

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Phillip Lenski, Administrative Law Judge
13-ALJ-15-0025

Case No.: 14-001097

JEREMIAH DICAPUA APPELLANT,

v.

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

REPLY BRIEF OF APPELLANT

Jeremiah DiCapua, #105096
McCormick Correctional Inst.
386 Redemption Way
McCormick, SC 29899

APPELLANT, PRO SE

RECEIVED

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SC Court of Appeals

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STATEMENT OF ISSUE

1. Respondent's Attorney, Tommy Evans, Jr., Assistant General Counsel for the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) terribly misled the Administrative Law Court (ALC) of facts and Legal Documents which Appellant strongly contends affected the decision rendered by The Court, and now, Respondent's Attorney Tommy Evans, Jr. is again attempting to mislead this Court by omitting Legal Documents and circumventing facts relevant to this appeal.

TIMELINE OF EVENTS

Appellant is currently confined to the South Carolina Department of Corrections pursuant to a parole revocation dated July 25, 2007. Appellant asserts that the following facts and Chain of Events are relevant to this appeal.

- 1... In August of 2000, Appellant was paroled from the South Carolina Department of Corrections.
- 2... On October 16, 2003, Appellant was arrested in Horry County, South Carolina for Distribution and Possession with Intent to Distribute Crack Cocaine. (See Enclosed Exhibit A, Appellant's Reply Brief, Pg.15-16, Appellant's ROA, Pg.44-45).
- 3... On October 13, 2004, Local Authorities, Horry County Probation & Parole, sought revocation of Appellant's Parole for the arrest listed in #2. **The finding of the State Parole Board at that hearing was to allow Appellant to Continue on Parole unless convicted.** (See Enclosed Exhibit B, Appellant's Reply Brief, Pg.17, Appellant's ROA, Pg.43).
- 4... On January 11, 2005, Appellant was found Guilty of the Charges listed in #2 (See Enclosed Exhibit C, Appellant's Reply Brief, Pg.18, Appellant's ROA, Pg.24).
- 5... On January 13, 2005, Appellant was sentenced to 30 months incarceration on each Conviction (listed in #2), to run concurrent (See Enclosed Exhibit C, Appellant's Reply Brief, Pg.18, Appellant's ROA, Pg.24).
- 6... On January 14, 2005, **Appellant's Convictions & Sentences were VACATED** (sua sponte) by the trial Judge. Appellant was again allowed to Continue on Parole. (See Enclosed Exhibit C, Appellant's Reply Brief, Pg.18, Appellant's ROA, Pg.24).
- 7... On January 24, 2005, the State appealed Judge Baxley's Order Vacating Appellant's Convictions and Sentences.
- 8... On April 23, 2007, the South Carolina Court of Appeals Reversed Judge Baxley's Order and reinstated Appellant's conviction. (See Enclosed Exhibit D, Appellant's Reply Brief, Pg.20, Appellant's ROA, Pg.18).
- 9... On July 25, 2007, Appellant's Parole was Revoked because of the Court of Appeals' reinstatement of Appellant's Convictions & Sentences (#2). (See Enclosed Exhibit E, Appellant's Reply Brief, Pg.21, Appellant's ROA, Pg.17).
- 10... On July 13, 2009 the South Carolina Supreme Court affirmed the Court of Appeals decision to reverse the Lower Court's (Judge Baxley). (See Enclosed Exhibit F, Appellant's Reply Brief, Pg.22, Appellant's ROA, Pg.12).
- 11... On February 23, 2011, **Appellant's Convictions & Sentences were again VACATED** on a Grant of Post Conviction Relief (See Enclosed Exhibit G, Appellant's Reply Brief, Pg.23, Appellant's ROA, Pg.6).
- 12... On March 16, 2011, at Appellant's next scheduled Parole hearing after his Convictions and Sentences were again Vacated; **Appellant's request for his Parole to be reinstated was Denied.**
- 13... On April 3, 2013, at Appellant's Subsequent Parole hearing, **Appellant's request for his Parole to be reinstated was Again Denied.**

STATEMENT OF THE CASE

Respondent's Attorney, Tommy Evans, Jr., has polluted his Initial Brief of Respondent in this Court, as he did in the Administrative Law Court (ALC), reference to the following facts:

1. Respondent's Statement... Initial Brief, Pg.2, Par.1, L.1-4.

That... The Appellant remained on Parole until his arrest and conviction for the offense of Distribution of Cocaine and Possession with Intent to Distribute Cocaine... **is incorrect and misleading.**

Appellant's Statement of Facts...

- A. Appellant was arrested on October 16, 2003 for the above mentioned charges (See Enclosed Exhibit A, Appellant's Reply Brief, Pg.15-16, Appellant's ROA, Pg.44-45).
 - B. A Parole revocation hearing before the S.C. State Parole Board on October 13, 2004 **forgave** the arrest and any infraction that may have been considered a Parole violation and **allowed** Appellant to remain/continue on Parole. (See Enclosed Exhibit B, Appellant's Reply Brief, Pg.17, Appellant's ROA, Pg.43).
2. Respondent's Statement... Initial Brief, Pg.2, Par.2, L.1.

That... This conviction was set aside by the Honorable Michael Baxley... **is misleading.**

Appellant's Statement of Facts...

