

SOUTH CAROLINA COURT OF APPEALS
In The State of South Carolina

APPEAL FOR THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge
Appellate Case Number 2014-000811

Bobby Ruff, #185024,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

RECORD ON APPEAL

Bobby Ruff, 185024
pro se

HA250/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

RECEIVED

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SC Court of Appeals

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MANDate Ministries - PO Box 38591 - Charlotte, NC 28278
www.mandateministries.com

August 21, 2013.

Attention: Parole Board State of South Carolina

Re: Letter of Support for Bobby Ruff Inmate #185024 – HA-250

To Whom It May Concern:

I am writing this Letter of Support for Bobby Ruff, Inmate #185024 at Kershaw Correctional Institution, Kershaw, SC in anticipation of his impending parole board review and subsequent release.

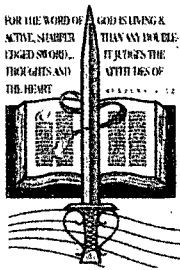
Over the past year of working closely with Mr. Ruff, I have noticed his incredible commitment and diligence in the Long Term Offenders program and curriculum. He has excelled in every class, completing all of his assignments on time, demonstrating exemplary behavior and a positive attitude with enthusiastic leadership for the younger inmates.

As the CEO of Mandate Ministries in Charlotte, NC, I have initiated the process of purchasing a 70 room hotel we will use for transitional housing for men returning to our community from prison. *We are committed to blocking one of the rooms for Mr. Ruff, should he decide to relocate to Charlotte and we will afford him opportunities for employment at our warehouse, transitional hotel or through various training programs and partnerships we have developed in construction, transportation or property management.*

Please feel free to contact me at 980.224.9455 if you have any questions. I stand ready and prepared to offer any additional testimony on his behalf.

Best regards,

Nicholas C. Moore, CEO



James L. Harvey Chapel
Kershaw Correctional Institution

4848 Goldmine Highway
Kershaw, SC 29067-8069
(803) 896-3354 / (803) 896-3383
FAX (803) 896-3310

August 22, 2013

Probation, Pardon, & Parole Board

As an SCDC Chaplain, I have the opportunity to see and hear the stories of many men and over time have the ability to see whose walk is consistent with their talk. Bobby Ruff has consistently been a part of the many ministries and programs in our chapel, which allows me to witness on a regular basis his behavior, demeanor and character. Ever since I have known Mr. Ruff, he has taken full responsibility for his actions that led to his incarceration and has consistently voiced both repentance and regret for the damage that he caused an innocent victim his family.

The three-fold mission of the South Carolina Department of Corrections is: Safety, Service and Stewardship: that we will protect the public, our employees, and our inmates, we will provide rehabilitation and self-improvement opportunities for inmates, and we will promote professional excellence, fiscal responsibility, and self-sufficiency. The rehabilitation process is successfully demonstrated in every area of Mr. Ruff's life, the public is not only safe, but will greatly benefit from his gifts, talents and abilities, and he demonstrates excellence in job performance, interpersonal relationships and self-sufficiency.

Upon release, Mr. Ruff will be invited to reside at The Zacchaeus House, an El Roi Ministries run transitional house in Rock Hill and he will be gainfully employed in one of our partner businesses through Mandate Ministries – Ruth's Chris Steak House, Newk's Deli or Carolina Pallet Co. Zacchaeus House staff and volunteers will mentor and hold Mr Ruff accountable for his successful reentry to society. He has my full endorsement for Parole without reservation.

Sincerely,

Gerald K Potoka
Chaplain, Kershaw Correctional Institution

October 25, 2013

Laraine Brooks-Tyner
1736 Chesapeake Lane
Unit 2
Schaumburg, IL 60193
(847) 985-0592

Attention: SCDC

To whom it may concern!

I am Laraine Brooks-Tyner, the sister Of Mr Bobbie P. Ruff (185024), a inmate at Kershaw Correctional Inst.. On June 13, 2013 I was contracted by Mr. Ed Jenkins, from Probation Pro. Mr. Jenkins left me a phone message for me to call him back because he needed to gather some information concerning my brother Bobbie Ruff for the ProBoard. I did call Mr. Jenkins back that same day and left a message that I was returning his phone call.

