

The State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court
Deborah Brooks Durden Administrative Law Court

Lower Court ALC #14-ALJ-15-0017-AP

Billy Lee Lisenby JR; Appellant

vs.

South Carolina Department of Corrections Respondent

Record ON Appeal

Dated: June 30th 2014

Billy Lee Lisenby JR.
Billy Lee Lisenby JR, #200273
Lieber Corr. Inst. Ashley B#31
P.O. Box 205
Ridgeville, S.C. 29472

Deputy Director of Legal Services
Dept. of PPPS,
P.O. Box 50666
Columbia, S.C. 29850

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SC Court of Appeals

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State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

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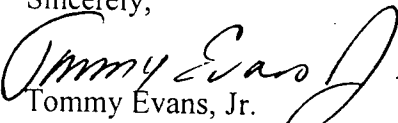
June 2, 2014

Billy Lisenby, Jr., #200273
McCormick Correctional Institution -B21 SMU
386 Redemption Way
McCormick, South Carolina 29899

Dear Mr. Lisenby:

This is in response to your request made pursuant to the Freedom of Information Act in which you have requested a copy of the request for reconsideration hearing you submitted in March of 2014. Please find this information enclosed.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

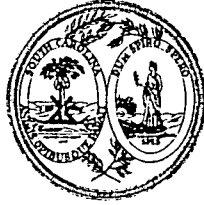
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Exhibit #1

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

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April 18, 2014

Mr. Billy Lee Lisenby, Jr. (200273)
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Dear Mr. Lisenby:

I am writing this letter on behalf of the S.C. Board of Probation, Parole and Pardon.

The Parole Board heard your request for a rehearing on April 16, 2014. After thorough consideration, and after having reexamined the parole file, the Parole Board decided that the reasons stated in your request did not affect the decision of the Parole Board, and would not affect the decision of the Parole Board if they were to rehear your case. Your request for a rehearing was denied by the Parole Board. The Board's decision is final.

Sincerely,

A handwritten signature in cursive script that reads "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support

LRP/eaw

Billy Lee Lisenby JR, #200273

McCormick CORR. Inst.

336 Redemption Way

McCormick, S.C 29899

State of South Carolina
Department of Probation,
Parole, and Pardon Services
2221 Devine Street, Suite 600
Post Office Box 50666
Columbia S.C 29250

Dated: March 13th 2014

RE: Request For Reconsideration Hearing and/or Appeal

Dear Parole Board,

On March 12th 2014 I was denied Parole For "Failure To Successfully Complete A Community Supervision Program", and "Institutional Record is Unfavorable." The parole review was for my convictions for Assault with the intent to Kill (a common law misdemeanor) and "Failure to stop for a blue light (a misdemeanor).

I ask that I be granted a Reconsideration Hearing For the following

Reasons:

1. The Parole Board made their decision, in less than a minute, the entire hearing lasted no more than 3 mins. This was not ample amount of time for the board to consider, and review my entire file. Unless they admit they reviewed my file prior to the hearing.
2. On Feb. 17th 2014 I provided the Parole Board with a detailed letter explaining how I aided (2) correctional officers at Lee County C.I on Aug. 23, 2011 who were in danger, during an uprising. I even enclosed a letter from the director on my heroic actions. I ask the board to consider my showing of courage and preventing (2) officers from being injured, and putting myself in danger. They fail to consider this at my hearing.