- A. Appellant was convicted of the above mentioned charges on January 11, 2005; However, on January 14, 2005, the Lower Court, sua sponte, vacated Appellant's Convictions and Sentences, reinstated Appellant's Bond, and SCDPPPS **again** allowed Appellant to continue on Parole (See Enclosed Exhibit C, Appellant's Reply Brief, Pg.18, Appellant's ROA, Pg.24).

3. Respondent's Statement... Initial Brief, Pg.2, Par.2, L.1-3).

That... This conviction was set aside by the Honorable Michael Baxley, That decision was appealed by The State and brought before the Court of Appeals. The Court of Appeals reversed the decision of the Lower Court... **is correct** (See Enclosed Exhibit D, Appellant's Reply Brief, Pg.20, Appellant's ROA, Pg.18).

4. Respondent's Statement... Initial Brief, Pg.2, Par.1, L.2-4.

That... Due to a failure to refrain from the Violations of State Law, The Parole Board decided to revoke the Appellant's Parole on July 26, 2007... **is misleading.**

Appellant's Statement of Facts...

- A. The only reason Appellant's Parole was revoked was because the S.C. Court of Appeals reinstated Appellant's Convictions (See Enclosed Exhibit D, Appellant's Reply Brief; Pg.20, Appellant's ROA, Pg.18).
- B. Appellant's Parole was not revoked because of the arrest. The arrest occurred back on October 16, 2003 and was forgiven by the S.C. Parole Board on October 13, 2004, which allowed Appellant to continue on Parole until The Court of Appeals reinstated Appellant's conviction on July 25, 2007 (See Enclosed Exhibit E, Appellant's Reply Brief, Pg.21, Appellant's ROA, Pg.17).

5. Respondent's Statement... Initial Brief, Pg.2, Par.2, L.4-6).

That... Writ of Certiorari was granted by the South Carolina Supreme Court, and the Supreme Court reversed the decision of the Court of Appeals. They decided that Judge Baxley had the authority to sua sponte Order a new trial... **is incorrect and misleading.**

Appellant's Statement of Facts...

- A. On July 13, 2009, The S.C. Supreme Court affirmed the Court of

Appeals' reversal of the Lower Court. (See Enclosed Exhibit F, Appellant's Reply Brief, Pg.11, Appellant's ROA, Pg.12).

6. Respondent's Statement... Initial Brief, Pg.3, Par.3, L.1-2).

That... The Appellant argues that his original revocation of Parole occurring in 2007 Denied his liberty interest in Parole because the conviction that caused the revocation was later overturned... **is misleading.**

Appellant's Statement of Facts...

- A. Appellant states the original/initial Parole Revocation hearing was on October 13, 2004, when the S.C. State Parole Board forgave the arrest and any infractions that may have been considered a Parole Violation and allowed Appellant to continue on Parole (See Enclosed Exhibit B, Appellant's Reply Brief, Pg.11, Appellant's ROA, Pg.43).
- B. Appellant strongly contends the arrest and any infraction thereof concerning the drug charges were forgiven by the S.C. Parole Board when they allowed Appellant to continue on Parole which substantially vested Appellant's Liberty Interest... to remain free from incarceration unless convicted (See Enclosed Exhibit B, Appellant's Reply Brief, Pg.11, Appellant's ROA, Pg.43).
- C. Appellant further contends that when convicted of those drug charges on January 11, 2005, and thereafter when the Court Vacated those Convictions and Sentences on January 14, 2005, The State Parole Board did not revoke Appellant's parole and again allowed Appellant to remain/continue on Parole... again substantially confirming Appellant's Liberty Interest... to remain free from incarceration unless convicted (See Enclosed Exhibit C, Appellant's Reply Brief, Pg. 18, Appellant's ROA, Pg.24).

7. Respondent's Statement... Initial Brief, Pg.4, Par.1, L.2-3.

That... upon arrest it is the duty of the Parole Agent to issue process in order for the Appellant to be brought before The Parole Board... **is a moot point and misleading.**

Appellant's Statement of Facts...

A. The arrest and anything incident to the arrest were forgiven on October 13, 2004 when the Parole Board forgave the arrest and incidents (See Enclosed Exhibit B, Appellant's Reply Brief, Pg. 11, Appellant's ROA, Pg.43).

8. Respondent's Statement... Initial Brief, Pg.4, Par.2, L.17-18.

That... The Appellant's parole was lawfully revoked due to his involvement in the crime... **is misleading and inflammatory.**

Appellant's Statement of Facts...

A. The arrest and anything incident to the arrest that may have been considered a Parole Violation were forgiven on October 13, 2004 and the Order Granting Appellant's Post Conviction Relief on February 23, 2011 (**which Respondent evades/omits from the Brief**) again Deemed Appellant **Legally Innocent**... (See Enclosed Exhibit G, Appellant's Reply Brief, Pg. 13, Appellant's ROA, Pg.6).

9. Respondent's Statement... Initial Brief, Pg.6, Par.3, L.4-5.

That... Even without those drug offenses the Appellant still has a false statement to bank, false pretenses, and murder on his record... **is misleading, inflammatory, and irrelevant.**

Appellant's Statement of Facts...

A. Those charges were on Appellant's record when initially paroled in August of 2000.

10. Respondent's Statement... Initial Brief, Pg.7, Par.3, L.1-2.

That... The Appellant argues that he was denied Due Process due to the fact his parole was revoked using a conviction that was later

overturned... is misleading.

