THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

BENNIE WICKER,JR.,#122304

APPELLANT,

-versus-

S.C. DEPARTMENT OF PROBATION,PAROLE,
AND PARDON SERVICES

RESPONDENT,

APPEAL FROM S.C. ADMINISTRATIVE LAW COURT
HONORABLE ALJ,SHIRLEY C. ROBINSON
Docket Number:2013-ALJ-15-0016

NOTICE OF INTENT TO APPEAL
WITH EXPLANATION FOR APPEAL ATTACHED

Please be advised,The Appellant in the above captioned case,hereby, serves notice of intent to appeal the Honorable ALJ Shirley C. Robinson Order,Dated March 25,2014,Affirming Department Of PPP Service Denying Appellant Parole Appeal. The Order arrived at the prisons's mail room on March 26,2014 and was delivered and recieved by Appellant on March 27,2014,and Appellant is on this day of March 31,2014 timely filing his Notice Of Intent To Appeal by sending a copy of the attached Order of ALJ Robinson's Order to this SC Court Of Appeals,sending a Copy of same to The SC Office Of Appellate and Indigent Defense asking for assistance, and serving a copy of same on SC Department Of Probation,Parole,and Pardon Services,which are Respondents.**See: Attached Order.**

"Respectfully!"

March 31,2014
March 31,2014

Bennie Wicker,Jr.,#122304
Lee Correctional Institution
990 Wisacky Highway
Bishopville,South Carolina 29010

(Pro Se)

Bennie Wicker Jr,.#122304
Lee Correctional Institution
990 Wisacky Highway
Bishopville,South Carolina
29010

March 31,2014

Clerk Of Court For S.C. Court Of Appeals
South Carolina Court Of Appeals

Dear Clerk Of Court For S.C. Court Of Appeals,

Please find enclosed my Notice Of Intent To Appeal Administrative Law Court Judge Shirley C. Robinson's Order, I have attached a copy of the Order to my Notice Of Intent To Appeal as required.....

However, I am uncertain about the following matters, which are:

Because,This is an appeal of an Administrative Matter guaranteed by our State constitution and guaranteed by our SC Supreme Court's ruling in Al-Shabazz which guarantees inmates a right to review of agency final decisions of either SCDC or Parole decisions under Furtick..., Therefore, I do not believe there are any filing fees required? However,If there are, you may go ahead and file my Notice Of Intent To Appeal and either consider the attached affidavit to proceed without pre-payment of cost,sufficient and if it is not, then notify me and I will send your office $25.00 a month until I pay off whatever filing fee or partial filing fee is required.....

Therefore, Please find enclosed my Notice Of Intent To Appeal with a copy of the Order,which Im appealing. Also finde enclosed a copy of certificate Of Service verifying I have served Respondents Counsel with a copy of my Notice Of Intent To Appeal.

Also, I have enclosed an affidavit of Indigency requesting permission to proceed without any pre-payment cost for filing....,

Finally, I ask that you ,please, notify the Office Of Indegency or better known as the Office Of Appellate Defense,and inform them I will be needing their assistance in this matter ,please,and ask them would they be willing to represent me.?

"Respectfully!"

March 31,2014.

Bennie Wicker Jr.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM S.C. ADMINISTRATIVE LAW COURT
HONORABLE ALJ SHIRLEY C. ROBINSON
DOCKET NUMBER:2013-ALJ-15-0016

Bennie Wicker,Jr.,#122304

Appellant,

versus

S.C. Department Of Probation,Parole,
And Pardon Services

Respondent,

CERTIFICATE OF MAIL SERVICE

I,Bennie Wicker,Jr.,#122304,Appellant in the above captioned case hereby certfy that I have served Respondent's Attorney with a copy of my Notice Of Intent To Appeal ALJ Shirly C. Robinson's Order,by placing a copy of said,in the U.S. Postal Mail,postage pre-paid,mailing it to the address listed below on this day of 31st ,in the month March ---- and year of 2014.

Addressed TO: Attorney Tommy Evans,Jr
Office Of General Counsel For the S.C.
Department Of Probation,Parole,And
Pardon Services/Post Office Box 50666
2221 devine Street,Suite 600
Columbia,South Carolina 29250

March 31,2014.

