STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALFROM THE ADMINISTRATIVE LAW COURT
Shirley Robinson, Administrative Law Judge
13-ALC-15-0047

Appellate Case No. 14-000811

Bobby Ruff, #185024 — Appellant

v.

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

APPELLANT'S FINAL REPLY BRIEF

Bobby Ruff, #185024
KER.CI-HA250
4848 Goldmine Hwy.
Kershaw, SC 29067

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STATEMENT OF ISSUES ON APPEAL

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2. Does there exist a protected interest in the privilege to be released on paroled?

3. Should the board have a fixed term for parole eligibility, and should the Appellant be released after his term of incarceration based on the opinion of the Parole Board of an unreasonable risk of danger to society solely on the immutable fact of the offense itself?

4. Has the Board permantly denied the Appellant an opportunity to be released on parole due to the use of his prior offense as a reason for denial, and has the Respondent failed to consider the COMPAS Risk Assessment under §24-21-10(F)(1) in its Notice of Rejection finding of fact to prove its procedures before the ALC?

Case No. 14-000811

STATEMENT OF THE CASE

The Appellant concedes to the Statement of the Case in the Respondent's Initial Brief.

ARGUMENTS

1. THE BOARD DID NOT FOLLOW THE MANDATORY CRITERIA, AND THE MANDATES PROSCRIBED BY THE SUPREME COURT IN THE COOPER DECISION.

The Appellant asserts that the Parole Board failed to consider and apply the statutory-related §24-21-10(F)(1), of S.C. Code Ann, thus, in effect rendering him ineligible for parole, which warrants review by the ALC. See §24-21-10(F)(1), "The Department must develop a plan that includes the...establishment of a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions. ..." (emphasis added). The ALC failed to make this finding. As such, its order as well as the parole board's notice of rejection are affected by an error of law. Appellant further contends that this Court must consider ancillary relief regarding all future Parole Board Orders that should consist that it "clearly considered a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to behavior as outlined in §24-21-10(F)(1)." The South Carolina Supreme Court case of Cooper v. S.C. Dept. of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008) must be revisited by the Court to address the parole board's notice of rejection that is clearly affected by an error of law.

Again, the case at bar, the order of denial did not conform to a new law that is not included in the Cooper decision. Ancillary process was not applied to include §24-21-10(F)(1) in Appellant's notice of rejection. The decision by the ALC was unlawful by an error of law, and should be reversed and remanded by this Court.

2. THE APPELLANT WAS DENIED A LIBERTY INTEREST BY NOT BEING AWARDED A PRIVILEGE OF PAROLE PURSUANT TO §24-21-700.

The Appellant contends that the Board did not determine his eligibility for parole under the provisions of article §24-21-700, when it failed to pursue approval by the Veterans Administration or to a committee appointed to commit to a

or in other words a committee appointed to commit him to a Veterans Administration Hospital. Appellant's issue here is that the Board did not seek any approval from the Veterans Administration for his release to the custody to the VA Hospital. The Appellant is a War time Combat Vietnam Veteran that has experienced traumatic events, in which the Veterans Administration is equipped to provide effective treatment for his condition. Ruff lived through a disaster during the Vietnam era, and the Board failed to consider the factor that the painful memories of that experience were still causing him problems at the time of his offense. The Board members are aware that a traumatic event such as combat changes an individual behavior in ways that are troubling such as drink, use drugs, or smoke too much, and lash out at people, overract to small misunderstandings. The anger can make an individual feel irritated and cause one to be easily set off.

Section 24-21-700 does apply because the Appellant is a prisoner who is otherwise eligible for parole under the provisions of this article, but the Board committed an error of law when it failed to seek approval by the VA or to a committee appointed to commit such prisoner as Ruff to a VA Hospital, thus, denying him eligibility for the same.

Parole is a privilege that has a protected interest essential for freedom of action. As such, this privilege was created by law. SEE, the Federal Constitution 14th Amendment provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." The Appellant has not abused any privilege that would warrant denial for parole, nor does his disciplinary record warrant denial for parole. In fact, it's the opposite, because the Appellant has complied with §24-21-640, "during imprisonment" regulations and criteria, in which the Board has abridge arbitrary and capriciously. The Appellant also asserts that he has an essential protected interest privilege to be released on parole based on his record during imprisonment under §24-21-640, and §24-21-700. The decision by the ALC was unlawful by an error of law, and should be reversed and remanded by this Court.

