

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW
COURT

Deborah Brooks-Durden, Administrative Law Judge
Case No.: 2012-ALJ-15-0042-AP
Appellate Case NO.: 2014-001772

S. C. Dept. of Probation, Parole and Pardon Services Respondent,

v.

Albarr-Ali Abdullah, #191449 Appellant.

INITIAL BRIEF OF APPELLANT

Albarr-Ali Abdullah, #191449
Appellant, Pro se
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067

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SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal iii

Statement of the Case iv

Facts V.

Arguments: The Parole Board's delay in holding a Parole Review Hearing is an Ex Post Facto violation.

 II. The South Carolina Department of Probation, Parole and Pardon Services Wrongfully extended Appellant's parole reconsideration dates.

Argument I. 1

Argument II. 1-2

Conclusion 3

TABLE OF AUTHORITIES

Cases: Weaver v. Graham, 450 U.S. 24, 101 S. Ct. 960 (1981);
Fleming v. Oregon Bd. of Parole, 998 F.2d 721, (9th Cir. -
1993).
Jones v. Murray, 962 F.2d 310.
Roller v. Cavanaugh, 984 F.2d 120 (4th Cir.) Cert. denied
114 S. Ct. 593 (1993); and Melvin v. Nikolopoulos.

U.S. Const. Amendments: 1, 9, and 10.

Statutes: S. C. Code of Laws Ann. § 24-21-645 (Supp. 2012).

STATEMENT OF THE ISSUES ON APPEAL

I. Did the S. C. Parole Board unlawfully extend the Appellant's Parole reconsideration dates?

STATEMENT OF THE CASE

On November 11, 1992 in the Charleston County Court of general sessions Appellant was sentenced to a 25 years term of imprisonment for armed robbery, twenty years for ABIK, and 10 years for attempted armed robbery. The sentencing court ordered that each term of imprisonment were to be served consecutively.

When the Appellant committed the crimes South Carolina law allowed a person convicted of a crime classified as violent becoming eligible for parole upon serving one-third of their sentences.

The Appellant initially appeared before the Parole Board on February 23, 2000. Appellant was rejected for release on parole at the initial hearing. Subsequent to the initial appearance and rejection for release on parole Appellant has appeared before the Parole Board six more times with each appearance the Parole Board rejected Appellant for release on Parole.

His most recent appearance occurred on January 30, 2013 at which time Appellant was denied release on parole.

Following his most recent denial of release on parole Appellant filed an appeal in the Administrative Law Court alleging the Board failed to hold a timely parole review hearing pursuant to S.C. Ann. §24-21-645 (Supp. 1992).

The Honorable Deborah Brooks-Durden, Administrative Law Court Judge entered judgement on June 25, 2014 denying Appellant's request for relief. On August 8, 2014 Appellant perfected his notice of appeal in this case and timely filed the notice of appeal with Clerk of Court of the South Carolina Administrative Law and the South Carolina Court of Appeals. By Order of this Court dated 9-10-2014 Appellant was ordered to submit his initial brief on or before October 10, 2014.

This initial brief of Appellant follows.

FACTS

Appellant was sentenced to 3 consecutive terms of incarceration totaling Fifty Five (55) years on November 11, 1992 in the Court of general sessions for Charleston county. The crimes for which Appellant were convicted and sentenced for occurred on September 19, 1991 at about 3:15 a.m.

On February 16, 2000 Appellant appeared before the Parole Board for his initial parole review hearing. Subsequently, Appellant has appeared before the Parole Board on August 20, 2002, August 24, 2004, August 23, 2006, October 8, 2008, October 20, 2010, and January 30, 2013.

On December 10, 2012 Appellant filed a grievance alleging the the South Carolina Department of Probation, Parole and Pardon Services failed to schedule his parole hearing within statutorily prescribed time limits. See S.C. Code Ann. § 24-21-645 (Supp. - 2012).

Appellant's parole review hearing held on January 30, 2013 amounts to an increase of about ten and a half months to Appellant's parole review hearing date resulting in Appellant's parole review hearings be held after 34 1/2 months, instead of the 24 months prescribed by S.C. Code Ann. § 24-21-645 (Supp. - 2012).

v.

v.

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ARGUMENTS

- Was the extension of Appellant's parole review hearings dates a violation of the Ex Post Facto laws?

The extension of Appellant's parole reconsideration hearing dates is an ex post fact application law violative of the United States Constitution. A recurrent issue in parole cases is whether changes in parole statutes, regulations or practices violate the Constitutional prohibition against ex post facto laws. See U.S. Const. Art. I, and 9, clause 3; and Art. 10 clause 1, which forbids imposing punishment for an act that was not punishable when it was committed, or imposing more severe punishment than the law prescribed at the time of the offense. See Weaver v. Graham, 450 U.S. 24, 101 S. Ct. 960 (1981).

