

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SEP 11 2014

SC Court of Appeals

Bernard Bagley, Appellant,

v.

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

Appellate Case No. 2013-000042

Appeal From The Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge

Unpublished Opinion No. 2014-UP-326
Submitted February 1, 2014-Filed August 27, 2014

PETITION FOR REHEARING

Appellant would respectfully request a rehearing before this Honorable Court as to its decision to issue three to find the parole board acted within its discretion in considering additional factors beyond those specifically enumerated in its parole form. However, what if the board considered inappropriate factors in making its determination? Appellant concedes that the parole form allows the board to consider other factors it considers relevant to a particular case, and the enumeration of factors on the form is not intended to limit the discretion of the parole board; however, to consider false factors or fraudulent factors such as the Appellant being on probation for the offense of murder at the time of the offense is clearly an error and arbitrary and capricious. In addition, unethical within the eyes of the public and to the integrity of the parole proceedings. As to making any findings as to Bagley actually being on probation at the time of the offense is prejudicial and more importantly concludes that he is a high risk of recidivism, along with receiving poor community response, and poor participation in a community program. The fraudulent or false factor considered by the board is irrelevant and tarnished the integrity of the parole proceedings and violate substantive due process rights because it is arbitrary, and an abuse in the exercise of discretion. When a factor significantly


prejudiced or caused the board to consider unreliable factors is an abuse of discretion. See S.C. Code Ann. §24-21-640 does not direct the parole board to establish criteria for the granting of parole to be a disadvantage to the offender by creating a sufficient risk of an increase penalty or punishment. Due to the additional fraudulent factor or other factor the board considered relevant to the Appellant's particular case, the Court's opinion that no error attached or no prejudice attached by the board's unreliable inappropriate factor that Appellant was on probation for the offense of murder at the time of the offense is not an abuse of discretion?

Appellant further requests that the Court allow for the filing of additional briefs and supporting documents because of the limitations placed on Bagley by the ruling and require access for research.

Appellant would respectfully request a rehearing as to issues five through eight because the Administrative Law Court (ALC) will not preserve these issues for appellate review based on lack of subject matter jurisdiction derived from the decisions of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), and Furtick v. S.C. Dep't of Probation, Parole and Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003). Additionally, in Cooper v. S.C. Dept. of Probation, Parole and Pardon Servs., 377 S.C. 489, 661 S.E.2d 106 (2008).

Furthermore, Bagley did raise the doctrine of res judicata bars the Parole Board for any reasons for rejection that could have been raised in the former hearing because the three (3) limited reasons that are fixed as the date of the offense can never be changed by the actions of Bagley while incarcerated. Appellant further requests that the Court allow an extension of time for filing of additional briefs and supporting documents, and to allow him to file a post-hearing motion in the ALC requesting a ruling on the issue(s) in order to preserve for appeal.

Respectfully submitted,


 Bernard Bagley
 #175851/HD133/KER.CA
 4848 Goldmine Hwy.
 Kershaw, SC 29067

pro se

Kershaw, South Carolina
 September 8, 2014

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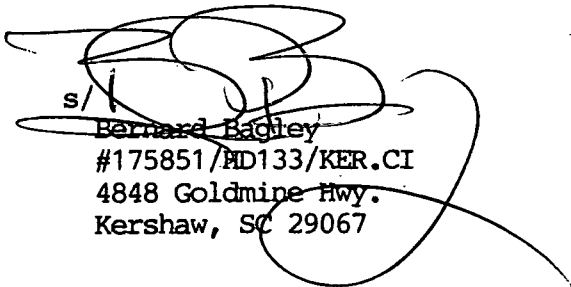
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MEMORANDUM OF LAW IN SUPPORT
OF PETITION FOR REHEARING AND AFFIDAVIT

S.C. Code of Law §24-21-640
The South Carolina Offender Management System Act
S.C. Code of Law §24-21-13
S.C. Code of Law §24-21-60
S.C. Code of Law §24-21-220
S.C. Code of Law §24-21-70
U.S. Constitution 14th Amendment
Due Process Clause
S.C. Code of Laws pertaining to Evidence
The No Evidence Rule

September 8. 2014

s/ 
Bernard Bagley
#175851/HD133/KER.CI
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Kershaw, SC 29067