Bennie Wicker Jr.

Bennie Wicker Jr,#122304
Lee Correctional Institution
990 Wisacky Highway
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29010

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM S.C. ADMINISTRATIVE LAW COURT
HONORABLE ALJ SHIRLEY C. ROBINSON
DOCKET NUMBER:2012-ALJ-15-0016

BENNIE WICKER,JR.,#122304

Appellant,

V.

S.C. Department Of Probation,
Parole,And Pardon Services

Respondent,

EXPLANATION FOR APPEAL

The Appellant reasons for appeal of the Administrative Law Court Judge's Order are set forth in the following reasons:

(1). The Department Of Probation,Parole,And Pardons Service began arbitrarily scheduling Appellants parole hearings in 2010,which resulted in applicant recieving 'NO' parole hearing in 2011 and Respondents Attorney admitted to this in their Brief to ALC and even admitted should the arbitrary scheduling continue Appellant would miss another hearing in 2016,which is a violation of Our S.C. Supreme Court's Ruling in Jernigan., In spite of the Respondents admission,. The ALC Judge sated that Appellant was given his 2011 Parole hearing in 2012., However,then the question becomes when was Appellant given his 2012 Parole hearing,If one reasons in 2013,then when will he recieve 2013 hearing and if in 2014 then when will appellant recieve 2014., **Because, By Statute,** Parole hearing can only be conducted once a year. So under any reasoning., Appellants statutory

right to yearly parole review has and is being violated. **Therefore,** the Administrative Law Judge's Order is not consistant with the Record before it and totally over looks Respondents admission in their Brief that they have been arbitrarily scheduling Appellants Parole hearing in violation Of South Carolina Supreme Court Precident, **Jernigan v. State, 340 S.C.256, 531 S.E.2d.507,** which makes clear appellant **must** be given his parole hearings once a year, period. Therefore ALC Order and reasoning ignores and violates clearly established SC Supreme Court Precident., And Appellants **Statutory Rights to Annual Parole hearings.**

The Appellant raised the issue in the Administrative Law Court that he was sentenced under the 1981 Parole staute that used **mandatory** language and place restrictions on parole Board discretion. Therefore, Appellant argued that such created a liberty interest and expectancy to parole under Greenholtz., therefore, The Parole Board was violating Appellants rights by denying or granting him parole based on the 1986 Parole act, which changed the mandatory language to non-mandatory language., The 1981 statute under which appellant was sentenced under, The United States Supreme Court ruled in a case decided long after Greenholtz, stated that the Court Of Appeals are devided on whether such language as that Appellant was sentenced under created an expectancy to parole and liberty interest. See Footnote nine In U.S. Supreme Court case, Board Of Pardons v. Allen, 107 S.Ct.2415.... However Appellant argued that parole statutes are **penal in nature,** therefore, any doubt **must** be resolved in favor of Appellant. **However,** The Administrative Law Judge did not even address the issue of whether the 1981 statute created a liberty interest and expectancy for appellant and since Parole Board members stated on record that Appellant was doing everything right and had done everything right and had basically met all of criteria,.... Appellant should have been granted parole under the 1981 act which created a liberty interest and expectancy to parole., The Administrative Law Judge Order does not address my issues I appealed., See: my Appellant's Reply Brief, which I filed To ALC, which will show none of my issues were addressed and the one ALJ did was clearly inconsistant with clearly established

South Carolina Supreme Court precident.....

CONCLUSION

The Appellant,respectfully,submits that for the reasons contained above that he is entitled to review of the Administrative Law Court Judges Order,which clearly ignores and violates clearly established South Carolina Supreme Court Precident,Appellant's Statutory Rights, and clearly established United States Supreme Court Precidents.

Therefore, Appellant would Respectfully ask that this Honorable S.C. Court Of Appeals Review This Matter.

This concludesathe Explanation Of Appeal:
PLEASE SEE ATTACHED: Appellant's Reply Brief,which was filed in ALC, which is attached to the explanation for appeal for the sole purpose of demonstrating that the ALJ did not address the issues raised in appeal..

