STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FOR THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge
Appellate Case Number 2014-000811

Bobby Ruff, #185024, Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services, Respondent.

APPELLANT'S INITIAL BRIEF

Bobby Ruff, 185024
pro se

KER.CI/HA250
4848 Goldmine Hwy.
Kershaw, SC 29067

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

1. WHETHER APPELLANT HAS A LIBERTY INTEREST IN ELIGIBILITY FOR PAROLE UNDER THE PROVISIONS OF ARTICLE S.C. CODE ANN. §24-21-700, DESPITE DEPARTMENT'S UNLAWFUL PROCEDURE IN VIOLATION OF STATUTORY PROVISIONS?

2. WHETHER THE DEPARTMENT FOUND ANY EVIDENCE OF A NEXUS BETWEEN APPELLANT'S 1991 COMMITMENT OFFENSES AND ANY PURPORTED DANGEROUSNESS AT THE PRESENT AND FUTURE TIME?

3. WHETHER THE BOARD SHOULD HAVE FIXED APPELLANT'S BASE TERM UNDER SOUTH CAROLINA LAW FOR MURDER PAROLE ELIGIBILITY UPON THE SERVICE OF 20 YEARS RATHER THAN NOT FIXING HIS TERM UNTIL HE IS FOUND SUITABLE TO THE SATISFACTION OF THE BOARD?

4. WHETHER THE DEPARTMENT SHOULD HAVE FIXED APPELLANT"S BASE TERM UNDER SOUTH CAROLINA LAW PAROLE ELIGIBILITY UPON THE SERVICE OF 20 YEARS RATHER THAN A PERIOD OF INCARCERATION FOR THE REMAINDER OF HIS NATURAL LIFE FOR MURDER UNDER LIFE MEANS LIFE OR LIFE WITHOUT PAROLE?

STATEMENT OF THE CASE

On November 9, 1991, the Appellant was being investigated for the death of Flora Edwards, and burglary 1st degree, and grand larceny. Upon the completion of the Greenville Police Department, they arrested the Appellant and charged him with the offense of murder, along with burglary and grand larceny. On July 29, 1993, the Appellant appeared before Circuit Court Judge Thomas Ervin to answer to the foregoing offenses. Upon conclusion of this appearances the Appellant was sentenced to a period of incarceration for life, for the murder and burglary 1st, and 30 days for grand larceny. At the time of the committed offense South Carolina law allowed an individual serving a life sentence for murder parole eligibility upon the service of 20 years.

Appellant appeared before the Board on September 4, 2013, and at the conclusion of this hearing parole was denied due to: (1) the nature and seriousness of the current offense; and (2) the indication of violence in this or a previous offense. Upon being notified of this denial, the Appellant filed a request for a rehearing/reconsideration with the Respondent, and a notice of appeal before the Administrative Law Court (ALC). The request for a rehearing/reconsideration is still pending before the Respondent without a response. The Appellant's appeal that the Respondent's (Department's) decision denying his parole was affirmed by Shirley C. Robinson, Administrative Law Judge on March 25, 2014.
This appeal follows:

ARGUMENT

1. THE APPELLANT HAS A LIBERTY INTEREST IN ELIGIBILITY FOR PAROLE UNDER THE PROVISIONS OF ARTICLE S.C. CODE ANN. §24-21-700, DESPITE DEPARTMENT'S UNLAWFUL PROCEDURE IN VIOLATION OF STATUTORY PROVISIONS.

In an appeal from an ALC decision, the Administrative Procedures Act (APA) provides the appropriate standard of review. S.C. Code Ann. §1-23-610(B). This Court will only reverse the decision of an ALC if that decision is:

(a) in violation of constitutional or statutory provisions;;
(b) in excess of the statutory authority of the agency;
(c) made upon unlawful procedure;
(d) affected by other error of law;
(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

The Court may not substitute its judgment for the judgment of the ALC as to the weight of the evidence on questions of fact. 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 reasonable minds could reach the same conclusion that the ALC reached.

