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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, and
Pardon Services,

Respondent.

FINAL REPLY BRIEF OF APPELLANT

Bernard Bagley
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OBJECTIONS OF RESPONDENT'S ISSUES ON APPEAL

1. Appellant object that Respondent would mislead the Court that the psychological report mandated in §24-21-610 is not one of the requisite factors of parole consideration.
2. Appellant object that Respondent and the ALC correctly determined that this appeal is outside the scope of an Americans with Disabilities Act Claim.
3. Appellant object to ALC determined that the Parole Board was not required to consider the statutory amendments to the sentence of murder.

STATEMENT OF THE CASE

Appellant verbatim alleges and incorporate herein the Initial Brief of Appellant Statement of the Case, and Facts to support this Reply Brief of Appellant.

Appellant was found guilty as charged and sentences to two consecutive life sentences for his convictions. However, on December 10, 1992, this Court, S.C. Court of Appeals affirmed in part, reversed in part and remanded for a new trial. SEE: State v. Bagley, Order 1992-UP-165 (S.C.Ct.App. dated December 10, 1992). The State refused to proceed for a new trial that would have vacated ~~the~~ consecutive life sentences and conviction of the first-degree burglary (90-GS-40-5864).

On April 4, 2001, Richland County Circuit Court Judge, the Honorable Marc Westbrook upon the consent of the Fifth Circuit Solicitor's Office, Elizabeth Leevy, Assistant Solicitor signed an Order for Destruction of Arrest Records pertaining to the first-degree burglary (90-GS-40-5864), and warrant GS number C746073. (SEE: Appendix p. 5). Also, See App. pp. 1-4, S.C. Court of Appeals Order/Opinion dated 12/10/1992).

Respondent was told not to use the consecutive life sentences and conviction of the first-degree burglary (90-GS-40-5864) in its decision-making determination in its findings of fact and conclusion of law, which is inferred in the findings of fact Notice of Rejection dated June 19, 2025, 02 indication of violence in this or previous offense that the Respondent did not include in its statement of the case. (App. p. 6).

Respondent's brief was submitted to this Court. Appellant's Reply Brief follows.

STANDARD OF REVIEW

An appellate court has jurisdiction to review decisions of lower courts or administrative agencies to ensure that those bodies function lawfully and that litigants receive justice under law. Moreover, the court provide authoritative interpretations of statutory and common law in response to ever-changing circumstances; the court is thus a major source of law according to Daniel J. Meador and Jordana S. Bernstein, Appellate Courts in the United States v (1994).

Parole hearings are quasi-criminal proceedings that are conducted in conformity with the rules of a criminal proceeding because a penalty analogous to a criminal penalty may apply. For example, eligibility for parole is a liberty interest, in which criminal and civil procedure rules apply.

The ALC special appeal can be commenced independently of a pending action and from which a final order may be appealed. Also, it involves statutory or civil remedies or rules rather than the rules or remedies ordinarily available under ALC rules of procedures. The special appeal may provide extraordinary relief S.C. Code Ann. §1-23-380, of the Administrative Procedure Act (APA). And this court is govern under S.C. Code Ann. §1-23-610(B).

See *Cooper v. SCDPPPS*, 377 S.C. 489, 661 S.E.2d 106 (2009), even a decision not constituting permanent denial of parole eligibility was capable of triggering due process requirements. In *Barton v. SCDPPPS*, the court held that statutory interpretation is a question of law subject to de novo review. Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. (Appellant argues that the ALC's construction of §24-21-610 is erroneous and should be rejected). (NOTE: *Barton's* cite 404 S.C. 395, 745 S.E.2d 110 (2013)).

OBJECTIONS

1. Appellant object that Respondent would mislead the Court that the psychological report mandated in §24-21-610 is not a requisite factors of parole consideration.

