole board hearings are a quasi judicial administrative proceeding that require a transcript for administrative record, and not providing one from a quasi judicial administrative proceeding is arbitrary or capricious. Nevertheless, the Board's findings of fact and conclusion of law conveys the same conduct, nature and seriousness of current offense; indication of violence in this or previous offense; and use of deadly weapon in this or previous offense exclude disabled persons from participation and being denied in benefits of services, programs, or activities of a public entity based on findings of of fact and conclusion of law discrimination of disabled persons.

The Respondent has failed to make reasonable modifications in policies, practices, or procedures that are necessary to avoid discrimination of the same conduct findings of fact and conclusion of law on the basis not allowing accommodations for the preparation for the parole hearing by conducting a psychological report as required under eligibility for parole §24-21-610, to provide a meaningful opportunity for release and to be heard, in which the Respondent cannot demonstrate that making the modifications would fundamentally alter the nature of the services, program, or activity. Appellant understands that he is not entitled to release on parole, but rather to a parole hearing and decision that considers reasonable modifications in light of his disability.

In *Buchanan v. SCDPPPS*, 442 S.C. 393, 899 S.E.2d 600 (2023), the Board allowed a report of favorable parole recommendation. SEE: Equal Protection Clause.

In *Nelson v. Ozmint*, 390 S.C. 432, 702 S.E.2d 369 (2010), held that otherwise moot question as to whether defendant should have been granted good time and earned work credits against his sentence qualified for review as one capable of repetition yet evading review. SEE: U.S. Constitution 14th Amendment.

Eligibility for parole statute required inmates convicted of a violent crime as defined in §16-1-60, must have their cases heard reviewed every two years for the purpose of a determination of parole. NOTE: Appellant is scheduled in June 2027 for his next parole hearing.

VI. THE PAROLE BOARD IS REQUIRED TO ANALYZE STATUTORY AMENDMENTS RELATED TO APPELLANT'S OFFENSE PRIOR TO DECIDING WHETHER TO GRANT OR DENY PAROLE.

The Appellant verbatim alleges and incorporate herein the Statement of the Case, Facts, Arguments 1,2,3,4, and 5 to support this argument.

Appellant asserts that the Board may adopt to analyze the enactment of the 1996 amendments to §16-3-20(A), and 1995 S.C. Acts No. 83, §§58,62, when considering whether to authorize parole, because such a policy does not alter the nature of the Board's duties as related to Appellant's criminal offense that require a lessening of the rigors of imprisonment by commuting a life sentence to a mandatory minimum term of imprisonment for 30 years. SEE: Title II of the ADA.

SCDPPPS supposedly have the 2% parole successful completion rate in 2025, but the statistics does not provide lifers release on parole in its report. However, SCDPPS do not have mental health agents to accommodate parole for lifers with severe and persistent mental illness, and approximately over 2,479 inmates were rejected parole in 2025, that include approximately 110 had a low assessment finding of recidivism, and approximately 34 had a medium recidivism, and 1 had a high assessment recidivism rate in 2025.

Appellant include this information to show that the Respondent the reentry assessment findings is arbitrary or capricious as well.

CONCLUSION

For the foregoing reasons stated, this Court should reverse and remand for a new parole hearing with instructions to accomodate Appellant with preparation for the hearing.

Respectfully submitted,

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June 19, 2026

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