

The State of South Carolina
In the Court of Appeals

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MAR 03 2014

Appeal from the Administration
Law Court, from South Carolina
Parole and Probation, Pandow,
John D McLead, Administration

Court of Appeals

Case No # 2013-002805

Emmanuel McFadden - - - - - appellant

South Carolina Parole, Probation, Pandow, - - - - - Respondent

Notice of Appeal

On date 1/21/14, the appellate received a deficiency or deficiencies have been noted under the South Carolina appellant Court Rules according to Rule 203. The appeal Notice of appeal, the decision of the Honorable John D. McLead. The appellant file this Notice, as Pro, Sec. at this time.

Emmanuel McFadden
Pro Se # 00124011

SWORN to and subscribed before me this
21st day of January, 2014
Emily White (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-27-2016

The State of South Carolina

In the Court of Appeals

Appeal from the Administrative,
and Parole and Probation Panels.

John D. McLeod, Administrator

RECEIVED

Case No. 2013-002805.

MAR 03 2014

SC Court of Appeals

Emmanuel McLeod - - - - - appellant,

v.
South Carolina Parole
and Probation Panels - - - - - Respondent,

Proof of Service

I, certify that, I have served the Notice of Appeals
on the Respondent, by depositing a copy of it in the
United State Mail postage prepaid, on date Jan 2014
address to the Respondent, and also Clerk of Court, P. O. Box
11629 Columbia S.C. 29211. Parole and Probation, P. O. Box 50666
Columbia, S.C. 29250.

SCDC

FEB 11 2014

MAIL ROOM

SCDC

MAR 21 2014

MAIL ROOM

To, Clerk of Court
Administrative Court.
1205 Pendleton St
Columbia SC 29201

Emmanuel McLeod
Pro, Se. # 00124011

State of South Carolina
County of Columbia.

Proof of Service

The undersigned hereby certifies that a true copy of the attached Matter has been served upon the Parties listed below, by mailing (1) one copy in an envelope properly addressed to each Party, with U.S. Postage prepaid this Feb day of 26 2014. Such Matter being petitioned for Designation of Matter to be included in the records of appeals.

S. G. Maxwell (Maddox)
80124071
cc: Tommy Evans FR parole and pardon
PO. Box 30666 Columbia SC 29250

cc: Jimmy A. Kitching Clerk
PO. Box 11629 Columbia
SC 29250

SCDC

FEB 26

MAIL ROOM

The State of South Carolina Court of Appeals
In the Court of Appeal

Emmanuel M. Laddan appellant

South Carolina parole v.
and Probation, Pardon Respondent

RECEIVED

MAR 03 2014

Proof of Service

SC Court of Appeals

I certify that I have served the
Fed. R. Civ. Proc 60(a) Motion to Reconsider
LSP" status on the clerk of court, and
the Respondent, and the clerk of court
administrative law court by depositing a
copy of it in the united states mail postage
prepaid on Feb 2014 addressed to the Respondent and
also clerk of court P.O. B-11629 Columbia SC 29211,
Parole and Pardon P.O. B-150666 Columbia SC 29250
clerk of court administrative court 1205
Pendleton st Columbia SC 29201

SCDC

FEB 11 2014

MAIL ROOM

Emmanuel M. Laddan
Pre-SE # 124611

The South Carolina Court of Appeals
is the Court of Appeals.

Emmanuel Mc Fadden, #124011, appellant,

v.
South Carolina Department of Probation
Parole and Pardon Service, Respondent.
Appellate Case No. 2013-002805.

The Honorable John P. McLeod
Trial Court Case No. 2013 ALJ 150035 A.P.

Designation of Matter to be
included in the Record of appeal.

Appellant proposes the following be included in
the Record.