Respectfully Submitted!

March 31,2014.

Bennie W. J. #122304.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bennie Wicker Jr #122304
Appellant,
-versus-
S.C. Department Of Probation, Parole, And Pardon Services
Respondents.

Case No.: 13-ALJ-15-0016

'APPELLANTS REPLY BRIEF'

The Appellant recieved a copy of Respondent's Brief on July 19,2013 via U.S. Postal Mail. The Appellant on this day of July 23,2013 would submit the following in Reply to Respondent's Brief.

(I)

The Appelant was sentenced in April 1984,therefore Appellant falls under the 1981 Act,subsections 24-21-13,24-21-640,etc. which statutes used mandatory language. The appellant contends that such mandatory language according to Greenholtz,442 US 1,99 S.Ct. 2100 creates a liberty interest and expectancy of being released on parole.

In 1985,The SC Legislature changed the mandatory language to non-mandatory language. the SC Supreme Court has stated,'When legislature amends or changes a statutes language from mandatory terms of 'SHALL' to dicretionary terms as 'MAY' shows the legislature intends a departure from the original law was intended. See: Kerr v. State,345 SC 183, 547 SE 2d. 494 (2001). (Adoption of amendment which materially changes terminoogy raises presumption that departure from original law was intended) Vernon v. Harleyville Mut. Cas. Co.,244 SC 152,135 SE2d 841. It must be presumed the legislature did not intend a futile act,but intended its actions to accomplish something. see:Denene,Inc. vs. City Of Charleston,352 SC 208,574 SE2d. 196 (2002).

The SC Supreme Court stated in Cooper,661 SE2d. 106(2008).,that parole statutes are 'PENAL' in nature,Therefore,the SC Supreme Court and Courts of this state MUST contrue parole statutes strictly in favor of defendants (appellant) and aganst the State and Department Of Probation,Parole,and Pardon Services.

The United States Supreme Court in Board Of Pardons v. Allen,107 S.Ct. 2415,which was decided long after Greenholtz ,stated in footnote nine,"U.S. Court Of Appeals decisions fall into four categories since Greenholtz" The 'Third' type of statute,listed in footnote nine, language is identical to the mandatory language contained in South Carolina's 1981 parole statute,which appellant was sentenced under..

However,The United States Supreme did say that the United States Court Of Appeals are divided on whether statutes using such mandatory language as the third type create a liberty interest and expectancy to release on parole,but that ,even under the most Restrictive interpretations of Greenholtz, Court ALL have held that the presence of such mandatory language in the statute give rise to aliberty interest in parole release".

It is well recognized jurisprudence that state statutes,such as the SC 1981 parole

statutes create a protected liberty interest by placing substantive limitations on offcial discretion. See: Olim v. Wakinekona,461 US 238,103 S.Ct. 1741.

South Carolina Supreme Court made it clear in Cooper that parole statutes are penal in nature,therefore,they MUST be construed STRICTLY in favor of Appellant and against the State and Department Of Parole.

Therefore,any doubt whether the 1981 parole statutes use of mandatory language creates a liberty interest and expectancy to release on parole,such doubts or questions must be resolved in favor of appellant because the statutes are penal in nature.

(II)

After this Honorable Administrative Law Court makes its legal determnation whether the 1981 parole statutes and Acts use of mandatory language creates a liberty and expectancy of Release on parole. The appellant believes that should this court find that the Parole Act of 1981 use of mandatory language to create a liberty interest and expectancy under Greenholtz,.....

This Court should make a legal determination of the question in Appellant's Appeal,which is as follows:

(1). Once the Appellant met ALL of the objective criteria in the parole criteria and the Respondents denied him parole based ONLY on factors which were present at the time of sentencing more than 29 years ago,such reasons that will never change. Does such action constitute Respondents converting appellants 'life sentence with parole' to the functionally equivalent of a 'life sentence without possibility of parole?

Keeping in mind,If the reasons the parole board is giving appellant for its denials are true,then those reasons will never change. And IF the reasons they are giving are not true,Then Respondents are violating appellants statutory rights to notice,which is to be informed of the reasons for denial...