3. INSUFFICIENT EVIDENCE WAS PRESENTED TO THE BOARD TO JUSTIFY DENYING THE APPELLANT AN OPPORTUNITY TO BE RELEASED ON PAROLE.

An additional mandatory criteria that must be considered is the record of the Appellant during his incarceration. It is arbitrary and capricious, along with an error of law for the Board's "only" measure of Appellant's future dangerousness is the offenses committed. The Department's criteria must reflect

all of the aspects of §24-21-640, which include a review of the Appellant's prisoner's disciplinary record, and other rehabilitation or self improvement records during incarceration. It is a prejudice error of law when the Board does not reveal a rational nexus between the evidence-based practices, factors, and criteria that contribute to behavior in a validated actuarial risk and needs assessment tool as outlined in §24-21-10(F)(1), and the ultimate dtermination that the Appellant progress during incarceration and the attitude he has achieved into past behavior and of current and future dangerousness. A person who has committed murder should not be considered a possible future danger to the community without any evidence to support the Board's discriminatory attribution of the Appellant.

It is clear that §24-21-640, that was created by the General assembly wanted current actions of the inmate to be taken into consideration. The whole and entire intent of the General Assembly cannot be changed by the Parole Board nor the ALC. The cardinal rule of statutory construction is to ascertain and effectuate the whole entire intent of the legislature, not what is suitable for use by the Board purpose to circumvent the language used and legislative intent. Appellant asserts that the language construed in §24-21-640 intended purpose, along with §24-21-10(F)(1), COMPAS Assessment Program must carefully be considered during and after imprisonment, as a rational nexus between the evidence and ultimate determination the prisoner's progress during and after incarcaeration and the attitude he has achieved into past behavior and of current or future dangerousness.

The Appellant is stating that the Board's determination is irrational when it determines that the current offense or Appellant's past criminal history outweighs the other criteria, that could cause them to deny parole without any rational nexus between current offense or past criminal history between the other criteria. The General Assembly did not give the Parole Board the authority to abuse its discretion to accept or deny parole, and the attitude toward the current offense is a major criteria that must be considered as required under the Second Chance Act (H.R. 1704) 2005, and the Omnibus Crime Reduction and Sentencing Reform Act of 2010, Department's provisional parole period under South Carolina State law. See South Carolina Reduction of Recidivism Act relating to inmates who may be placed within certain programs. Relating to the Cir-

cumstances Warranting Parole. The Board insinuates that parole is a privilege given by grace, and that all of the mandated criteria was considered prior to the denial of parole. The Holy Bible Scripture intent and the language used provide many examples of grace, Acts 2:47 being one. The Scripture does not speak of grace in vain. "Do the Holy Spirit which God made to dwell in us long unto envying? It cannot be so." Listen to the Scripture instead of letting it speak in vain.

The Appellant further asserts that the South Carolina Omnibus Reduction and Sentencing Reform Act of 2010, Department's provisional parole section under State law, and the Reduction of Recidivism Act relating to inmates who may be placed within certain programs, i.e. provisional parole program relating to the circumstances warranting parole is the proof to reveal that the proper measures were not made during his parole proceedings. The COMPAS Assessment Program is proof enough to provide that a rational nexus between the crime committed and his current and future dangerous is an error law. Also, the notice of rejection dated 9/6/13 does not provide proof of §24-21-10(F)(1) was properly complied with by the Board.

The Board mentions the circumstances about the crime committed should be sufficient evidence revealing Appellant's future dangerousness, if this is the case all those that are currently paroled on the offense of murder is sufficient evidence revealing their future dangerousness. As such, was the Parole Board improper with its decision to release and grant them parole? The Respondent's reasoning is unreasonable with respect to this matter.

The Notice of Rejection nor the ALC order did not state the findings of fact, §24-21-10(F)(1), and the COMPAS Assessment considered in reaching this conclusion in Appellant's case, not doing so is an unlawful procedure. It is the opinion of Ruff that in order for the Board to prove that proper procedures were followed, it must not only state the findings of fact, but §24-21-10(F)(1), and the COMPAS Assessment considered in reaching this conclusion. The ALC received a copy of the Appellant's letter of rejection dated 9/6/13, as part of the record and designation of matter. The issue is ancillary before the Court, and before the ALC as a plain error of law within its jurisdiction to act, but failed to do, exercise its discretion regarding this matter. The issue is preserved for appellant review based on subject matter jurisdiction, which can be raised at

any time, even for the first time on appeal. The Respondent open the door for matters regarding jurisdiction. The decision by the ALC was unlawful by an error of law and abuse of discretion, and should be reversed and remanded by this Court.