Appellant's Statement of Facts...

Appellant argues his Due Process rights were violated when The State violated his Liberty Interest by not reinstating his Parole.

- A. Appellant's arrest and any incidents thereof were forgiven back on October 13, 2004 (See Enclosed Exhibits A & B, Appellant's Reply Brief, Pg.15-16, 17, Appellant's ROA, Pg.44-45,43).
- B. Appellant's Convictions on January 11, 2005 were vacated on January 14, 2005 and Appellant was allowed to Continue on Parole which substantiated his Liberty Interest when The Parole Board forgave the arrest on October 13, 2004 (See Enclosed Exhibits B & C, Appellant's Reply Brief, Pg.17, 18, Appellant's ROA, Pg.43,24).
- C. Respondent **hides the fact that Appellant's Convictions and Sentences were again vacated on February 23, 2011 on a Grant of Post Conviction Relief.** (See Enclosed Exhibit G, Appellant's Reply Brief, Pg. 23, Appellant's ROA, Pg.6).

11. Respondent's Statement... Initial Brief, Pg.7, Par.3, L.2-3.

That... He argues that his revocation was made due to a crime he did not commit... **is correct.**

Appellant's Statement of Facts...

- A. Appellant is Deemed Legally Innocent when the Court again Vacated his Convictions and Sentences on February 23, 2011, **which Respondent fails to advise this Court.** (See Enclosed Exhibit G, Appellant's Reply Brief, Pg. 23, Appellant's ROA, Pg.6).

12. Respondent's Statement... Initial Brief, Pg.7, Par.3, L.4-5.

That... The authority of the Parole Board should be identical to the Court in a Probation Revocation... **misleads the Court.**

Appellant's Statement of Facts...

"If after warrant for violation by probationer of conditions of probation has been issued, and probation has been revoked by court, there is a determination by the court that there has been no violation by the probationer of any condition of the probation, there is a serious question as to the validity of the revocation of probation." 1956-57 SC Atty. Gen. Op. 219.

13. Respondent's Statement... Initial Brief, Pg.7, par.4, L.1-2.

That... The fact his case was overturned is not relevant. That... There was a sufficient showing to the Board that the Appellant committed the crime... **is scandalous.**

Appellant's Statement of Facts...

- A. Appellant has been deemed Legally innocent. (See Enclosed Exhibit G, Appellant's Reply Brief, Pg. 23, Appellant's ROA, Pg.6).
- B. Respondent is interjecting to this Court that he has the authority to override the Court's and/or Jury's Decision that "Appellant did not commit the crime" when the Court's current ruling is that **Appellant is Legally innocent. Respondent has clearly overstepped his Bounds.** (See Enclosed Exhibits C & G, Appellant's Reply Brief, Pg. 18, 23, Appellant's ROA, Pg.24,6).

14. Respondent's Statement... Initial Brief, Pg.7-8, Par.1, L.1-3.

That... The Appellant exchanged drugs for money with a police informant. Upon his arrest, the police found drugs in his possession, and the Appellant admitted that the informant gave him one hundred and sixty dollars... **is scandalous...A Blatant Misrepresentation of Facts.**

Appellant's Statement of Facts...

- A. The above are evidentiary facts that the Appellant has been Deemed Legally Innocent of.

- B. There is No Testimony of Fact that Appellant gave informant Drugs...The informant did not give a statement nor come to Trial.
- C. Order Vacating Convictions & Sentences, January 14, 2005... Judge Baxley states:

1. "The primary evidence upon which the defendant was convicted was a videotape of an alleged controlled buy of crack cocaine." (See Enclosed Exhibit C, Pg.1, Par.2, L.1-2, Appellant's Reply Brief, Pg.18, Appellant's ROA, Pg.24).

2. "The video recorded the defendant and the informant from a poor angle and it cannot be said with certainty what transaction, if any, occurred between the two." (See Enclosed Exhibit C, Pg.1, Par.2, L.8-10, Appellant's Reply Brief, Pg. 18 , Appellant's ROA, Pg.24).

3. "Thus, this Court cannot with certainty affirm that the crack cocaine discovered at the scene was the property of the defendant (See Enclosed Exhibit C, Pg.1, Par.2, L.15-16, Appellant's Reply Brief, Pg.18, Appellant's ROA, Pg.24).

4. "This Court finds that the introduction of the videotape and the admission of Detective Kent Donald's Testimony as to what was **depicted** on the videotape as it was played for the Jury **was inappropriate evidence.** (See Enclosed Exhibit C, Pg.1, Par.2, L.18-20, Appellant's Reply Brief, Pg. 18, Appellant's ROA, Pg.24).

15. Respondent's Statement... Initial Brief, Pg.8, Par.1, L.1-2.

That... The Appellant admitted that the informant gave him one hundred and sixty dollars... **is a Boldface Lie.**

Appellant's Statement of Facts...

- A. Appellant never gave any statement of any such concerning this case.
Never Admitted To Anything.

Respondent has omitted the above-mentioned Legal Documents, and further, has twisted the above-mentioned facts in an attempt to mislead this Court as he did the Administrative Law Court.

The following is a Correct Chain of Events Relevant to this case.