The reasons parole board used on appellant: (1). Nature Of Offense (2). Use Of Violence in this or a previous offense (3). Use of a weapon in this or a previous offense.

The Respondents Brief stated that the victims,police chief and or sheriff opposed parole. Well those feelings may never change. However,what Respondent failed to mention was that four different churches wrote Board in favor Of appellant recieving parole along withseveral other family members.

Also, The Solicitor has been deceased for over 15 years,The Police Department was sued by Attorneys from Nelson,Mullins,Riley,And Scarborough on behalf of Appelant. pursuant to US Supreme Court precident,Heck v. Humphrey, which prohibits a suit from proceeding if it would implicate the conviction. Therefore, Newberry Police Department is under the false assumption,should I be released on parole,then the suit could proceed. Prior to my law suit,the sheriff nor police had any problem with me. Newberry is a nice place to live and has alot of great people,but there are alot of rasism as is indicative of the recent event of the black child being killed and his body being dragged through the streets and the sheriff nor chief of police are avocating the young man who did it getting a life sentence. Then the white men who kicked the door open of the black womans house and beat her then killed her son in front of her.because the black child hit a white child. The woman identified the men,but the police and sheriff said there

was not enough evidence to prosecute,because the men said they were at a cook out and more than 100 people could testify to it,so the solicitor would not even prosecute. I know Im an african american and maybe should not sued his police department.,But that is how we as a civilized society should resolve our differences. And I belive our system works and not a terroristic one.

However,None of these things are the issue, The question is that,if the appellant has a liberty interest according to the 1981 parole statutes use of mandatory language,and the appellant has met ALL the objective criteria and the parole board denies him using ONLY reasons that will never change. Does such constitute Respondents exeeding their statutory authority by converting appellants Life sentence with parole to the functionally equivalent of a life sentence without parole.

This Court 'MUST' consider the parole boards chairmans comments during parole hearing ,which were that Appellant Has everything in his life together,that he is dong a good job at helping other and making their lives better,and that appelant has it all together. As the Respondents mentioned in their Brief. Therefore,Based on the Parole Boards Chairmans statements, The Parole Boards actions were arbitrary,capricious,biased and an unwarranted abuse of discretion.

Therefore, Should this court find this issue to be in favor of appellant,the appellant would request that the parole boards decision be reversed and or the Respondents be ordered to grant applicant a new parole hearing within 90 days of the signing of said order or release appellant on parole.

(III)

The appellant contends that Respondents arbitrary scheduling of his parole hearings violates Jernigan and apellant's statutory right to yealy parole hearing reviews. The appellant was sentenced under a statute,which mandates that he recieve yearly parole hearings. The Respondents have skipped parole hearings of appellants begining in 2011.

In page 4 of Respondents Brief,it says appellant recieved a hearing on October 20,2010 and then on page 5,it states appellants next parole hearing was held on January 18,2012, well,what happened to 2011 parole hearing?????? This is evidence,Respondents have been violating appellants statutory right to yearly parole hearings,which the South Carolina Supreme Court has ruled on in Jernigan v. State and said the parole boardcannot do.....

If This court will look at the months October 2010,January 2012,and March 2013,This Court will see that if this same arbitrary scheduling continues,then appellant will miss another year in 2015 or 2016. This clearly is arbitrary,capricious,bias,and an un-warranted abuse of discretion...

Therefore,Appellant is entitled to a ruling ordering Respondents to stop this arbitrary scheduling of appellants parole hearings and to grant appellant a new parole hearing or grant him another hearing to compensate for the missed year hearing.

If the Respondents should contend that they gave appellant the 2011 parole hearing in 2012?,then when did they give me my 2012 hearing? If they say in 2013, Then the question is when will I recieve my ACTUAL 2013 Parole Hearing??????? My point is that under any reasoning,It is clear Respondents are violating my statutory rights to yearly parole hearings and the mandates of Jernigan v. State.

FINALLY, The Appellant complaint that the Respondents are violating his statutory right to be heard and notice and believes I am entitled to relief as a matter of law and fundamental fairness.