The actions of Respondents aren't mere procedural issues. Parole statutes that change the standards for granting parole or dictate longer periods of incarceration if applied retroactively to offenses committed before the change in law violate the Ex Post Facto Clause. Fleming v. Oregon Bd. of Parole, 998 F. 2d 721, (9th Cir. 1993); Jones v. Murray - 969 F. 2d 310.

This rule applies to changes in good ^{time A.A.} statutes that result in postponing parole or other release eligibility. Weaver v. Graham, 450 U.S. 35 and other statutes that reduce the opportunity to obtain parole. Several Courts have also held that statutes and actions that reduce the frequency of parole consideration violate the Ex Post Facto Clause. Roller v. Cavanaugh, 984 F. 2d 120 (4th Cir.) Cert. Denied 114 S. Ct. 593 (1993) and cases cited. Also see, Melvin v. Nickoloupolus. ("This action results in unlawful detention, false imprisonment and this confinement is not privileged.").

- II. Did the South Carolina Department of Probation, Parole and Pardon Services unlawfully extend Appellant's parole reconsideration dates?

The South Carolina Department of Probation, Parole and Pardon Services, (SCDPPPS) extended Appellant's parole reconsideration date by more than 10 1/2 months.

1.

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Appellant's latest appearance on January 30, 2013 occurred more than 34 1/2 months from the 24 month initial parole review date set on February 23, 2000 as the biannual date required by S.C. Code of Laws Ann. § 24-21-645 (Supp. 2012), as admitted by Respondents in their Supplemental Amended Brief, p.p. 1-2.

2.

2.

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CONCLUSION

For the reasons stated, this Court should reverse the judgement of the administrative law court.

Dated: 10-9-2014

Respectfully submitted,
si Alban Ali Abdullah

Albarr-Ali Abdullah, #191449

Appellant, Pro-se

Kershaw Correctional Institution

4848 Goldmine Highway

Kershaw, South Carolina 29067

Date 10-9-14

3.

Albarr - Ali Abdullah, # 191449
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067
10-9-2014

The Honorable Jenny A. Kitchings,
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Albarr - Ali Abdullah v. SC DPPPS
Appellate Case No.: 2014-001772

Dear Ms. Kitchings:

Please find enclosed an original and one copy of Appellant's Initial Brief and Proof of Service on Counsel for the Respondent in the above case. Please file the enclosed and return a clocked in copy for my records. Thank you in advance for any time and attention you give this case.

Sincerely,
Albarr Ali Abdullah
Albarr - Ali Abdullah, # 191449,
Appellant, Pro Se
10-9-14

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SC Court of Appeals

The South Carolina Court of Appeals

Albarr-Ali Abdullah, #191449, Appellant,

v.

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

Appellate Case No. 2014-001772

The Honorable Deborah Brooks Durden
Trial Court Case No. 2012ALJ150042AP

ORDER

The time for serving and filing the appellant's initial brief is hereby extended until October 10, 2014. The designation of matter has been received.

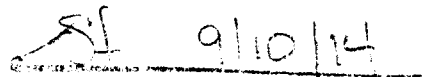
FOR THE COURT

BY


CLERK

Columbia, South Carolina

FILED


9/10/14

cc:

Albarr-Ali Abdullah, 191449
Nicole Thomas Wetherton, Esquire
Tommy Evans, Jr., Esquire

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE
LAW COURT

The Honorable Deborah Brooks-Darden, Administrative Law Judge

Appellate Case No.: 2014-001772

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

v.

Albar-Ali Abdullah, #191449 Appellant.

PROOF OF SERVICE

I, Albar-Ali Abdullah, #191449, Appellant in the above captioned case certify that I served a copy of Appellant's Initial Brief on Tommy Evans, Jr., Esquire by depositing a copy of it in the United States Mail, postage pre-paid, on 10-6-14, addressed to: Tommy Evans, Jr., Esquire General Counsel, South Carolina Department of Probation, Parole and Pardon Services, Post Office Box 50666, Columbia, South Carolina 29250.

Respectfully submitted,
Albar Ali Abdullah
Albar-Ali Abdullah, #191449,
Appellant, Pro Se
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067
Date 10-6-14

Sworn to and subscribed before me
this 6 day of October, 2014.

Catherine A. Cameron
NOTARY PUBLIC OF SOUTH CAROLINA

My commission expires: _____

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