

The State of South Carolina
In The Court of Appeals

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

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

Billy Lee Lisenby JR, Appellant

vs.

South Carolina Department of Corrections Respondent

Appellant's Initial Brief

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Dated: June 30th 2014

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SC Court of Appeals

Statement of The Issues on Appeal

- I. Did the Administrative Law Court err in denying Appellant's Appeal without allowing the parties to file briefs in their behalfs?
2. Did The ALC err in not making a ruling on whether or not the Parole Board Failed To Apply The Criteria For Parole Per The Purpose of Parole and as required by S 24-21-640, and did the Parole Board fail to Reconsider and/or afford Appellant a Fair Consideration in Rendering A Decision, Even after being informed of Our S.C. Supreme Court's Ruling In Cooper?

Statement of Case

This matter is before the South Carolina Court of Appeals pursuant to the Notice of Appeal Filed by Billy Lee Lisenby, JR ("Appellant"), an Inmate incarcerated within the South Carolina Department of Corrections ("SCDC"). Appellant is confined within SCDC for convictions of Assault with the intent to Kill (a common law misdemeanor) and Failure to stop for a blue light (a misdemeanor)

On March 12, 2014 Appellant was denied Parole for Failure to successfully complete a community supervision program, and Institutional Record is Unfavorable. See attached Exhibit 5 March 12, 2014 letter from MR. Larry Ray Patton JR, Director of Parole Board Support Services. Appellant timely filed a letter titled "Request for Reconsideration Hearing and/or Appeal," which was denied on April 18, 2014. See attached Exhibit 1 - April 18th 2014 letter from MR. Patton.

Appellant filed an appeal at The ALC and it was denied. Appellant now seeks review from the Court of Appeals for the reasons that follow.

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Argument I

Did the Administrative Law Court err in denying Appellant's Appeal without allowing the parties to file briefs in their behalfs?

Appellant argues he is a pro-se litigant a layman of the state and knows very little about the law. At the time of his dismissal of Parole he had no ideal how to properly appeal a parole hearing. The Respondent's don't advise the inmate of his/her right to appeal to the Parole board, or to the ALC if they are denied parole. Pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) the Respondent have to notify the inmate of his/her right to appeal disciplinary hearings, the Parole Board should do the same.

Appellant further argues that he is totally computer illiterate and at the time he was denied parole he was in solitary confinement at M^eCormick Corr. Inst. and had no access to law books, only the law computer.

On March 18th 2014 Appellant filed for a Request For Reconsideration Hearing and/or Appeal. [See Exhibit #1] At the end of this Request Appellant plainly stated:

"For the above reasons I ask for a reconsideration hearing, and/or to please inform me of my appeal rights, where I wish to appeal."

The Respondents never advised Appellant of his rights to appeal.

The Parole Board denied his request for reconsideration on April 18th 2014 without advising him of his appeal rights.

Appellant then wrote the ALC, and Parole Board asking can he appeal the parole board's denial to the ALC. The ALC sent him a "notice of Appeal" with no instructions. Appellant not knowing and understanding what to do he filled out the "Notice of Appeal". Putting the Respondent on notice that he is going to challenge the denial, assuming he would be able to get in to detail in his brief as outlined in *Coope v. S.C. Dept. of Probation Pardon and Parole Services*, 377 S.C. 489, 66 S.E.2d 106 (2008). Appellant accompanied his appeal with a \$25.00 money order not knowing he did not have to pay. See Exhibit #2 where the ALC ^{states} "There is no fee for PPPS appeals."

In the Notice of Appeal Appellant pointed out he was denied Fair consideration, Due Process, violation of the American Disability Act, Cruel & Unusual punishment. Also Appellant expressed their violations constitutes an Infringement of a state-created liberty interest, warranting minimal due process protections.

The ALJ only considered Appellant's statement "denying me parole repeatedly for the same reasons." The Judge fail to address any other issue. She should have allowed both parties to file briefs, so we could support our allegations by law, and case law. Appellant's not an attorney, and he didn't receive the rules to this court until after he filed his appeal on 5-20-2014. The Judge dismissed it the following day on May 21, 2014. See Exhibits 3 and 4. Appellant wasn't even allowed to amend the "Notice of Appeal."

This is an unfair system to send the Appellant's or inmates the rules after they file the "Notice of Appeal." Then allow the Judge to deny the appeal before the inmate or Appellant receive the rules or get to brief the issues. Rule 59 B. under Notice of Appeal states:

"A brief factual basis for each expressly and specifically asserted constitutional violation;" Appellant briefly explained the violations without citing law or case law. To allow the parties not to file briefs violates due process, and Appellant should be entitled relief.

Appellant ask that this be remanded back to the ALC so both parties can file their briefs, and seek discovery.

Briefs are needed like a fish needs water. In former times, the appellate brief may not have been as significant as it is today because oral argument played a much more prominent role in the resolution of appeals. With the increase in the caseloads of appellate courts has come the severe curtailment of oral argument. In some cases, oral argument is simply not available. See Rule 215, SCACR (appellate court may decide case without oral argument if it determines that oral argument would not aid the court in resolving the issues). Thus, the appellate brief has become an attorney's and pro-litigant's greatest, or perhaps only, opportunity to persuade the appellate court, or ALC.