4. USING THE FACTS OF THE OFFENSE AS A REASON FOR DENIAL DOES PERMANENTLY DENY THE APPELLANT AN OPPORTUNITY FOR PAROLE.

The Board has arbitrary and capricious created an unlawful standard for parole denial: "...the amount of violence that occurred in the commission of the underlying crime...." The Parole Board nor the ALC has held an evidentiary hearing to determine as to whether there evidence of dangerousness if Appellant is release on parole. The Board's inference is unlawful because there would always be some evidence that Ruff is guilty of something more than his conviction. This process violate many legal protections, double jeopardy, an inadequate legal burden of proof.

The Appellant asks the Board, "what evidence linked his 1991 offenses to his current or future propensity for dangerousness? The Board can not provide or show a reasonable and rational cause to the ALC nor this Court otherwise, but the nature and seriousness of the commitment offense. Appellant contends when the Board had the hearing and found him unsuitable based solely on his crime, there's no reason to ever give him another hearing; because what will change the board's opinion? The Board's reasoning is arbitrary, in violation of due process. Appellant asserts that it can be a violation of due process to eternally hold him or other prisoners to be an "unreasonable risk of danger to society if released" based solely on the immutable fact of the offense itself. There is no evidence of current nor future dangerousness. Appellant ask the Court as well as the ALC to rely upon his spotless record during and after his incarceration as required under §24-21-640, S.C. Code Ann., along with his above average programming history, an evidentiary record that will go undisputed. The Board's opinion or discretion to be considered evidence would amount to a tautology, because there would then always be evidence to support the denial of favorable parole decisions.

The Appellant designate the foregoing into the record. The Appellant has the Veterans Administration to use as a major resource that will be available to help him with any problems if the Board would comply with §24-21-700, of S.C. Code Ann. The mitigating factors in the Appellant's case could not have been

assessed or considered by the Board for review, because he was denied parole based on the underlying offense. Again, the Board's opinion nor discretion are not sufficient reasonable or rational evidence under §24-21-10(F)(1), COMPAS Assessment, and §24-21-640, as a reason for denial being lawful. The ALC commits serious error of law when it failed to make finding that the Board did not reveal COMPAS Assessment results under §24-21-10(F)(1), as a reasonable and rational criteria or evidence to be considered for the record and order, along with notice of rejection. The Appellate Court sits to review errors in law.

CONCLUSION

The Appellant request for oral arguments or an evidentiary hearing to determine whether or not that his risk of dangerousness can be determined solely by the offense committed. Additionally, the Appellant request that he be granted parole.

Respectfully submitted,

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pro se

November 4, 2014

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

DESIGNATION OF MATTER

Appellant proposes that the following information be included in the Record of Appeal:

1. Notice of Rejection dated 9/4/13;
2. ALC Order in case 13-ALC-15-0047;
3. Appellant's COMPAS Assessment Results;
4. The Board's request for Appellant's approval to be release to the Veterans Administration;
5. Appellant's disciplinary record;
6. The Second Chance Act (H.R. 1704);
7. The Omnibus Crime Reduction and Sentencing Reform Act of 2010;
8. Circumstances Warranting Parole;
9. Appellant's record during and after incarceration pursuant §24-21-640;
10. Appellant's programming history (evidentiary record); and
11. A rational nexus between the evidence and ultimate dtermination of current or future dangerousness.

Bobby Ruff, #185024

November 4, 2014

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SC Court of Appeals

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CERTIFICATE OF (PRO SE) COUNSEL

The undersigned certifies that this Reply Brief complies with SCACR and with and the S.C. Supreme's Court's Order dated August. 2007.

Bobby Ruff, #185024

pro se

November 4,2014

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CERTIFICATE OF Service

I, Bobby Ruff, #185024, the Appellant, hereby certify that I have served the Final Reply Brief of Appellant, Designation of Matter, and Certificate of Counsel dated November 4, 2014 on Respondent by depositing a copy of the same in the U.S. Mail, postage prepaid, this 4th day of November 2014, addressed to: Tommy Evans, Jr.
Assistant General Counsel
SCDPPPS
PO Box 50666
Columbia, SC 29250

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

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November 4, 2014