The Board members meet approximately 3 weeks before each parole hearing to discuss what concerns or reservation they may have concerning whether or not to parole an inmate. (Note:The inmate is not present at this proceeding). The problem is that the board at this informal proceeding knows exactly what its concern is,but does not inform the inmate weeks later at his formal parole hearing. Which I believe is a denial of meaningful notice which contemplates an inmate being informed of what criteria or factors are being used, which in turn affords him an opportunity to meaningful be heard and or respond. Instead the Board just ask an 'ASSEMBLY LINE TYPE QUSTION' to everyone who appears before it., which is: "DO you have anything you want to say?" Yes, The Board gives all inmates a very lenghthly list of thing the parole board will consider,But How is the inmate to guess from so many things what to say??????? Now note the parole board already knows what its exact concern is,but does not make the inmate aware of it. So,is the really a meaningful notice and fundamentally fair opportunity to be heard.

For example,The inmate has a great job lined up? Great Family support,and a great place to live? etc. But the parole board has serious reservations about inmate living so close to victims. Instead of parole board asking question in that area,such as asking inmate how does he feel about victims? Or ask him,What type of emotional affect does he think it would have on victims of him living so close???? The Parole Board gives NO indication of its concern and the inmate not knowing any better speaks about the great job he has and the great family support and place to live.??? Clearly,this cannot be seen as fundamentaly fair notice.

This all may be permissable under a statute using non-mandatory language because such inmates may be presumed to have no liberty interest. However,This would NOT apply to appellant who was sentenced under the 1981 parole statutes and ACT,which use mandatory language,creating a liberty interest and expectancy to be released on parole. For the record, I believe that the language does not matter,because under all parole stattes,they say an inmate has a right to notice and to be heard. Therefore,the statute itself creates a liberty interest.

West Virginia Supreme Court already addressed this issue and found that parole board had to give inmates prior notice of theirconcerns if they had determined what they were before parole hearing. See:Rowe v. Whyte 280 SE2d. 301 (1981).,Tasker v. Mohn 267 SE2d. (1980).

The Fourth Circuit Court Of Appeals denounced this type of behavior by saying when the Parole Board only tells an inmate after the hearing what its concerns are."It is the equivalent of locking the barn door after the horse has been stolen" Franklin v. Shields 569 F2d. 784.

The United States Supreme Court clearified the term,'Parole is a Privilege not a right" What the term really means is : "STATES HAVE NO CONSTITUTIONAL DUTY TO ESTABLISH A SYSTEM OF PAROLE BUT ONCE THEY ELECT TO DO SO,THE MEANS BY WHICH THEY GRANT OR DENY THE PRIVILEGE CANNOT BE ARBITRARY,CAPRICIOUS,OR BIASED" See: Board Of Pardons,107 S.Ct. 2415.

Therefore, For all the reasons contained,The appellant prays that he should be granted a ruling and a new parole hearing.

Respectfully Submitted!

July 23, 2013
Date

Bennie Wilkes
Signature

(IV)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

FILED
JUL 24 2013
SC ADMIN. LAW COURT

Bennie Wicker Jr #122304
Appellant,

-versus-

South Carolina Department Of Probation, Parole and Pardon Services
Respondents.

Case No.: 13-ALJ-15-0016

'Certificate OF Mail Service'

(I)

Personally Appeared before me, Bennie Wicker Jr, The Appellant in the above captioned case who was first duly sworn, deposes and states the following:

I, Bennie Wicker Jr #122304, Appellant in the above captioned case did on this day of July 23, 2013, place a copy of my Reply Brief, entitled "Appellants Reply Brief" in the U.S. Postal Mail, postage pre-paid, mailing it to opposing counsel Respondent, Addressing it as follows:

Attorney Tommy Evans Jr
S.C. Department Of Probation, Parole, and Pardon Services
2221 Devine Street, Suite 600/Post Office Box 50666
Columbia, South Carolina 29250

"Respectfully Submitted!"

July 23, 2013
Date:

Bennie Wicker Jr
Bennie Wicker Jr #122304
Lee Correctional Institution
990 Wisacky Highway
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29010

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Bank Swallow

RECEIVED
APR 01 2014
SC Court of Appeals

Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court Of Appeals
Post Office Box 11629
Columbia, South Carolina
29211