

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RONALD J. SHEPPARD,)
SCDC NO.: 00320057)
)
Appellant,)
)
vs.)
)
SCDPPPS,)
)
Respondent.)
_____)

Docket No.: 12-ALJ-15-0001-AP

**APPELLANT'S MOTION FOR
RECONSIDERATION OF
ORDER OF JANUARY 17, 2014**

COMES NOW THE PETITIONER/APPELLANT, RONALD J. SHEPPARD, by and through his undersigned counsel, O. Grady Query, Esquire and Michele Patrao Forsythe, Esquire of the law firm Query Sautter Forsythe, LLC, and moves for reconsideration of this Honorable Court's Order of January 17, 2014, affirming the decision of the Parole Board.

PROCEDURAL HISTORY

Oral argument was held at the ALC in Columbia, South Carolina on November 20, 2013, regarding Appellant's Special Appeal. Appellant prays that this Honorable Court reconsider the Order of January 17, 2014, affirming the decision of the Department to rescind parole previously granted to the Appellant, as Appellant believes that the court misinterpreted the law of the case and thereby improperly affirmed the Department's decision. For the reasons set forth below, the Appellant requests [a specific ruling for each argument and] that the Order be rescinded and/or amended accordingly. In the alternative, Appellant requests a specific ruling on the concession that the practice of the Department was to provide notice to the Office of the Attorney General upon request and on the procedural violation wherein the Attorney General did not follow the Department's Operations Manual requiring a written letter or petition.

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ARGUMENT

I. Notice Under South Carolina Code Section 24-21-221

For the first time at Oral Argument, the Department conceded that it did not fail to comply with the statute, but rather followed the procedure established between the Department and the Office of the Attorney General in similar cases over a period of twenty-two years. Petitioner Sheppard should not be deprived of his constitutionally guaranteed freedom right established by the panel vote on December 14, 2011, because of an unannounced and unilateral procedural change made by the Department. Therefore the December 14, 2011 hearing and the decision rendered on that day to grant parole is valid and must stand.

While S.C. Code Ann. § 24-21-221(2) (2007) requires that notice be given to the solicitor who prosecuted the prisoner or his successor in the jurisdiction in which the crime was prosecuted, notice to the Attorney General is not specifically mentioned. In its Oral Argument before this Court on November 20, 2013, the Department conceded for the first time that the Attorney General was given notice of hearings from time to time when the Attorney General specifically requested notice in cases which were prosecuted by the Attorney General. The Department further conceded that the Attorney General did not request notice of Petitioner's parole hearings—in fact, and according to the Department, the Attorney General's Office waived its right to be notified.

Petitioner and his counsel were not made privy to this information until some two years subsequent to the filing of this action with this Court. This has obviously become the established practice and custom for the Department and the Attorney General's Office; and was apparently satisfactory to the Attorney General for over twenty-two (22) years of prosecution pursuant to the Statewide Grand Jury statute. The Department's admission of the frequently used practice and custom of requesting notice on some, but not all cases is an adulteration of the requirements

of the statute under any interpretation and nullifies the Attorney General's position of not receiving proper notice. Moreover, this practice adopted by the Department and the Attorney General should not provide the basis for depriving Appellant of a valid constitutional freedom right.

Thus, the Court erred in finding that the State was denied procedural due process, and in finding the December 14, 2011 Hearing was void *ab initio*. The Department's concession that the practice and custom of requesting notice (as opposed to a statutory interpretation requiring notice) constitutes a waiver of notice of the December 14, 2011 Hearing. On page six of the Court's Order dated January 17, 2014, the court states "a procedural error tainted the process whereby parole was granted." Error could not have occurred, as the Department concedes that the statute (S.C. Code Ann. § 24-21-221(2) (2007)) is satisfied when the Attorney General requests notice and notice is in fact given. For that reason, the decision of this Court should reflect the Department's concession and that the Department committed no violation of procedural due process with regard to the Parole Hearing for Ronald Sheppard on December 14, 2011.

II. Section 24-21-645

In Barton v. S.C. Dep't of Prob., Parole and Pardon Services., 404 S.C. 395, 745 S.E.2d 110 (2013), the South Carolina Supreme Court held "appellant received the requisite number of votes from the Parole Board, and thus, should be granted parole."

The Court reviews this provision of Petitioner's argument ignoring that the Parole Board granted Petitioner parole and provided him with conditions of his parole in writing. A final decision was rendered in this matter. Petitioner was notified and accepted the provisional parole order. (See Petitioner's Acceptance of Conditions of Parole entered into the Record). Petitioner accepted his parole by virtue of his signature affixed upon the certificate. Therein is the Court's

misinterpretation of the statute. Inmates are notified immediately of the granting of parole. They are verbally informed by the Department. If there are conditions, as was apparent in the instant case, the prisoner must accept those conditions in writing. The parole order, which Petitioner/Appellant signed “provides for his release from custody.” See South Carolina Code §24-21-650 (as amended). The statute is thus written based upon the general practices and procedures of the Parole Board.