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3. On Feb 17th 2014 I wrote the Parole board in a letter titled "Mental Health Issues American Disability Act." In that letter I enclosed my entire S.C.D.C Mental Health Records. I plainly asked that my hearing be heard pursuant to the A.D.A of 1990. I explained I have been diagnosed with Bipolar symptoms, Narcolepsy, Intermittent Explosive Disorder, and I pointed out that Mental Health within S.C.D.C has placed me on 14 different meds, since 2007, and I have been in full compliance. I brought attention to the fact I have rehabilitated myself and completed all mental health classes available to me, and I cannot take vocational classes due to my disability. At the end I noted "There is no Rehabilitative Avenues left for me." The Parole board fail to consider this.
4. On Feb. 17th 2014 I sent the Parole Board a complete manual explaining my mental health disorder Intermittent explosive disorder. The Board fail to consider this.
5. On Feb. 17, 2014 I sent a copy of my Blackstone Career institute transcript, showing I have completed a Paralegal course. "Even though I'm disabled I plan on assisting Thuz (True Healing Under God) a civil rights group led by John Bernette." MR. Bernette is a partner of Rev. Al-Sharpton and was present at my hearing. The board fail to consider this.
6. Since 2011 my family and friends have gone online to the Parole Board Website and sent in numerous recommendations in my behalf. Not once has the Parole board considered this, or mentioned it in my hearing.
7. This year my France's Rev. Demetricka Rahliff, Nicole Kahan, my mom and dad (Billy and Patricia Luby) sent in letters of recommendation, speaking on my mental health issues, and the corruption of the agency who arrested me. Note several of the officers in my case are set to stand trial for corruption in April 2014. The board fail to consider any of this.
8. My Parole File is void of the S.C. Department of Mental Health Form M-155A Report of Finding Mental Capacity to determine whether I understood the nature and seriousness of offense.
9. The Parole board intentionally or purposefully treated me unfavorable violating my due process rights when it failed to review or apply S.C. Department of Mental Health Report of Finding Mental Capacity during my parole process. See 14th Amend. U.S. Const. (due process) and S.C. Art. I, §3 (due process). I appeared before the parole board, and at the conclusion of the hearing the parole board denied me an

Opportunity to be released on parole. SC DPPP Form 1212 States, "If the inmate thinks his file is some how incomplete or contains some error or other inaccuracy, he must notify the board of the specific error or inaccuracy."

10. An evaluation assessment must be done by the parole examiner before you go up for parole to determine your mental condition and my ability to adjust to life outside the prison and from a duly qualified psychiatrist or psychologist. This was not done in my case and is a violation of due process and/or the prohibition against cruel and unusual punishment see S.C. Const. Art. I, § 14 (Cruel or Unusual or ~~Corporal Punishment~~) Courts have held that "Categorically" denying parole to a prisoner based upon his mental illness would violate the A.D.A. *Thompson v. Davis* 295 F.3d 896, 897 (9th Cir. 2002).
11. The board fail to apply the criteria for parole as required by the State Parole statutes specifically section 24-21-640 in violation of my state created liberty interest of a fair consideration. (See *Cooper v. S.C. Dept. of Probation and Parole* 337 S.C. 489, 661 S.E.2d 106 S.C. 2003.)
12. They willfully denied me the realistic opportunity to participate in the parole program in violation of his constitutional rights.

I'm challenging the Parole board's failure to utilize the procedure promulgated by the legislature in section 24-21-640 of the S.C. Code and the criteria established by the Parole Board pursuant to this statute. If a Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it's essentially abrogates an inmates right to parole eligibility and, thus infringes on a state-created liberty interest.

OF The 15 criteria list, the board ignored and fail to consider the following:
(OF 24-21-640)

- (5) "The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself."

The board never reviewed my certificates and progress in mental health counseling or anything else. This was never brought up at my hearing.

(6) "The inmate's physical, mental, and emotional health."

I'm a 100% percent disabled and I have mental concerns and the board never spoke on this nor considered it in anyway. Even though I provided them with the mental health records.

(10) "The adequacy of the inmate's overall parole plan. This includes inmates living arrangements where he/she will live and who he will live with; the character of those with whom the inmate plans to assoc. in both his/her working hours and his/her off work hours; the inmate's plans for gainful employment."

They never asked who I'll be living with, and they kept cutting us off when we were talking. I'm disabled, but I will strive to work when I can. The board never considered this.

(11) "The willingness of the community into which the inmate will be released to receive the inmate."
My family, friends, and community have gone online and sent detail recommendations on the Parole board website, and sent in letters. This was never considered, and it could not have been considered in (3) mins.

(12) "The willingness of the inmate's family to allow him/her to return to the family circle."
My family loved The Rev. Al-Sharpton's Protégé and Civil rights activists who has taken part in the million man March, and was a major factor in the most recent Trayvon Martin March. My family's correspondence to the Parole board via the board website would've shown this. But they fail to consider it.