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Judge **SC Court of Appeals**
Appellate Case No. 2013-000042

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Bernard Bagley, #175851,

Appellant,

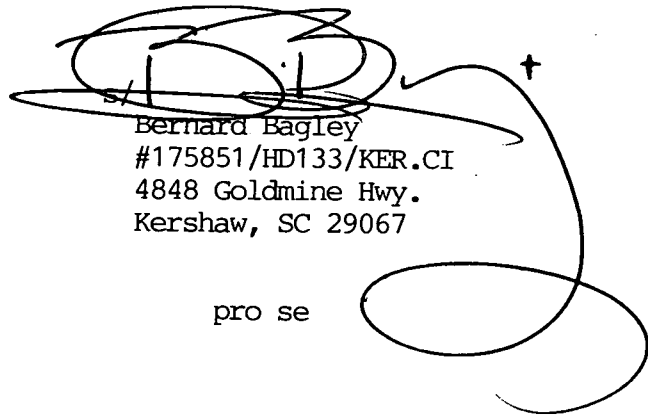
v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF COUNSEL
(PRO SE)

The undersigned certifies that the Appellant has complied with Rule 221(a)(c), SCACR, and Rule 240(i), SCACR that contains all issues inadvertently overlooked for grounds for relief proposed to be included by the parties.


Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

September 8, 2014

pro se

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Judge

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Appellant,

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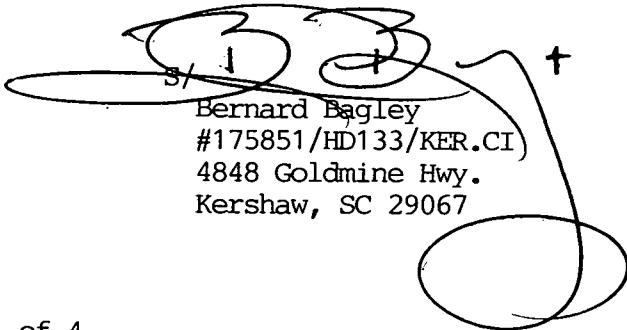
Respondent.

PROOF OF SERVICES

I, Bernard Bagley, the Appellant pro se, certify that I have served the Appellant's Petition for a Rehearing, Memorandum In Support, Affidavit, and Certificate of Counsel dated September 8, 2014, on Respondent and the Administrative Law Court this September 8th, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to:

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

Office of the Clerk
Administrative Law Court
Edgar A. Brown Bldg.
1205 Pendleton St., Suite 224
Columbia, SC 29201


s/ Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

September 8, 2014

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SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Bernard Bagley, #175851,
Affiant,

AFFIDAVIT

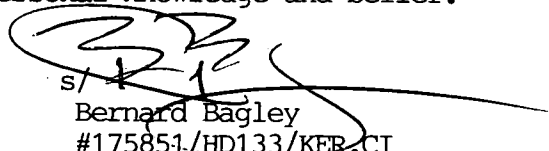
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Respondent.

Being duly sworn this 8th day of September, 2014, I Bernard Bagley certify the following:

1. That I have not ever never been on probation for the offense of murder at the time of the offense I'm currently serving, or any other offense.
2. That the parole board abused its discretion as to issue three by considering an inappropriate other or additional fraudulent/false and misleading factor that I was serving probation for the offense of murder at the time of the offense.
3. That the inappropriate other or additional fraudulent/false and misleading factor considered by the board seriously prejudiced me when it considered the inappropriate factor in making its parole decision determination.
4. That issue is of first impression that require judicial review for relief due to error of law and arbitrary that violate substantive due process in my particular case.

I declare, certify, verify, and state under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge and belief.


s/ Bernard Bagley
#175851./HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

September 8, 2014

Sworn and subscribed before
me on the 8th of September 2014.

Catherine A. Amos

BERNARD BAGLEY
#175851-HD133-KERC.I.
4848 GOLDMINE HWY.
KERSHAW, S.C. 29067



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SC Court of Appeals

THE S.C. COURT OF APPEALS
JENNY ABBOTT KITCHINGS, CLERK

P.O. Box 11629

COLUMBIA, S.C. 29211-1629

THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

BY WARGEN
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
S.C. DEPARTMENT OF CORRECTIONS

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