- (1) - Date; 7/10/13, Parole Hearing, Notice of Rejection
- (2) - Date; 7/25/13, Received clock stamp comply from
Production of Document.
- (3) - Date; 7/17/13, Plaintiff's First Request for Production
- (4) - Date; 7/3/13, Barton v Dept. of Parole and Probation
404 S.C. 395; 745 S.E.2nd. 118 SC 2013.
- (5) - Date; 8/9/13, Motion to inquire Papers and Proof
of Service.
- (6) - Date; 8/12/13, Notice of appeal file
- (7) - Date; 9/16/13, Request for Production of Documents.
Respondent does not intend to Respond to appellant, Request.
- (8) - Date; 9/18/13, Received, Respondent, Record on appeal
Final Decision.

Designation of Matters to be
included in the Record of appeal.

- (9) Date; 9/23/13, Received Clock Copy Production of documents.
- (10) Date 11/7/13, Received Brief of Respondent, dated 11/6/13.
- (11) Date 12/20/13, Received Order of Dismissal.
- (12) Date 1/21/14, Notice of appeal file according to Rule 203.
- (13) Date 12/5/13, Order of Dismissal.
- (14) Date 12/16/13, Motion to Vacate or set aside Order of Dismissal.
- (15) Date 12/20/13, Brief of appellant.
- (16) Date 12/20/13, Certificate of Service
- (17) Date 12/10/13, Motion to Contest Case Hearing Under Rule 28 and 29.
- (18) Date 12/27/13, Motion for Reconsideration are Prohibited filed 12/27/13.
- (19) Date; 12/18/13, Motion to Vacate or set aside Motion for Reconsideration are Prohibited, Under Rule 60, 67.
- (20) Date; 2/6/14, Notice of appeal, following deficiency or deficiencies, and proof of service.
- (21) Date; 2/20/14, Order Appellant has failed to provide the Notice of appeal filing and served said file.
- (22) Date; 1/15/14, Notice of appeal, following deficiency or deficiency.

Emmanuel M. Linder
Pro. Se. # 00124011.

State of South Carolina
In the administrative Law Court
Docket Number B.A.15-0035

appeal of Final Decision
Department of Probation, Parole, and Pardon Service

Emmanuel, McFadden, #124011 ——— appellant
S.C. Department of Probation, Parole, and Pardon Service ——— Respondent.

Certificate of Service

I Certify that on the 20th Day of 2013
I Certify that I have served the within Brief of
Appellant by deposition a copy of the same in United
States mail, postage prepaid the 20th day of
November, 2013, address to

Tommy Evans Jr
South Carolina Department of Probation
Parole, and Pardon Service
PO Box 30666
Columbia, South Carolina 29250

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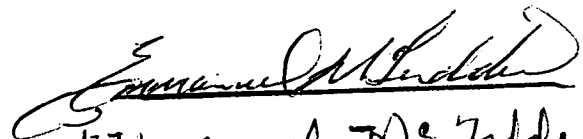
State of South Carolina
In the Administrative Law Court
Docket Number 13-ALJ-15-0035.

Appeal of Final Decision
Department of Probation, Parole, and Pardon Service

Emmanuel, N.C. Tadder, #124011. appellant;

SC Department of Probation, Parole and
Pardon Service. Respondent.

Replay to the Respondent Brief


Emmanuel N.C. Tadder
#124011

cc South Carolina Department of
Probation, Parole Service
P.O. Box 50666
Columbia, South Carolina
29250
cc Tommy Evans, JR
Assistant General Counsel

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Argument;

(1) The appellant failed to abide to the Rules of the Administrative Law Court, therefore this appeal should not be subject to dismissal based upon affirmative fact.

(2) The Respondent did not follow the Mandate prescribed by the South Carolina Supreme Court in the Cooper.

(3) The Respondent fail to turn over a Request for Production of the document, that denial due process to appellant in this case.

(4) The Respondent, using Identical Reason for denial is lawful and not arbitrary and capricious.

(5) The Respondent failed to turn over the information concern the five member vote was not detrimental to the appellant, so there were some violation of the laws.