In this case, Ruff argues that the department decision is made upon unlawful procedure and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Furtick v. SCDPPPS, 576 S.E.2d 146 (2002), the Court determined that permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process. This determination gives the ALC the social ability to engage an effective meaningful review a decision of the department denying parole eligibility.

The Appellant is being considered for parole; however, the Board failed to provide any new evidence to establish a nexus between Ruff's nature seriousness, and indication of present and future violence of his 1991 offenses, and as a result, implicating permanent denial of parole eligibility. Appellant further argues that there is no evidence of a nexus between his 1991 commitment offenses and any dangerousness at this present and future time.

In essence, the Board has not produced any evidence of a nexus between Appellant's 1991 commitment offenses, and if the opposition voiced to the Board by the Greenville Police and Sheriff's Department, as well as the Thirteenth Circuit Solicitor is evidence, the Appellant states that the opposition voiced to the Board has an influence over the Board's decision-making process that renders their objectivity tainted and ineffective with prejudice towards him, thus, arbitrary or capricious by an abuse of discretion or clearly unwarranted exercise of discretion. Section 24-21-700 states that:

Any prisoner who is otherwise eligible for parole under the provisions of this article, except that his mental condition is deemed by the Probation, Pardon and Parole Board to be such that he should not be released from confinement may, subject to approval by the Veterans Administration, be released to the custody of the Veterans Administration or to a committeee appointed to commit such prisoner to a Veterans Administration Hospital....

The Appellant whom is a Vietnam Veteran is otherwise eligible for parole under the provisions of article §24-21-700, was determined by the Board that he is not eligible for parole. (page 4 of 5 of ALC Order dated 3/25/14). The department's assertion made by the ALC judge indicates that the Board failed to consider the appropriate procedure, and criteria so as to be tantamount to an abrogation of Appellant's parole eligibility under §24-21-700, which is arbitrary or capricious by an abuse of discretion or excerise of discretion.

ARGUMENT

2. THE DEPARTMENT DID NOT FIND ANY EVIDENCE OF A NEXUS BETWEEN APPELLANT'S 1991 COMMITMENT OFFENSES AND ANY PURPORTED DANGEROUSNESS AT THE PRESENT AND FUTURE TIME.

The mandatory criteria the Board must follow in each case is found in S.C. Code of Laws §24-21-640, which specifically state:

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 in society will not be impaired thereby; and, that suitable employment has been secured for him.

Here, the Appellant challenge the accuracy of the Board's discretion, decision-making process, and the conclusion of law in its order dated 9/4/13, where there is not any evidence of a nexus between the nature seriousness, and indication

of violence of his 1991 offenses, and the mandatory criteria the Board must follow in S.C. Code of Laws, §24-21-640. Nothing has been revealed by the department that the Appellant has not shown the character or disposition in the foregoing referenced criteria. The department's position that "hereby makes the following conclusion of law" in its order dated 9/4/13 is erroneous and made upon an unlawful procedure when it has not revealed any or all evidence of a nexus between Appellant's 1991 commitment offenses and the mandatory criteria §24-21-640, or the purported conclusion of law as required under Rule 52, South Carolina Rules of Civil Procedure (SCRCP).

Ruff sought to have his Rehabilitation Record presented and reviewed by the Board, but was informed such could not be accomplished since his Rehabilitation Record was not present with the parole examiner or with the director of board support. Appellant argues the hearing and the decision-making process was carried out under unlawful procedures since evidence-based practices and factors that contribute to criminal behavior was not produced or considered in the conclusion of law by the Board in making Appellant's parole decision as required by S.C. Code of Laws, §24-21-10(f)(1). There is no evidence establishes that the Board's process adopted a validated actuarial risk and needs assessment tool consistent with evidence-based practices in making the parole decison in Ruff's case, as required by S.C. Code of Laws, §24-21-10(f)(1). Appellant specifically argues that §24-21-10(f)(1) applies, and the language of §24-21-10(f)(1) on its face makes the procedure applicable to all parole decisons since the law or purpose statement explains that the procedure "...,which the parole board shall use in making parole decisions,..." Appellant argument in this brief that z24-21-10(f)(1) applies, and the department's actions in not applying §24-21-10(f)(1) are arbitrary and capricious. Moreover, there is not any evidence of a nexus between Appellant's 1991 commitment offenses and any factors that contribute to present or future criminal behavior, as required by S.C. Code of Law §24-21-10(f)(1).