CHAIN OF EVENTS

Appellant asserts that... the decision of the South Carolina Parole Board to Not reinstate Appellant's parole after his Convictions and Sentences were again Vacated constituted a **Breach of Trust**... a standing Agreement between Parties that... Appellant's Parole would not be revoked unless Convicted.

FACTS

On October 13, 2004, Appellant was brought before the South Carolina Parole Board by Local Authorities (Horry County Probation & Parole) seeking revocation of Appellant's Parole for the October 16, 2003 arrest for Possession with Intent and Distribution of Crack Cocaine.

The findings of the Parole Board that day were to allow Appellant to continue on Parole for the above mentioned arrests,, and the Board's decision that day likewise forgave any and all prior charges that may have been considered a parole violation and any and all charges against Appellant that were complained of in Warrant# W-26-03-515. (See Statement of Case #3, and Enclosed Exhibit B, Appellant's Reply Brief, Pg. 17, Appellant's ROA, Pg.43).

In support of the above statement, Appellant will respectfully show unto this Court:

1... That on January 11, 2005... Appellant was found guilty of the above charge, Possession with Intent & Distribution, for which he was previously allowed to continue on Parole. (See Enclosed Exhibit C, Appellant's Reply Brief, Pg. 18, Appellant's ROA, Pg.24).

2... That on January 13, 2005... Appellant was sentenced to 30 months incarceration on each of the convictions (to run concurrent). (See Statement of Case #5, and Enclosed Exhibit C, Appellant's Reply Brief, Pg. 18, Appellant's ROA, Pg.24).

3... That on January 14, 2005, Appellant's Convictions and Sentences were Vacated by the trial Judge and Appellant was released and again allowed to continue on Parole. (See Statement of Case #6, and Enclosed Exhibit C,

Appellant's Reply Brief, Pg. 18, Appellant's ROA, Pg.24).

Appellant asserts that the above chain of facts/events dating from October 13, 2004 thru January 14, 2005, clearly defines that there was an Agreement between Parties.

Case in Point Supporting Facts:

When... After being arrested (2003) Appellant was allowed to Continue on Parole (re: revocation hearing, 2004);

When... Thereafter, Appellant was convicted of the charges that allowed him to continue on parole (2005);

When... Thereafter, Appellant's Convictions and Sentences were Vacated, and Appellant was again allowed to Continue on Parole (2005).

Appellant avers that the above chain of facts/events Precisely defines Appellant's case:

That... There was an Agreement between Parties; and,

That... **APPELLANT'S PAROLE WOULD NOT BE REVOKED UNLESS CONVICTED.**

Appellant asserts the Agreement between Parties was... Appellant would NOT be revoked unless Convicted; and that... the Agreement between Parties was contractual dating from October 13, 2004 thru July 25, 2007 when Appellant's Parole was revoked and he was reincarcerated because of the South Carolina Court of Appeals' Reversal of Judge Baxley's Order Vacating Appellant's Convictions and Sentences.

ARGUMENT

On February 23, 2011, Appellant's Convictions and Sentences were again Vacated on a Grant of Post Conviction Relief. This Order again Vacating Appellant's Convictions and Sentences again deemed Appellant Legally Innocent of the charges that caused his Parole Revocation; However, the State now refuses to reinstate Appellant's Parole, thereby renegeing on their Promise... Not To Revoke Appellant's Parole Unless Convicted. (See Enclosed Exhibit G, Appellant's Reply Brief, Pg. 23, Appellant's ROA, Pg.6).

Appellant contends that the Agreement between Parties is still contractual;

That... Appellant is again Legally Innocent as in 2005;

That... Since the 2004 Revocation hearing, Appellant has **NOT** violated any Laws of the Land to breach this Agreement between Parties; and

That... Appellant's Parole would **NOT** be revoked unless convicted.

Appellant contends that whether he is claiming a Breach of Trust -or- Breach of Agreement;

That... The steady train of facts in this case are clear and documented;

That... There was an Agreement between Parties; and,

That... The Agreement was both: inferred and implied.

Appellant further asserts that the Agreement between Parties... Not To Revoke... is also a Binding Verbal Legal Agreement; whereas, at Appellant's 2007 Revocation Hearing, the Chairwoman Clearly/Verbally states for the record that... the reason for this hearing is because you now have been **Convicted**.

LAW

Appellant asserts that... Arbitration between Parties - agreements - whether construed to be implied, inferred or verbal, are binding litigation in any Court of Law. The Due Process Clause of the South Carolina Constitution and the United States Constitution, protects citizens (Appellant) from undue/illegal impunities.

"Minimal due process protections apply to parole revocation proceedings for federal and state prisoners. Although parolees are subject to many restrictions, they enjoy a protected liberty interest in conditional freedom. That interest in continued liberty is significant enough to fall within the scope of the Fourteenth Amendment's Due Process Clause. Moreover, parolees rely on an implicit promise that their parole will be revoked only if they violate their parole conditions. Therefore, due process requires that parole be revoked only through a procedure designed to ensure that the finding of a violation is factually correct and that the discretionary decision to recommit the parolee to prison is based on an accurate assessment of the parolee's behavior." Georgetown Law Journal, 2009.

"Although parolee's liberty interest is conditioned on observance of parole conditions, termination of parole inflicts grievous loss and deserves due process protection." Morrissey v Brewer, 408 US 471,482 (1972).