The Parole Board denied me parole apparently without giving credence to section 24-21-640 or its own criteria.

The Parole Board has denied me for Parole For Failure To Successfully Complete A Community Supervision Program. They denied me for this in 2011, 2013, and 2014. This cannot be changed by me while I'm incarcerated. I was sentenced to the Youthful Offender Program Y.O.A in 1993. That's been 21 years ago and I'm still being denied for parole for the same issue.

Next I have been denied for Parole For Institutional Record is Unfavorable, in 2011, 2013, and 2014. But most of my disciplinary infractions stem from my mental health diagnoses, and to constantly deny me for Parole for this is a violation of the A.D.A. In fact the denial for institutional Record is some what vague. From March of 2013, to March of 2014 I only received (2) charges, and one stemmed from my mental health diagnoses.

I have been denied for parole for the same reasons all (3) years, per Cooper, supra the Cooper court has already held this to be a violation of due process.

The Parole Board neither offered an explanation nor indicated that it had considered the statutory criteria of Section 24-21-640 and the F.F.A. criteria listed on the parole Form. The Parole Board's decision was arbitrary and capricious.

For the above reasons I ask for a re-consideration hearing, and/or to please inform me of my appeal rights, when I wish to appeal.

Thanking you in advance!

Bob J.

Memorandum

To: APPELLANT

From: Clerk's Office

Date: 5-28-14

The information you filed with the Administrative Law Court is being returned to you for the following reason(s):

_____ We have no jurisdiction over this matter, however if you would like to proceed with filling a grievance, follow the steps below.

_____ **File your appeal on the appropriate form (see attached Notice of Appeal form and Special Appeals Rules).**

_____ Attached is a copy of the Notice of Appeal form you must use to file an appeal from a final decision of the South Carolina Department of Probation, Parole and Pardon Services.

_____ Attached is a copy of the Rules of Procedure for the Administrative Law Court in matters on appeal from the South Carolina Department of Corrections.

_____ Furtick vs. State, held that an inmate may file an appeal with the Court from final decisions of the Department of Probation, Parole and Pardon Services regarding the permanent denial of parole eligibility. If you wish to proceed with an appeal then you must receive a written final decision from the appropriate official at PPPS. Attached to the decision will be a form Notice of Appeal with instructions on how to file the appeal with the Court. This form must be used before your case will be filed and processed with Administrative Law Court.

_____ In order for your case to be processed by the ALC, a copy of the final decision from the Department of Probation, Parole and Pardon Services must be attached to the Notice of Appeal.

✓ _____ There is no fee for PPPS appeals. The \$25⁰⁰ fee will be reserved and applied toward your next DOC appeal. (See attached Receipt)

Exhibit #2

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lee Lisenby, Jr., #200273,

Docket No. 14-ALJ-15-0017-AP

Appellant,

vs.

ORDER OF DISMISSAL

South Carolina Department of Probation
Parole and Pardon Services,

Respondent.

This case is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Billy Lee Lisenby, Jr. (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On March 12, 2014, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) had rejected him for parole. On April 18, 2014, the Board denied Appellant's request for a rehearing. Appellant challenges the Board's denial of parole on the grounds that this denial is based upon the same grounds given when his parole has been repeatedly denied in previous years.

The Supreme Court of South Carolina has spoken clearly concerning the jurisdiction of the Administrative Law Court in cases such as this.

We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

Cooper v. S.C. Dept. of Probation Pardon and Parole Services, 377 S.C. 489, 66 S.E.2d 106 (2008).

The Cooper decision was underscored by Compton v. S.C. Dept. of Probation Pardon and Parole Services, 385 S.C. 476, 685 S.E.2d 175 (2009), as follows:

In Cooper, we held that if the Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate's right to parole eligibility and infringes on a state-created liberty interest, warranting minimal due process protection. Because the Parole Board in Cooper neither offered an explanation nor indicated it had considered the statutory criteria or the criteria set forth in Form 1212, we had no other choice but to determine the order was defective

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and the decision was arbitrary and capricious. We emphasized that this result could be avoided in the future if the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212, and that if the Parole Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC will have limited authority to review the decision.