Table of Authorities

Patterson v. County of Oneida, NY 375 F.3d 206, 229 (2nd Cir 2004).	Page 3
Burrough v. Wersham 352 SC 382, 574 SE 2d 215, (SC App 2002).	Page 6.
Nachts v. Oxford Health Plan, Inc, 421 F.3d 96, 100 (2nd Cir 2005).	Page 7.
Plans Chamber v. Time Warner Inc 282 F.3d 147, 153 (2nd Cir 2002). access to Court,	Page 7.
Casey v. Lewis 43 F.3d, 126, 1 (9th Cir 1994)	Page 7
Ex. Parte Hall, 312 US 546 (1941).	Page 7.
Wright v. Miller 973, F, supp. 390 (SD NY, 1997).	Page 8.
United State v Cook. 890 F.2nd, 672 (4th Cir 1987).	Page 9.
Planned Parenthood v Casey. 505 US 833, 112 S Ct 2791 1992).	Page 9.
County of Sacramento v Lewis	Page 10.

Statement of issues on appeal

- (1) Did the Respondent, abuse its discretion in denying appellant parole from 2000, to 2013.
- (2) Did the Respondent, violate the right under the 14th amendment to the Constitutional, by denying appellant Due Process in the number of years for (14) years.
- (3) Did Parole Board, fail to look at Notice that it sent to the appellant from 2000, to 2013. Yes an increase of reason; it is the appellants opinion and clearly shows prejudice, and Retaliation for bringing this action, The Reason for Rejection increase from three (3) Reason for denial over years to four (4) Reason.
- (4) Did the Respondent, use individual appellant, "personal involvement" in the deprivation of appellant, Constitutional Rights Violation, of section 1983. Can take several different forms, (1) Parole Board fail to concern the age of defendant, at the time of incident. The age of a person is very important, and Mine set of a young man, first the individual defendant may have directly participated in the alleged conduct. *Patterson v County of Oneida*, NY 375 F 3d 206, 229 (2d. Cir 2004).

Statement of the Case:

The Respondent, Statement of this Case, stated, On Jan 4, 1984, the appellant along with his Co-defendant Willie State entered the store of the victim Mr. David Kinney along with his son Phillip. Upon entry, the appellant drew a weapon, pointed it at Mr Kinney, and demanded Money. As Mr. Kinney turned the appellant shot him in the leg; he then proceeded to shoot him in the hip and head. The Respondent stated, all of these events occurred in the presence of the victim's son. The appellant account of this incident, he was involve in a Car accident before this Matter occurring, that cause him to have suffers stress, and indeed Migraine headaches the Respondent fail to mention to this Honorable Prole Court, Co-defendant Willie State, had a gun, too, and he was the old of the two young Men, in this incident that went had and Person life were taking, at this point and time, the appellant was a young Man at the age, (20) year old, a Boy, and was being lead by the old Co-defendant to entered in store. But the appellant, has suffer More than (30) year in Prison, for this action, and is solely Responsible for his action. But, I, was a very young Man at that time in my life when I was lead to committed this crime, My life have change over the year, I, have Made a Numbers of self improvement to become a Better Person. I, have my High school, document and I have complete a Number of Course in Bible Mason.

Statement of the Case.

The appellant do understand his Part in taking
Dr. Kinney, life and Kucera, none of his hard worked
Can replace, ~~this~~ to his family and appellant, but
wish he could change that Part of his life, & t,
is a ~~big~~ ^{big} factor, ~~due~~ (1) nature and seriousness of the
Current offense. (2) an if he could chance indication of
of violence in this case, he would, but it is ~~big~~ ^{big} factor
of a Previous offense, (3) a use of a deadly weapon in
this case. Once again the appellant cannot change these
Previous offense, and wish he had knowledge to do so,
and Respondent, used the Institution Records that ~~it~~ ^{it} stated
to ~~be~~ Unfavorable. Once, the appellant, start to challenge
the Records. 2002 and 2009. audio tape, these tape are
missing, available, ~~for~~ these year, The Respondent fail
to give up this information. & t, has become one of
the important issue in this case. The Respondent state
the appellant don't have any favor votes, but hold
Back on the year, 2002 and 2009. Records.