RESOLVEMENT

Appellant asserts that a Breach of Promise between parties... **NOT TO REVOKE UNLESS CONVICTED has been VIOLATED** and that... this **VIOLATION** parallels an unlawful revocation of Appellant's Parole, which infringes upon Appellant's Liberty Interest and Due Process Protection.

Appellant respectfully seeks redress from harms, and petitions this Court for reinstatement of Parole pursuant to SC Code Ann. §17-27-20(a)(5)(1985).

CONCLUSION

Respondent contends that because he has "included, stated and shown" in his "order" that he "considered and applied" the statutory criteria set forth in Form 1212, that review is neither appropriate nor necessary. Appellant asserts, however, that Respondent has "mis"-applied the statutory criteria, and that prima facie error, clear error mandates judicial intervention, review, and correction.

Respondent states that:

"The Appellant argues that the reasons given for denial no longer apply, this is due to the fact his prior drug offense was set aside. He argues that the nature and seriousness of the current offense: and, his prior criminal record indicating a poor community adjustment, no longer exist. The Appellant believes that the use of these reasons for his denial of parole was unlawful.

"Within South Carolina law, the Board has certain criteria they must consider prior to a decision. According to the South Carolina code of laws: (emphasis added)

"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 of society will not be impaired thereby: and, that suitable employment has been secured for him. (emphasis added)

S.C. Code Ann. §24-21-640 (Supp. 2012)(emphasis added).

"It is the position of the Appellant that the nature and seriousness of the current offense does not apply due to the drug offense being set aside. This reason for denial applies to the murder offense not the subsequent drug offenses. It is also the Appellant's position that the second reason for denial should not apply due to the offense being set aside. Even without those drug offenses the Appellant still has a false statement to bank, false pretenses, and murder on his record."

(Initial Brief of Respondent, Pg.6, L.1-20)(emphasis added).

Based upon the above-stated portion of §24-21-640, Respondent reveals that the Parole Board believes it can "revoke" parole based upon crimes committed "prior to" parole being granted. That is what the Parole Board did in "Appellant's" case. This is not the plain meaning of the statute and intent of the Legislature. Respondent has misunderstood and mis-applied this portion of the statute.

Careful consideration of the prisoner's record "before, during and after imprisonment" is for use in determining eligibility of potential first time parolees alone. The Board might also consider behavior "before and after" imprisonment when determining eligibility of re-offenders for whom some sanction less than revocation is being considered, to measure the degree of severity of the current offense compared to the "past" offenses of the parolee.

The Legislature did not intend that a parolee falsely accused, revoked, and then acquitted, would be revoked "again" based solely upon his record prior to incarceration or parole. Nor did the Legislature intend to create a super-judicial entity in the Parole Board with power to deem Court/Jury determined facts and proofs null and void in favor of its own version of truth and self-declaration of what the facts are.

Respondent also states:

"The reasons for denial is left solely up [sic] the Parole Board because it is a question of fact, which is not subject to Court review."

(Initial Brief of Respondent, Pg.6, L.20-22).

Respondent says "it's a question of fact not subject to Court review"... The Parole Board has declared that Parole-Board-determined-facts are not to be questioned by The Courts... But, when The Courts "established the fact" that Appellant is innocent of the crimes charged and erroneously convicted of, the Parole Board decided that the Court's decision was subject to the Parole Board's review. The Parole Board decided that, though The Courts deemed Appellant "innocent", the Parole Board would judge him guilty as charged and revoke Appellant's parole.

Respondent also says:

"The court cannot substitute its judgment for that of the agency as to the weight of evidence on questions of fact." Lark v Bi-Lo, 276 SC 130, 276 SE 2d 304 (1981).

(Initial Brief of Respondent, Pg.6, L.22-23).

Clearly the Parole Board has substituted "its" judgment for that of "the Court's"..."as to the weight of evidence on questions of fact." The Courts found Appellant to be innocent. The Parole Board has "overruled" the Court's ruling.

Additionally, Respondent states:

"He argues that his revocation was made due to a crime he did not commit. The revocation of parole is totally up to the Parole Board and there exist a lessor burden of proof to be met for the Board to revoke parole. The authority of the Parole Board should be identical to the Court in a probation revocation."

(Initial Brief of Respondent, Pg.7, L.15-18).

The Parole Board claims equivalent-to-"supreme" judicial power, with a lessor burden of proof. The Parole Board claims it can take away a parolee's liberty though The Courts have ruled he is not guilty of breaking any Law.

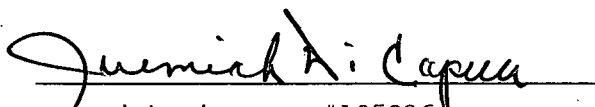
Surely it was not the Legislature's intent to create the monster that the

Parole Board now is, believing it has uncheckable power and inerrant judgment, and believing it is immune from the responsibility to guarantee paroled citizens Due Process Protection and the benefits of a fair tribunal.

Appellant asserts it is long past time to clarify for the Parole Board where the bounds of its power starts and stops, and Appellant prays The Court agrees. Appellant asserts it is long past time to clarify the intent of the statute reference to use of current and past offenses to deny parole; Appellant prays The Court agrees. Appellant, **prima facie**, is innocent reference to claims he broke the law and thus violated his parole, but the Parole Board unashamedly nonetheless continues to declare Appellant guilty as charged, and has revoked Appellant's parole. Appellant prays The Court will intervene, in the name of justice being done, and alas reinstate or order reinstatement of Appellant's parole without further delay.