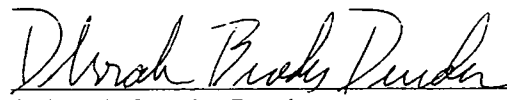
Moreover, S.C. Code Ann. § 1-23-600(D) (Supp. 2013) provides, “An administrative law judge shall not hear...an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.” Thus, this Court’s authority to review a decision of the Board is limited to determining if the Board followed the proper procedure and considered the relevant factors. If that procedure was followed, any decision of the Board constitutes a routine denial of parole and will not be disturbed by this Court.

In this case, Appellant does not claim that the Board failed to consider the factors discussed above. His argument that the Board’s denial was based upon identical reasons given for denial of parole in previous years is simply not a claim that invokes the jurisdiction of this Court under S.C. Code Ann. § 1-23-600 (Supp. 2013). Appellant has failed to allege in his Notice of Appeal that this is anything other than a routine denial of parole under the legal authority discussed above. Thus, the Department’s decision may not be disturbed upon appeal.

ORDER

IT IS THEREFORE ORDERED that the Board’s determination that Appellant should be denied parole in this instance is **AFFIRMED** and this appeal is **DISMISSED**, with prejudice.

AND IT IS SO ORDERED.


Deborah Brooks Durden
Administrative Law Judge

May 21, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the emergency Mail Service addressed to the party(ies) or their attorney(s).

This 21st day of May 2014
By: D. S. C.
Judicial Law Clerk

Dear Appellant:

5/20/2014

Page 1

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

Case number	Inmate number	Inmate first name	Inmate last name	Grievance No	Respondent	Filing date	Date Assigned	Judge last name
14C0017	200273	BILLY	LISENBY	MCCI	PPPS	5/16/2014	5/20/2014	DURDEN

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Exhibit #4

You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Deputy Director of Legal Services. Dept. of PPPS, PO Box 50666, Columbia, SC 292501.

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MAY 20 2014

CLERK OF COURT

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
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Fax: (803) 734-9440
www.dppps.sc.gov

March 12, 2014

Mr. Billy Lisenby #00200273
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

RE: NOTICE OF REJECTION

EXHIBIT
#1

Dear Mr. Lisenby:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Failure To Successfully Complete A Community Supervision Program
Institutional Record Is Unfavorable

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support Services

Exhibit #5

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State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

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Facsimile: (803) 734-9440
www.state.sc.us/ppp

April 18, 2014

EXHIBIT
#2

Mr. Billy Lee Lisenby, Jr. (200273)
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Dear Mr. Lisenby:

I am writing this letter on behalf of the S.C. Board of Probation, Parole and Pardon.

The Parole Board heard your request for a rehearing on April 16, 2014. After thorough consideration, and after having reexamined the parole file, the Parole Board decided that the reasons stated in your request did not affect the decision of the Parole Board, and would not affect the decision of the Parole Board if they were to rehear your case. Your request for a rehearing was denied by the Parole Board. The Board's decision is final.

Sincerely,

A handwritten signature in cursive script that reads "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support

LRP/eaw

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

The State of South Carolina

In The Court of Appeals

Appeal From The Administrative Law Court
Deborah Brooks Dunder Administrative Law Court

Lower Court ALC # 14-ALJ-15-0017-AP

Appellate Case No. 2014-001307

Billy Lee Lisenby JR, Appellant

vs.

South Carolina Department of Corrections Respondent

PROOF OF SERVICE

I hereby certify that I have served The Respondent's a copy of Appellant's Record on Appeal by depositing a copy of the same in the United States Mail, postage prepaid, June 30th, 2014 addressed to the Respondent's as follows:

Deputy Director of Legal Services

Dept. of PPPs,

P.O. Box 50666

Columbia, S.C. 29250

Billy Lee Lisenby

Billy Lee Lisenby JR, #200273

P.O. Box 205

Liebera Corr. Inst.

Ridgeville S.C. 29472

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