Appellant avers whether or not that the psychological report mandated in §24-21-610 is not a requisite factor of parole consideration, for the purposes of the psychological report analysis, the relevant inquiry of Rule 702, SCRE, Testimony by Experts. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or the determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise in regards to S.C. Code Ann. §24-21-640, circumstances warranting parole, etc..

Section 24-21-640 states that the 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: 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 by 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.

SCDPPPS Form 1212, Criteria fo Parole Consideration (App. p.7,) clearly states, at the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In determining whether the ALC's decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC erred and violated Appellant's substantial rights that seriously prejudiced him his right to present a report from an expert witness based on evidence on his own behalf.

SEE: Rule 705, SCRE, Disclosure of Facts or Data Underlying Expert Opinion, and Rule 401, SCRE, Relevant Evidence that means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Appellant avers that the ALC applied an incorrect legal standard in denying the right to present witnesses and evidence on his own behalf.

Respondent failed to inform the Court that in *Bagley v. SCDPPPS*, Order 2026-UP-268 (S.C.Ct.App. dated June 3, 2026), that a Petition for Rehearing is pending in this Court, filed June 12, 2026. Furthermore, Appellant asserts that §24-21-610 provide him the right to present a report, in which the Board must receive a report of his mental condition and ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist that appears to the satisfaction of the board in accordance to §24-21-640, of S.C. Code Ann..

The Respondent fail to provide §24-21-640 in its argument, but rather interpret §24-21-610 with language "prior to granting parole" "not require prior to denying parole." Also, the term "paroled" as used in §24-21-610 described a type of release from custody. So, do the term "paroled" as used in §24-21-640 described a type of release from custody?

Appellant interprets "a report from a duly qualified psychiatrist or psychologist" in §24-21-610 to mean the inmate has the right to present witnesses and evidence on his own behalf guaranteed by S.C. Constitution Article 1, §3, and the U.S. Constitution 14th Amendment. In addition, Appellant contends that his argument does not include Board's considered the requisite factors of parole consideration, rather, the right to present witnesses and evidence on his own behalf in accordance to SCDPPPS Form 1212.

Furthermore, the interpretation precede the necessary process outlined in §24-21-640, that says "no 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 by his conduct he has merited a lessening of the rigors of his imprisonment; and that society will not be impaired thereby." The report may or may not be favorable to the satisfaction of the board; nevertheless, an inmate has the right to present evidence from a duly qualified psychiatrist or psychologist on his/her behalf to the Board until it appears to the satisfaction of the board that he has shown a disposition to reform, he will probably obey the law, and lead a correct life, and by his conduct he has merited a lessening of the rigors of his imprisonment, and that the interest of society will not be impaired, which the report must be created and submitted to the Board at the hearing as evidence on his own behalf per §24-21-610.

Respondent want this court to believe that it cannot accommodate duly qualified psychologists or psychiatrists to enter the institution in which the offender is housed, and not able to conduct the necessary interview and inquiry as to the inmate's mental state, and furnish a report "as to inmate's in Appellant's similar situation." Furthermore, the cost of the psychological report is passed on to the inmate, the \$680.00 cost the parolees pay it during the release on parole. Respondent seems that accommodations to policy that the report is required every ten years could not suffice the expense.

Also, the Respondent's argument is absurd because it only applies to inmates appearing before the board. Inmates that are serving ten or more years with a maxout date are not required to obtain a psychological report, and the court may take into consideration, the majority of those inmates should have some

psychological report prior or upon release. The Appellant has requested to pay the cost of \$680.00 for the necessary interview and inquiry as to his mental state, and a furnish report to be receive by the board as evidence on his own behalf, but the Respondent has failed to accommodate him in this effort.

In addition, the Appellant place ~~emphasis~~ ^{emphas} that he require the psychological report as a right to present a duly qualified psychiatrist or psychologist witness and the report as evidence on his own behalf as required by §24-21-610, to support §24-21-640, and to compliment and support the risk and needs assessment tool required by §24-21-10(F)(1), based on the Respondent's own representation of the Appellant. As such, Appellant submits that his due process rights were affected by other error of law of his right to present witnesses and evidence on his own behalf, were violated.