Appellant also asserts the Parole Board's "judicial posturing" is in practice a constitutional violation reference to "separation of powers", and Appellant prays The Court alas "decide and declare" that such practice and authority is "unconstitutional", and correct it.

Wherefore on this ____ day of _____, 2014,
Appellant Prays for Relief.


Jeremiah DiCapua, #105096
Appellant, Pro Se

AFFIDAVIT

STATE OF SOUTH CAROLINA)

ARREST WARRANT # 198890
Distribution Crack Cocaine

HORRY COUNTY)

44-53-375

Now comes the affiant, Detective Kent Donald, after being duly sworn and deposes that:

There is probable cause to believe that the defendant did commit the offense set forth, and that such probable cause is based on the following facts:

That on October 16, 2003, **Jeremiah Dicapua** sold a quantity of crack cocaine while in the **Myrtle Beach** section of the county.

To wit: On October ¹⁶, 2003, officers from the **Horry County Police Department** and **Myrtle Beach Police Department** conducted an undercover operation at the **Red Roof Inn** in **Myrtle Beach**. The room was fitted with electronic audio and video recording devices. **Jeremiah Dicapua** arrived at room 433 and met with the occupants and sold 1.6 grams of a rock-like substance he represented as crack cocaine for an agreed upon amount of money.

In this **Jeremiah Dicapua** did violate the South Carolina code of laws specifically 44-53-375.

SWORN TO AND SUBSCRIBED BEFORE ME
ON 10-17-03

SIGNATURE OF ISSUING JUDGE
[Signature]

SIGNATURE OF AFFIANT
[Signature]
CASE 0384257

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Clerk of Court
Horry County
[Signature]

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AFFIDAVIT

STATE OF SOUTH CAROLINA)

ARREST WARRANT # 198888
Possession Crack Cocaine W.I.T.D.

HORRY COUNTY)

44-53-375

Now comes the affiant, Detective Kent Donald, after being duly sworn and deposes that:

There is probable cause to believe that the defendant did commit the offense set forth, and that such probable cause is based on the following facts:

That on October 16, 2003, Jeremiah Dicapua had in his actual possession, a quantity of crack cocaine while in the Myrtle Beach section of the county.

To wit: On October 16, 2003, Jeremiah Dicapua was arrested for distribution of crack cocaine during an undercover operation in Myrtle Beach. During a search incident to arrest, officers located a clear plastic bag containing an off-white rock-like substance believed to be crack cocaine in his right front pants pocket. The substance weighed approximately .8 grams and field-tested positive for cocaine attributes.

In this Jeremiah Dicapua did violate the South Carolina code of laws specifically 44-53-375.

SWORN TO AND SUBSCRIBED BEFORE ME
ON 10-17-03

SIGNATURE OF ISSUING JUDGE
[Signature]

SIGNATURE OF AFFIANT
[Signature]
CASE 0384257

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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
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

June 28, 2012

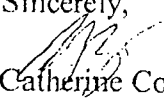
Jeremiah DiCapua, 105096
McCormick CI
386 Redemption Way
McCormick, SC 29899

Dear Mr. DiCapua:

I was forwarded your letter in which you were inquiring about a copy of a parole continuation order from your hearing dated October 13, 2004.

After review of your closed case file information, the document which you are requesting was unable to be located. However, hearing roster records do indicate that your case was heard related to violations charged in warrant # W-26-03-515 dated October 23, 2003 and that you were continued on parole at that time.

I hope this information is helpful and apologize for any inconvenience.

Sincerely,

Catherine Cooper
Director, Parole Board Support

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) Indictment Numbers 2004-GS-26-303,
) 2004-GS-26-1549

State of South Carolina,)
)

ORDER VACATING CONVICTION
AND SENTENCE

v.)

Jeremiah DiCapua,)

Defendant.)

2008 MAR 20 AM 9:04
Melanie H...
CLERK OF COURT
HORRY COUNTY

CERTIFIED COPY

Jeremiah DiCapua was convicted by jury trial of Distribution of Crack Cocaine and Possession With Intent to Distribute Crack Cocaine in Horry County on January 13, 2005. He was sentenced by this Court to serve thirty (30) months imprisonment and pay a \$25,000 fine on each of these convictions, to be served concurrently, during a sentencing hearing held on January 13, 2005.