III. South Carolina Code Sections 24-21-645(D) and 24-12-650

“[A] statute is not to be construed in derogation of common law rights if another interpretation is reasonable. See Barton v. South Carolina Dept. of Probation Parole and Pardon Services, 404 S.C. 395, 417, 745 S.E.2d 110, 112 (2013) quoting Doe v. Marion, 361 S.C. 463, 473, 605 S.E. 556, 561 (2007). The particular order issued by the Department was provided to this Court and accepted as an exhibit to the Record in this matter. It is specifically in accordance with statute. It is error, however to assume that the order issued by the Department is similar to an Order issued by an administrative body. Contrary to this Court’s assertion, an agency decision does not necessarily follow the provisions of formality or be subject to the rigors of the South Carolina Rules of Civil Procedure. In fact, agency decisions are governed by the Administrative Procedures Act South Carolina Code Section 1-23-310 et seq. (as amended). Moreover, the Parole Board’s granting of parole and Petitioner’s acceptance of the conditions triggered the moment where the substantive right to liberty attached. In accordance with Barton, and its progeny the parole statute must be construed in favor of the Petitioner, not the Department, Parole Board, or the Attorney General. State v. Dingle, 376 S.C. 643, 659 S.E.2d 101(2008).

IV. The Attorney General's Initiation Process for the January 18, 2012 Hearing

In accordance with the Parole Board Operation's Manual, which outlines the policies and procedures of the Department, the procedure for initiating the process of rehearing cases is clear:

"If the offender has not been released on parole, the process is most often initiated by a report that the Board or panel receives from the parole examiner at the prison where the offender is incarcerated. However, a report could come from any source...A request for a rehearing may also be made by a petition or letter received from the requesting party within 30 days of the parole rejection. This letter or petition must specify the exact reasons why the Board should reconsider its decision."¹

The Attorney General did not follow the proper policies and procedures outlined by the Department in the Manual when he notified the Department via a telephone call that he did not receive notice of the December 2011 parole hearing. The court's finding that the Attorney General acted appropriately is in stark contrast to the procedures outlined by the Department and should be reversed.

Further, the Board may *only* conduct a rehearing if one of the following occur: 1) subsequent misconduct by the prisoner; 2) new criminal charges against the prisoner; 3) after-acquired information about the prisoner; 4) failure of the prisoner to meet conditions of release; 5) requested by the inmate of the inmate's authority. See SC Board of Pardons and Paroles, Operations Manual, Part III, Rehearings of Parole Cases, p. 44; 59 Am. Jur. 2d Pardon & Parole § 101.

The request for re-hearing did not meet any of the mandatory requirements for such a proceeding as outlined in the Manual created by the Department that governs the Board. The requirements focus on misconduct, new charges or after-acquired information regarding **the prisoner**. There is no mention of the right to conduct a rehearing secondary to the Department's failure to provide notice to the solicitor that prosecuted the prisoner. A mere administrative error should not rise to the level of the above-listed reasons for a re-hearing, especially when no after

acquired information about the prisoner was presented. Thus, the court erred in finding that the Attorney General acted appropriately in initiating the process for a rehearing.

V. The January 18, 2012 Hearing

As the court erred in finding the December 14, 2011 hearing void *ab initio* since the Attorney General effectively waived his right to statutory notice of the December 14, 2011 hearing, the Court's Order should be amended to reflect that the re-hearing held before the full panel on January 18, 2012 is the proceeding that should be void *ab initio*, as the hearing was unnecessary due to the Attorney General's effectively waiving his statutory right to notice of the December 14, 2011 hearing. Therefore, this court does in fact need to address Appellant counsel's arguments concerning the justification of a re-hearing and rescission of the decision of the panel vote following the hearing on December 14, 2011 granting Appellant parole.

Further, there is nothing in the Department's Operations Manual that provides for a re-hearing in the event of an administrative error. As stated above, the Manual is clear that a re-hearing may only be conducted if one of the five incidents listed in the Manual were to occur. In the instant case, the court attempts to correlate the Attorney General's waiver of notice of the December 14, 2011 hearing with the re-hearing requirement of after acquired information. This court fails, however, to recognize that the requirement clearly indicates the acquired information must regard the prisoner. This requirement cannot be so broadly interpreted to include after acquired information regarding an administrative error of failure to provide notice to the solicitor that prosecuted the prisoner, especially after the Attorney General effectively waived notice of that hearing. In addition, the Attorney General provided no new information or evidence regarding the prisoner at the January 20, 2012 re-hearing that would lead to a rescission of the Panel's earlier decision to grant Appellate parole as due process requires.

CONCLUSION

For the foregoing reasons, the Court's Order dated January 17, 2014 should be rescinded and/or amended accordingly.

Respectfully submitted by,

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January 31, 2014

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¹ SC Board of Pardons and Paroles, Operations Manual, Part III, Initiating the Process of Rehearing Cases, p. 45

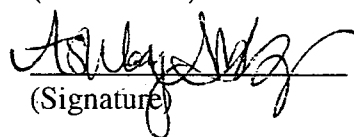
STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RONALD J. SHEPPARD,) Docket No.: 12-ALJ-15-0001-AP
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Appellant/Petitioner,)
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vs.) **CERTIFICATE OF SERVICE**
)
SCDPPPS,)
)
Respondent.)
_____)

I hereby certify that I am the law clerk for the attorneys for the Appellant/Petitioner, Ronald J. Sheppard, in the above-captioned matter and that on the 31st day of January, 2014, I served a copy of Appellant's Motion for Reconsideration on the following person(s) via facsimile and United States Mail, with proper postage affixed thereto, and addressed as follows:

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