Argument.

- (1) The appellant's objection to Respondent's statement, that appellant failed to abide to the Rules of the Administrative Law Court, therefore this appeal should not be subject to dismissal.
- (2) The appellant's objection to the Rule Violations based upon the Respondent's failure to comply to Rule of discovery and Rule 26-37. A Request was made, to receive Production of the document, to the Respondent and they failed to complete the Request. The Respondent made a statement on Page 8, unlike Barton the appellant has never received an affirmative vote in any of his thirteen (13) Parole Hearings. If this is so, why hold back 2002 and 2009 audio tape, all the members on the ~~board~~^{Panel} should had a yes or no votes.
- (3) The appellant's argument to this Honorable Parole Board that this case on appeal should not be subject to dismissal because there is a genuine issue of Material Fact in this case.
- (4) The Respondent failed to produce hearing taping of each one of the year, of vote thirteen (13) Parole Hearings. By this action, the appellant has shown both error of the Ruling and resulting prejudice. *Burrough v. Marsham*, 352 S.C., 382.574 S.E. 2d 215. (S.C. app. 2002).

Argument

(1) We do Object to Respondent, Statement of the appellant failed to abide to Rules of the Administrative Law Court, therefore this appeal should be subject to dismissal. (A) The institutional Record, will show a number of days, not have access to Law Library. Leg Beech will stated Tech down, 10/1/13, Better tier, 10/2/13 the whole unit 10-5-13. whole unit, 10/12/13 whole unit 10/25/13, whole unit also Institutional Clean up. on this days, 10/27/13, whole unit. 10/28/13 whole unit, 10/31/13 Odds. - Room Number. (B) The appellant also Object to the Rules Violation, base upon the Respondent fail to Comply to Rules of discovery, Rules 19. and this first Request for Production of the documents, the Respondent has failed to complete this Action. all 7 members of the Board, should had a (Yes) or (No) vote, +n, connection with a Motion to dismiss under Rule 12 B-6.) the court may consider not only the facts stated in the Complaint but the documents attached to the Complaint as exhibits or incorporated by reference. *Nichols v Offord Health Plan Inc.* 421 F.3d 96, 100 (2d. Cir 2005), *Plane, Chamber v Time Warner Inc.* 282 F.3d. 147, 153 (2d. Cir 2002). Access to Court. *Casey v. Lewis* 43 F.3d. 1261. (9th Cir 1994), Prisoners Right to access to Court was first acknowledged in *H. Parte Hull*, 312 U.S. 546 (1941).

Arguments:

The appellant, Objections to Respondent Assertion that appellant failed to abide to the rules of the administrative Law Court; therefore, this appeal be subject to dismissal. The Records of the Parole Board, will show the appellant, has not received a fair due process violation, atypical and significant hardship, by his first challenges process in Cooper, see Wright v. Miller, 973 F. sup 390 (S.D. NY, 1997).

The Records will establish, to the Honorable, Deborah Brooks Durden, administrative Law Judges Order is contrary to the Rule of Law, rendered by the South Carolina Supreme Court as stated in Cooper. In the Order, dated May 27, 2009, by the Honorable, Durden, A.J., it explicitly state that the Board considered all the factors published on the Parole Consideration form as well as the factors outline in 24-21-640. of the SC Code of Laws. The Records will establish the Parole board has rejected the appellant for Parole on the following Reason.

- (1) Nature and seriousness of Current offense.
- (2) Indication of Violence in this or a previous offense.
- (3) Use of a deadly weapon in this or previous offense.