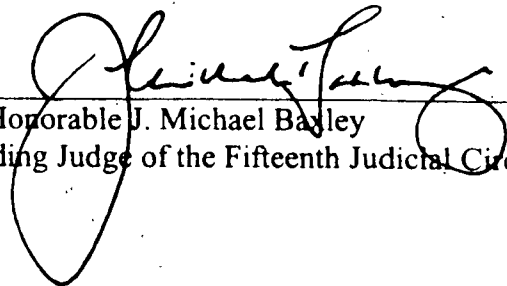
The primary evidence upon which the defendant was convicted was a videotape of an alleged controlled buy of crack cocaine. The tape shows the defendant enter a hotel room in which a female informant and an accompanying female witness, both of whom had been arrested for prostitution earlier in the day, allegedly purchase \$160.00 worth of crack cocaine from the defendant. The Court did not view the tape prior to trial and admitted the tape into evidence. Upon further reflection, this Court finds that the introduction of the videotape was inappropriate for multiple reasons. First, the audio portion of the taping equipment malfunctioned and there was no audio. Second, the video recorded the defendant and the informant from a poor angle and it cannot be said with certainty what transaction, if any, occurred between the two, a situation that renders the missing audio most important. Third, the informant was allowed to make telephone calls from the hotel room and it is not known to whom these calls were placed. Further, in something never seen before by this Court, the informant was allowed to leave the hotel room unaccompanied by law enforcement during the sting operation and was completely off camera for a duration of time. Thus, this Court cannot with certainty affirm that the crack cocaine discovered at the scene was the property of the defendant, for neither the informant nor the female witness testified at trial. In light of these facts, this Court finds that the introduction of the videotape and the admission of Detective Kent Donald's testimony as to what was depicted on the videotape as it was played for the jury was inappropriate evidence.

JMB
1

Therefore, this Court, *sua sponte*, vacates the jury conviction on the above two charges. This decision does not dismiss the charges against the defendant, but it is the decision of this Court to suppress the introduction of the videotape in any new trial to be had on the charges. This decision does not affect the Court's earlier decision to lift Mr. DiCapua's bench warrant on January 13, 2005, and this Court hereby reinstates and imposes a ten thousand dollar (\$10,000) surety bond upon the defendant, with the further requirement that if he is able to meet bond, the defendant shall not leave Horry County

without the written permission of assistant solicitor Donna E. Elder until such time as these charges are concluded.

IT IS SO ORDERED.



The Honorable J. Michael Baxley
Presiding Judge of the Fifteenth Judicial Circuit

Hartsville, South Carolina
January 14, 2005

EXHIBIT 'D'

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

TO SEE FULL CASE

SEE APPELLANTS...

ROA P 18.

The State, Appellant,

v.

Jeremiah Dicapua, Respondent.

Appeal From Horry County
J. Michael Baxley, Circuit Court Judge

Opinion No. 4239
Heard March 6, 2007 – Filed April 23, 2007

REVERSED

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W.
Elliott, Senior Assistant Attorney General Norman
Mark Rapoport, all of Columbia; and Solicitor
John Gregory Hembree, of Conway, for
Appellant.

Appellate Defender Eleanor Duffy Cleary, of
Columbia, for Respondent.

GOOLSBY, J.: The State appeals the trial court's *sua sponte* grant of a new trial to the respondent Jeremiah Dicapua following his convictions for distribution of crack cocaine and possession with intent to distribute crack cocaine. We reverse and reinstate Dicapua's sentence.

FACTS

On October 16, 2003, the Horry County Police Department and Myrtle Beach Police Department organized a sting operation in Myrtle Beach. They rented connecting rooms at a Red Roof Inn in Myrtle Beach. One room was to be used as a transaction room and the other as a control room where the officers, using surveillance equipment consisting of a hidden camera and a microphone, would monitor what occurred in the transaction room.

The police issued a female informant \$180 in "marked police buy money" with which to buy

South Carolina

-vs-

Jeremiah Dicapua

ORDER

Whereas the above named Parolee has been charged with violating the conditions of parole ordered on 8-31-00 by the South Carolina Board of Probation, Parole and Pardon Services, as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, we find the Parolee has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated 4-26-07 a copy of which is incorporated by reference.

The South Carolina Board of Probation, Parole and Pardon Services now finds that the Parolee has violated the conditions of Parole number:

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- 12
- 13

Special Conditions Additional Conditions which were agreed to by the Parolee on the above date 16

In consequence whereof, the South Carolina Board of Probation, Parole and Pardon Services hereby orders the parole revoked and orders the above named Parolee be returned to the South Carolina Department of Corrections to serve the remainder of the original sentence imposed by the Court, said sentence to run from the date of commitment until the final date of expiration of the maximum active sentence. The parole is revoked in the (Presence Absence Waiver) of the Parolee by the panel of the full Board.

IT IS ORDERED that the above named Parolee is continued on parole as provided for in the sentence identified above and subject to the conditions set forth therein and not inconsistent with the order. This action is taken in the (Absence Presence Waiver) of the Parolee.

Additional Conditions ordered by the Board.

Additional Conditions:

PRIMATE RECORDS OFFICE
2007 JUL 30 AM 11:27

Ordered this 25th, day of July, 2007.

Karen A. Walts
Chairman

C. David Bels
J.P. Nelder

This is to certify that I have read or have had read to me the Order and the Conditions set out therein. If I have been continued under supervision, I agree to comply with the above conditions and all conditions of my original parole order not inconsistent with this order.

Ordered this _____, day of _____

Agent

Parolee

THE STATE OF SOUTH CAROLINA
In The Supreme Court

TO SEE FULL CASE
SEE APPELLANTS...
ROA P. 12

The State, Respondent,

v.

Jeremiah Dicapua, Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Horry County
J. Michael Baxley, Circuit Court Judge

Opinion No. 26684
Heard February 3, 2009 – Filed July 13, 2009

AFFIRMED

Appellate Defender Robert M. Pachak, of South Carolina Commission on Indigent Defense, of Columbia, for Petitioner.