Argument #2

Did The ALC err in not making a ruling on whether or not the Parole Board Failed To Apply The Criteria For Parole Per The Purpose of Parole and as Required by § 24-21-640, and did the Parole Board fail to Reconsider and/or afford Appellant a Fair Consideration in rendering A Decision, Even after being informed of Our S.C. Supreme Court's Ruling In Casper?

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).

Appellant ask the Parole Board on March 18th 2014 that he 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 August 23, 2011 who were in danger, during an uprising. I even enclosed a letter from the director on my heroic actions. I asked 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.
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 2009, 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 Avenue 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 They (True Healing Under God) a Civil Rights group led by John Barnett." MR. Barnett is a partner of Rev. Al-Shaopton 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 Françee Rev. Demetria Ratiliff, Nicole Kahan, my mom and dad (Billy and Patricia Lisenby) 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-155 A Report of Finding Mental Capacity to determine whether I understand 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 SCDPPP's Form 1212 states, "If the inmate thinks his file is some how incomplete or contains some error of 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 daily qualified psychiatrist or psychologist. This was not done in my case and is a violation of due process and for 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 mental illness would violate the A.D. A. Thompson v. Davis 295 F.3d 890, 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. 2008.)
12. They will fully 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 inmate's 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 hired The Rev. Al-Sharpton's Prot'gee' 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 24-21-610 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 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 Couper, supra the Couper 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 Fifteen criteria listed on the parole form. The Parole Board's decision was arbitrary and capricious.

LAW

An evaluation assessment must be done by the parole examiner before an Inmate is seen for parole in order to determine the Inmate's mental condition and the Inmate's ability to adjust to life outside prison, per the opinion of a duly qualified psychiatrist and/or psychologist. Thompson v. Davis 295 F.3d 890, 897 (9th Cir. 2002). Moreover, pursuant to Morrissey v. Brewer, 92 S.Ct 2593 (1972), the purpose of parole "is to help individual(s) reintegrate into society as constructive individual(s) as soon as they are able, without being confined for the full term of the sentence imposed. It also serves to alleviate the costs to society of keeping an individual in prison."

The record of The Parole Board is void of a mental health evaluation assessment by a duly qualified psychiatrist and/or psychologist. This 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.) Furthermore, Courts have held that "categorically" denying parole to a prisoner based upon his mental illness would violate the Americans with Disabilities Act. ("ADA"), 42 U.S.C. § 12101-213 (2000)

I was denied by the Parole Board for "Institutional Record is Unfavorable." A lot of my charges are related to my mental illness. The Parole Board never reviewed my progress in mental health counseling. I'm 100% percent disabled and I have major mental health concerns that the board failed to consider. Pursuant to the ADA, 42 U.S.C. § 12102 (2)(A)-(L) (2000) ("The term 'disability' means.... a physical or mental impairment that substantially limits one or more of [a person's]... major life activities....")

Respondent's cannot and has not disputed my disability.

I hereby repeat the allegations of my "Request for Reconsideration Hearing and/or Appeal" as if repeated here in verbatim. See attached Exhibit #3

Appellant informed the Parole Board of our S.C. Supreme Court's decision in Coope v. South Carolina Dept. of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (S.C. 2003) The S.C. Supreme Court in Coope held that the procedure employed by parole board in denying Inmate parole deprived Inmate of his state-created liberty interest and triggered due process requirements, including entitlement to review by administrative law Judge (ALJ), where parole board rejected Inmate's application on basis of only three statutory enumerated Factors, each of which was fixed as of date of Inmate's offense and could not be affected by Inmate's actions while incarcerated, without addressing any of the other enumerated Factors, and without regard to it's own criteria for parole. U.S.C.A. Const. Amend. 14; Code 1976, § 24-21-640. Parole is a privilege and Coope has no right to be paroled; however, Coope does have a right to a fair consideration in rendering a decision.

The Parole Board's Failure to afford the Appellant a Fair Consideration by denying Appellant repeatedly for the same Reasons, making Appellant parole ineligible, even after being informed of our S.C. Supreme Court's ruling in Copper; Constitutes an infringement of a state-created liberty interest, warranting minimal due process procedures.

Appellant informed the Parole Board of his major Mental illness, per Exhibit-1 Request For Reconsideration Hearing and/or Appeal, which Appellant herein repeats as if reported herein verbatim.

Appellant's mental illness date back prior to his incarceration. Appellant pointed out in Exhibit # that this is a violation of the ADA to deny him parole for "Institutional Record is Unfavorable" where he is 100% percent disabled and alot of the charges are related to his mental illness. Thus, Appellant has been denied parole because of his mental illness. Noting **THE HEARING LASTED LESS THAN THREE MINUTES**, predetermined denial of Parole.

Conclusion

The Appellant ask that this Court Remand to the ALC or to the Parole Board with instructions for Appellant to be given a mental health evaluation assessment and ensure he is not denied parole due to his mental illness; Instruct the Parole board and ALC to address the enumerated Factors, with regards to the parole boards criteria § 24-21-640; Moreover, instruct this court to estop the Parole Board from denying for the same reason, which our S.C. Supreme Court has already declared to be unconstitutional per Copper; Remand TO The ALC and allow both parties to brief their issues.

Respectfully Submitted,

Dated: June 30th 2014

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Certificate of Compliance

The undersigned hereby certifies that this Initial Brief of Appellant complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.

Dated: June 30th 2014

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Deborah Brooks Dunder Administrative Law Court

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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 Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, June 30th, 2014 addressed to the Respondent's as follows:

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