The Key of Factors, is none of these. If factors will ever change, and to keep use them, Constitutional a violate, Proceedings Cruel and unusual Punishment

Arguments.

The appellant arguments, and Request, for this Parole Board to look into the Notice that the Parole Board sent to appellant to denying him Parole, from the years 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, for those years the denials were substantiated for (3) Reason for an increase of reason.

It is the appellant opinion and Clearly show Prejudice against the appellant and Retaliation, for being this action for the last years, to increase, one more, for those years would it be fair to say that these are the Principles demonstrating that the appellant was given a fair hearing in those years.

Base upon finding of facts when the reason for Rejection increase from three (3) reason for denial to four (4) reason denial and my status of incarceration has never been modified or change in any way. a Parolee's interest in his continued liberty during good behavior is protected by the substantive due process right to the "finality of his sentence," see; *United States v. Cook* 890 F.2d. 672 (4th Cir 1989).

The Due Process Clause of the Fourteenth Amendment had been understood to contain a substantive component as well as a procedural one, barring certain government action regardless of the fairness of the procedures used to implement them, see; *Planned Parenthood v Casey*, 505 U.S. 833, 112 S.Ct. 2791 (1992). through the doctrine of substantive due process all fundamental rights comprised within the term Liberty are protected by the Federal Constitution from invasion by the State.

Argument.

The Appellant, Rely upon Record Proceeding of 24-21-40, appellant assert he received two third of Majority Votes in those years. This meaning appellant needed five votes. The pre-amendment version of Section 24-21-645 should apply to the appellant case because the appellant committed his crime prior to the amendment, after naturally appellant asserts that he should have been granted parole. Even under the amend. statute, appellant assert that his 14th amendments and Federal Ex-Post Factor Clauses as applied retroactively authorization of Parole for Person convicted of a violent crime does not required a vote of at least two third of the seven member board. With out required to have many members actually attend a parole hearing. But instead requires a vote of at least two third vote of the members participating in a hearing. "Executive action that infringes such a right violates the substantive component of the Due Process Clause. Only when it can be properly characterized as arbitrary or conscience shocking in a constitutional sense" County of Sacramento v. Lewis, 523, US 833, 118 S Ct 1708 (1998).

Argument.

The Respondent, ~~was~~, as to Part of the Omnibus Criminal Improvement Act of 1986, he did violate the ex Post Facto Clause in denying Cooper Parole. The Department contends the detailed Factors on the Parole Form, used by Parole Board, were based on the statutory Criteria of section 24-21-640. In Response, Cooper appeals to Challenge the Authority of Parole Board to Create these detailed Factors. Cooper contends that by creating these Factors the Parole Board effectively Change the standards for granting Parole and retroactively apply it to his offense.

Conclusion

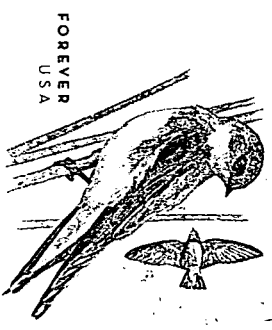
We are asking this Honorable Court, of this Parole Board, to Concern all these issues, and the argument of the appellant. The appellant never Received, sentence to the death Penalty, & was sentenced to life in Prison under the Old Law and the Law Requirement were for me to serve (30) thirty years or less, In addition, the sentence included the Eligibility for Parole at a Certain Point of the Sentence. I, have served (30) thirty years and counting, I, Pray that this Honorable Parole Board take in Consideration, all that has been said in this Matter.

Commencement 11/4/2011
9677 Sand Lane B. 154
PO Box 2552
Tusculum, SC 29162

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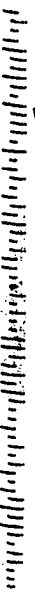
MAR 03 2014

SC Court of Appeals

South Carolina County Appals

Jerry A. Kitzling Clerk
PO Box 116229 Columbia
SC 29211

2921161629




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