Attorney General Henry Dargan McMaster; Chief Deputy Attorney General John W. McIntosh; Assistant Deputy Attorney General Salley W. Elliott; Senior Assistant Attorney General Norman Mark Rapoport, all of Columbia; and Solicitor John Gregory Hembree, of Conway, for Respondent.

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
)
 Jeremiah Dicapua, # 105096,)
)
)
 Applicant,)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

2010-CP-26-2664

TO SEE FULL CASE
SEE APPELLANTS
ROA P. 6

**ORDER GRANTING
 POST-CONVICTION RELIEF**

This matter came before the Court pursuant to an Application for post-conviction relief filed March 29, 2010. Respondent made a Return on April 28, 2010. An evidentiary hearing was convened at the Horry County Courthouse on February 1, 2011. The Applicant was present in court and represented by Paul Archer, Esquire. Respondent was represented by Christina J. Catoe, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a parole violation from a Horry County murder conviction from 1980. The Applicant was initially released to parole in 2000. In January 2004, the Applicant was indicted in Horry County for distribution of crack cocaine (2004-GS-26-303). In April 2004, the Applicant was indicted for possession with intent to distribute crack cocaine (2004-GS-26-1549). He was represented by Thomas D. Guest, Jr., Esquire. On January 10-13, 2005, the Applicant was tried before the Honorable J. Michael Baxley. The jury found him guilty, and Judge Baxley sentenced the Applicant to thirty months (2 ½ years) on each charge, with the sentences to run concurrently. He also imposed a \$25,000.00 fine regarding each charge. The convictions at issue in this PCR were later considered a violation of the Applicant's parole for murder. Therefore, after he served his sentence on these charges, his parole was revoked on his previous murder charge.

of the videotape did not prejudice the outcome of the Applicant's trial.

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003):

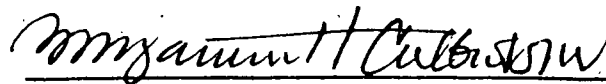
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court rejects the State's arguments, and finds that trial counsel was ineffective for failing to contemporaneously object to admission of the videotape during trial. This Court finds that counsel should have objected to the videotape using the four reasons set forth in Judge Baxley's Order Vacating Conviction and Sentence. This Court finds that the Applicant was prejudiced by trial counsel's failure to object because it is apparent from the post-trial Order that had counsel contemporaneously objected, Judge Baxley would have excluded the videotape and dismissed the case.

CONCLUSION

Based upon the foregoing, this Court finds and concludes that the Applicant has met his burden of proof as to sole the claim raised; therefore, he is entitled to post-conviction relief. The Applicant's PCR Application is **GRANTED**. His convictions are hereby **VACATED** and the cases are **REMANDED** to the trial court so that the Applicant may receive a new trial on the charges of distribution of crack cocaine (2004-GS-26-303) and possession with intent to distribute crack cocaine (2004-GS-26-1549).

AND, IT IS SO ORDERED this 23rd day of February, 2011.



Benjamin H. Culbertson
Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Phillip Lenski, Administrative Law Judge
13-ALJ-15-0025

Case No.: 14-001097

JEREMIAH DICAPUA APPELLANT,

v.


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

PROOF OF SERVICE

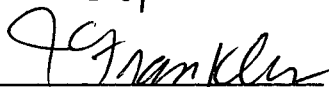
I, Jeremiah DiCapua, Pro Se, do hereby certify that I have served the
within Reply Brief of Appellant, dated September 8, 2014, on Respondent, by
depositing a copy of the same in the United States Mail, postage prepaid, this
9th day of September, 2014, addressed to:

Tommy Evans, Jr.
Assistant Legal Counsel
SC Dept of Probation, Parole
and Pardon Services
P. O. Box 50666
Columbia, SC 29250

I further certify that all parties required by Rule to be served have been
served.


Jeremiah DiCapua, Pro Se
McCormick CI, F4B-214
386 Redemption Way
McCormick, SC 29899

SWORN TO and SUBSCRIBED before me
this 29 day of Sept, 2014.


Notary Public for South Carolina
My Commission Expires 12/16/2015

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SEP 11 2014

SC Court of Appeals

September 8, 2014

Jeremiah DiCapua, #105096
McCormick CI, F4B-214
386 Redemption Way
McCormick, SC 29899

Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Jeremiah DiCapua, #105096 vs SC Dept of Probation, Parole and Pardon
Services, Case No.: 14-001097

Dear Madam Clerk:

Enclosed please find the Reply Brief of Appellant in the above referenced case
along with Proof of Service. ~~Please return a clock stamped, filed copy to me.~~ J.A.

Thank You For Your Time.

Respectfully,


Jeremiah DiCapua, Pro Se

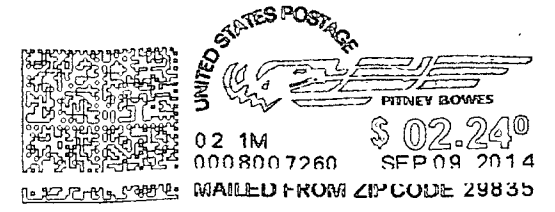
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SEP 11 2014

SC Court of Appeals

Jeremy
McCormick

386 Redemption Way
McCormick, S.C. 29899



The Honorable Jenny Abbott Kitchens
Clerk of the South Carolina Court of Appeals

Post Office Box 11629

Columbia, South Carolina

29211

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SC Court of Appeals

Legal Mail

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