

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Phillip A. Brown (SCDC #118100),

Plaintiff,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-40-7160

**RULE 59(E) MOTION TO ALTER OR AMEND**

The Applicant, by and through his attorney, hereby moves this honorable court to alter or amend the judgment or amend the Judgment of this Court, dated 9/25/2014 based on the following grounds:

1. PCR Court failed to address the issue that the Parole Board ("Board") violated its Operations Manual Policy, page 47, section 3. INITIATING THE PROCESS OF REHEARING CASES.

2. PCR Court failed to address the issue that the Solicitor, Sheriff, and victim's family stated that the Board failed to follow its Operations Manual, page 20, section 2(B), NOTICE REQUIREMENTS.

3. PCR Court failed to address the issue that the Board violated the contractual agreement it entered into upon signing the Order of Parole, Operations Manual, page 37, CONDITIONS OF PAROLE.

4. PCR Court did not address the issue regarding the transcript of the meeting when the decision was made by the Board to rescind Applicant's parole violating Operations Manual, page 18, section 3. INFORMATION RELEASEABLE ON REQUEST.

RICHLAND COUNTY  
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JENNIFER W. HODGE  
C.C.P. & G.S.

## GROUND 1

PCR Court failed to address the issue that the Board violated its Operations Manual, page 47, section 3. INITIATING THE PROCESS OF REHEARING PAROLE CASES. "A requesting party has 30 days to send a petition or letter after the parole rejection".

The PCR Court refused to hear the issue that the Board violated its policy by allowing the petitions of the requesting parties to be heard after the thirty-day time limit had expired. 59 Am. Juris.2d Pardons and Paroles §101. "If the offender is initially granted parole, but the Board subsequently decides to deny parole, there is only a very small window of time which the Board may do so".

Applicant was granted parole on April 14, 2010, took the required psychological test on May 26, 2010 and began the Addiction Treatment program, as stipulated by the Board, on June 14, 2010. Applicant was not notified of a rehearing of his parole case until July 28, 2010. The date that the Board received notice from the requesting parties has not been disclosed. Applicant has requested the information through his attorney and the F.O.I.A.

## GROUND 2

PCR Court failed to address the issue that the Solicitor, Sheriff, and victim's family state that the Board failed to follow its Operations Manual, page 20, section 2(B), "the Director of Victims Services is responsible for giving adequate and timely notice at least 30 days before the date of the hearing".

PCR Court refused to hear the issue of Applicant's evidentiary facts and dismissing the issue without making a factual finding pursuant to SCRCP Rule 52(a) upon which an appeal may be based. This constitutes an inadequate state corrective process. The PCR Court is required to

make a factual on each issue properly before the Court. See S.C. Code Ann. §17-27-80; Church v. McGee, 705 SE2d 481 (S.C. 2011); Pruitt v. State, 426 SE2nd 127 (S.C. 1992).

The Board and the PCR Court are in essence holding Applicant responsible for the Board's failure to notify the Solicitor, Sheriff, and victim's family. Any interested party is responsible for attending a parole hearing and voicing their opinion. A party's failure to attend cannot become the liability of the opposing party. The parties in question have 30 days before the hearing and 30 days after the hearing to notify the Board of their views.

### Ground 3

PCR Court failed to address the issue that the Board violated the contractual agreement it entered into with the Applicant upon signing the "Order of Parole".

The Board entered into a contractual agreement with the Applicant as outlined in the Board's Operational Manual, page 37, CONDITIONS OF PAROLE. "Underlying every parole is the contractual agreement between the State and the parolee". Applicant upheld his agreement to the conditions set forth by the Board, i.e., take and pass a psychological test and attend and complete the Addition Treatment program (ATU) at Lee C.I. Applicant graduated from the ATU on December 17, 2010.

In this instant matter parole rescission and revocation are one and the same. To allow the Board to renege on its contractual agreement is a violation of the U.S. Constitution and the South Carolina Constitution. Morrisse v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, "Whether any procedural protections are due depends not on whether governmental benefit is characterized as "right" or "privilege" but whether the individual will be condemned to suffer grievous loss, and question is not merely of weight of individual's interest but whether the nature of interest is one within contemplation 'liberty or property' language of the Fourteenth Amendment." The

parolee has relied on at least an implicit promise that parole will be revoked or rescinded if he fails to live up to the parole conditions.

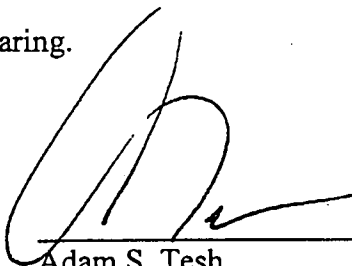
Ground 4

PCR Court did not address the issue regarding the meeting when the decision was made by the Board to rescind Applicant's parole in violation of Operations Manual, page 18, section 3. INFORMATION RELEASEABLE ON REQUEST.

Applicant requested the date and transcript of the Board hearing/meeting of when the decision was made by the Board to rescind Applicant's parole. Refusal to disclose this information is a violation of Operation Manual, page 18, section 3. INFORMATION RELEASEABLE ON REQUEST. "The following must be made available to any person who requests it.. 'Any transcripts of hearings or meetings'".

Conclusion

Wherefore, based on the foregoing grounds, facts, and arguments, Applicant respectfully prays that this Honorable Court grants the relief prayed for in the original post-conviction application or orders a new evidentiary hearing.



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October 9, 2014