SEE: Buchanan v. SCDPPPS, 442 S.C. 393, 899 S.E.2d 600 (2023), Dr. Susan Knight, a forensic psychologist, examined Buchanan in preparation for the parole hearing. She also provided a report into evidence on Buchanan's behalf, and testified as an expert witness. In Wolff v. McDonnell, 418 U.S. 539 (1974), the Court held that inmates in disciplinary proceedings were entitled to "call witnesses and present documentary evidence in his defense. A liberty interest is implicated.

2. Appellant object that Respondent and the ALC correctly determined that this appeal is outside the scope of an Americans with Disabilities Act Claim.

Appellant verbatim alleges and incorporate herein the Initial Brief of Appellant Arguments, and Objection and Argument 1 to support this Reply Brief of Appellant.

Appellant asserts that the ADA is ripe because the Respondent failed to accommodate him in the preparation for the parole hearing with a duly qualified psychologist or psychiatrist to provide a report into evidence of his mental state or mental condition on his behalf as mandated in §24-21-610. The Respondent is in error once again, because Appellant is in no way attempting to force the Board to make a favorable parole decision, he is only implicating a liberty interest of the right to present witnesses and evidence on his own behalf in accordance to SCDPPPS Form 1212, and Rule 702, SCRE.

In Pennsylvania Dept. of Corr. v. Yeskey. 524 U.S. 206 (1998) the Court held that Title II of the ADA, prohibiting "public entity" from discriminating against "qualified individual with a disability." Appellant avers that the application of the ADA to state prisons is a constitutional exercise of the South Carolina Legislature's power power.

Furthermore, the ADA corresponding state laws prohibits the same conduct, i.e., disabled persons may not be excluded from participation in or denied the benefits of parole services, programs, or activities of SCDPPPS, and Appellant avers that disabled inmates (physically, emotionally, or mentally) may not be subjected to discrimination under the guise of "the board considered the requisite factors of parole consideration," findings of fact listed in the constructive Notice of Rejection same conduct. In Myers v. SCDHHS, 418 S.C. 608, 795 S.E.2d 301 (2016), the ALC had jurisdiction of ADA claim and cause of action. Furthermore, the ALC

did not make any specific finding on whether or not there is a casual connection between the discriminatory same conduct of Respondent's findings of fact. In other words, the ADA must trump the Cooper determination when a liberty interest is implicated in the consideration of parole process. Also, see *Thompson v. Davis*, 295 F.3d 890 (2002), the Court held in its discussion that the ADA Framework Title II of the ADA prohibits a public entity from discriminating against a qualified individual with a disability on the basis of disability.

Appellant contends that the Respondent's same conduct use of findings of fact and Cooper's ruling that the Board only have to state that it considered the factors mandated in Cooper is a question of law whether the Cooper standard is discriminatory under the ADA which is in the purview of the ALC jurisdiction authority.

The psychological report has a lot to do with characteristics of current offense, risk and criminogenic needs, antisocial behavior patterns, antisocial attitudes, poor impulse control, criminal thinking, and substance abuse under evidence-based scientific research that demonstrates the mandates listed in §24-21-640, S.C. Code., along with accommodation with the preparation for the hearing and presenting evidence on Appellant's behalf as required in accordance to the ADA.

3. Appellant object to ALC determined that the Parole Board was not required to consider the statutory amendments to the sentence of murder.

Appellant verbatim alleges and incorporate herein the Initial Brief of Appellant Arguments, and Objections and Argument 1, 1 and 2 to support this Reply Brief of Appellant.

Appellant contends that the Respondent open the door to the modification of Appellant "sentenced to two consecutive life sentences" when the first-degree burglary (90-GS-40-5864) was expunged (App. p.5), which he believes constitutes a new judgment that comprises a new conviction and sentence under §16-3-20, S.C. Code Ann., that enhances the statutory amendment aggravated circumstances of murder for constructive rejection for parole and to prevent any chances to a minimum sentence of thirty years.