ARGUMENT

3. THE BOARD SHOULD HAVE FIXED APPELLANT'S BASE TERM UNDER SOUTH CAROLINA LAW FOR MURDER PAROLE ELIGILIBILITY UPON THE SERVICE OF 20 YEARS RATHER THAN NOT FIXING HIS TERM UNTIL HE IS FOUND SUITABLE TO THE SATISFACTION OF THE BOARD.

The Appellant asserts that §24-21-10(f)(1) of the S.C. Code of Laws allows the department to fix his base term for parole eligibility upon the service of his initial parole hearing rather than not fixing his term until he is found suitable to the satisfaction of the Board without the establishment of a process of a validated actuarial risk and needs assessment with evidence-based practices and factors which the parole board shall use in making parole decisions. There is not any evidence of a nexus between Appellant's 1991 commitment offenses or the immutable factors that will never change. The department in essence is arbitrarily depriving Appellant of his life, liberty, and property with an unreasonable process without any evidence of dangerousness at this current and future time.

The parole examiner nor the Director of Board Support presented Appellant's evidence before the Board in mitigation, i.e. Record of Rehabilitation. The Appellant was restricted before a monitor that allowed him access to the Board during the hearing, and the only means that he could present evidence before the Board in mitigation is by the parole examiner and the Director of Board Support. His Record of Rehabilitation was mailed to the Director of Board Support several weeks prior to his hearing, whereby the Board had no information pertaining to Appellant's plans, etc. The department has failed to submit the transcript of the hearing to the ALC, and this Court as well.

The ALC failed to review the case when there was no evidence-based material as required by §24-21-10(f)(1).

ARGUMENT

4. THE DEPARTMENT SHOULD HAVE FIXED APPELLANT'S BASE TERM UNDER SOUTH CAROLINA LAW PAROLE ELIGIBILITY UPON THE SERVICE OF 20 YEARS RATHER THAN A PERIOD OF INCARCERATION FOR THE REMAINDER OF HIS NATURAL LIFE FOR MURDER UNDER LIFE MEANS LIFE OR LIFE WITHOUT PAROLE.

The Appellant argues that §24-21-10(f)(1) of the S.C. Code of Laws allows the department to fix his base term for parole eligibility upon the service of his initial parole hearing rather than not fixing his term under the life means life department policy and life without parole policy. There is not any evidence of a nexus between Appellant's 1991 commitment offenses or the immutable factors that will never change. The department has arbitrarily depriving Appellant of his life, liberty, and property with an unreasonable process without any evi-

dence of dangerousness at this current and future time.

CONCLUSION

Based on the foregoing reasons the Appellant respectfully requests that the final decision of the department and ALC be reversed.

X

Bobby Ruff,,#185024
KER.CI/HA250
4848 Goldmine Hwy.
Kershaw, SC 29067

May 15, 2014

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FOR THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Court
Appellate Case Number 2014-000811

Bobby Ruff, 185024, Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services, Respondent.

CERTIFICATE OF (PRO SE) COUNSEL

The undersigned certifies that this Initial Brief complies with SCARR and with the South Carolina Supreme Court's Order dated in August 2007.

X Bobby Ruff, 185024
pro se

May 15, 2014

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FOR THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge
Appellate Case Number 2014-000811

Bobby Ruff, 185024, Appellant,

v.

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

CERTIFICATE OF SERVICE

I, hereby certify that I Bobby Ruff, on the 15th day of May, 2014, in Kershaw, SC, served a copy of the foregoing Appellant's Initial Brief on all parties to this matter by depositing a copy of the same in the US mail, postage paid, or in the mailroom of the undersigned institution and addressed as follow to:

Tommy Evans, Jr.
Assistant General Counsel
SCDPPPS
P.O. Box 50666
Columbia, SC 29250

May 15, 2014

Bobby Ruff, 185024
KER.CI/HA250
4848 Goldmine Hwy.
Kershaw, SC 29067