Furthermore, the Respondent failed to provide Appellant proper notice that the first-degree burglary offense would be resurrected without allowing him to show or explain that it was expunged in accordance to S.C. Code of Laws §17-1-40, and that his file contains errors regarding this matter that has been redress numerous times years ago. Nevertheless, the Respondent continues to throw the first-degree burglary to the courts attention, and in the face of the Appellant without due process in accordance to Rule 60(b)(4)(5), SCRPC. SEE: *State v. Bagley*, Unpublished Opinion No. 92-UP-165 (1992)(App. pp. 1-4).

Nevertheless, the Respondent is using the expunged offense as a current conviction and consecutive sentence to enhance the circumstances to continue a constructive rejection denial of parole without any prospective consideration to the murder offense under §16-3-20, or to provide evidence on his own behalf regarding preparation for the same.

Respondent has speculated what the Appellant assumes regarding the current law as it relates to the minimum sentence of thirty years. Appellant avers if the

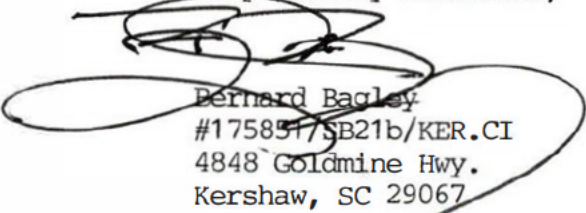
Board, with all do respect, seriously and meaningfully reviewed the inmates records similars to Appellant's records to those inmates serving thirty years minimum sentences for murder under §16-3-20, there findings will be shock to the conscious who would have the mental condition and ability to adjust to life outside the prison, and who conduct has merited a lessening of the rigors of imprisonment, and that the interest of society will not be impaired, perhaps, the discretion of the Board or panel aims at protecting the best interest of both society and the inmate(s) being considered for parole paradigm or perspective deliberations upon reasonable probability that an inmate will not again violate the law if parole is granted.

Respondent should be allow to weigh those same factors listed in Form 1212 to those inmates that have received the minimum sentence of thirty years for murder under §16-3-20.

CONCLUSION

This Court must consider that the psychological report is necessary for preparation for parole hearings, and the inmate's right to present witnesses of a duly qualified psychiatrist or psychologist and evidence of the psychological report as evidence on his/her own behalf. Furthermore, the ADA application is viable for accommodations to access for the psychological report and the preparation for parole hearings by duly qualified psychiatrist and psychologist, in which the Appellant agrees to pay the cost for the same while Respondent modify its policies to accommodate for the services. In brief, Respondent open the door to a new judgment that Appellant is serving two consecutive life sentences without notice and due process of law upon an expunged offense. WHEREFORE, for the foregoing reasons the ALC's decision dismissing this appeal should reverse and remand for additional briefing, or the alternative, a new parole hearing that would allow Appellant the opportunity to present a psychological report to the Board from a duly qualified psychiatrist or psychologist with Respondent's accommodation in accordance to the ADA and under §24-21-610, and specifically, SCDPPPS Form 1212, Criteria for Parole Consideration.

Respectfully submitted,



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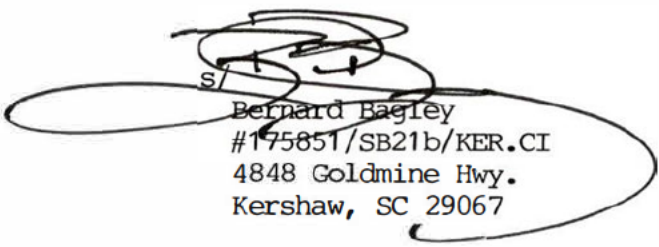
S.C. Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 267(d), SCACR.

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