Mr. Jenkins did call me back the next day, ask me about our family and if my brother ever had a problem with drugs and alcohol, he also ask me when my brother was discharged from services(Army). I did answer all of Mr. Jenkins question, I was also ask if he could tape our conversation and I agreed.

Mr. Jenkins also ask if the Proboard had contract me , I advise him that they haven't. He told me that I should be hearing from the Proboard soon, that my brother Prohearing was schedule for September 4,2013.

I advise my brother that I had spoke with Mr Ed. Jenkins, that he told me that his prohearing is schedule for September 4, 2013.

On September 4, 2013 I was advise by my brother that at his prohearing none of the information I provide to Mr. Jenkins was presented , neither was any of his information present in his hearing that he had sent to a gentlemen at the proboard, he was denied .

I did call Mr Ed Jenkins that same day and left a message asking him to contract me concerning my brother proboard hearing. I did speake with Mr. Jenkins the next day and advise that my information I have giving him wasn't us at my brother hearing.. Mr.Jenkins told me that no one from Proboard ask him for that information.

I do have a study job, I am also receiving my husband pension. I am financial stable to help my brother when he get out , provide transportation to help him look for a job and he do have a place to stay with me.

I am asking the Proboard to give my brother another chance, I do realize what he did was wrong, He also know it was wrong.

Sincerely,

Laraine Brooks-Tyner
Laraine Brooks-Tyner

Date - 11/02/2013

Notary - *Michael T. Rossiak*



**South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration**

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SC Board of Probation, Parole and Pardon Services
P. O. Box 50866
Columbia, SC 29250

Inmate Name	SCDC #
-------------	--------

Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release, nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainees or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature	Date	Witness	Date
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State of South Carolina
Department of Probation, Parole and Pardon Services

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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
Fax: (803) 734-9440
www.dppps.sc.gov

September 4, 2013

Mr. Bobby Ruff #00185024
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

RE: NOTICE OF REJECTION

Dear Mr. Ruff:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support Services

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bobby P. Ruff, #185024
Appellant.
vs.
South Carolina Department of Probation,
Parole and Pardon Services.
Respondent.

NOTICE OF APPEAL

DOCKET NO. ALC-15 -AP

Notice is hereby given that Bobby P. Ruff, #185024, the Appellant does hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated 9/4/13 and received on 9/11/13, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):
(1) The parole board erred by depriving the appellant a state-created liberty interest under §24-21-700, satisfying the statutory conditions for parole, and violate due process and equal protection requirements. (2) Procedure employed by parole board was arbitrary and capricious and in violation of S.C. Constitution Art.1, §3, and S.C. Constitution Art. 12, §2, and §24-21-10(F) when it failed to consider appellant's record of rehabilitation and after imprisonment record for review. (3) The parole board abuse of discretion when it relied upon the immutable factors of the commitment offense to deny appellant parole under its cri-

Bobby P. Ruff
Appellant's Name
HA250/KER.CI
4848 Goldmine Hwy.
Mailing Address
Kershaw, SC 29067
City, State, Zip Code

Bobby P. Ruff
Signed
10/4/13
Dated

CERTIFICATE OF SERVICE

I hereby certify that I Bobby P. Ruff (I) furnished on the 9th day of October, 2013 at Kershaw South Carolina a true and correct copy of the foregoing Notice of Appeal on all parties to this matter by first class United States Mail, postage paid, in the mail as in the undersigned's registration and address as follows:

Name of person/Agency served: Office of General Counsel SCDPPPS
Address: P.O. Box 50666
Columbia, SC 29250

Bobby P. Ruff
Signature

Bobby P. Ruff
Signature

NOTICE OF APPEAL (Continuance)
Bobby P. Ruff, #185024 v. SCDPPPS
SC Administrative Law Court

page 2 of 2
October 4, 2013

teria 1212 Revision A, and §24-21-640. (4) The parole board erred in failing to grant him parole until the board has first received a report as to his mental condition and his ability to adjust to life outside the prison under §24-21-610 (2)(5), S.C. Code of law (1990-2007), constitute an ex post facto violation and due process violation.

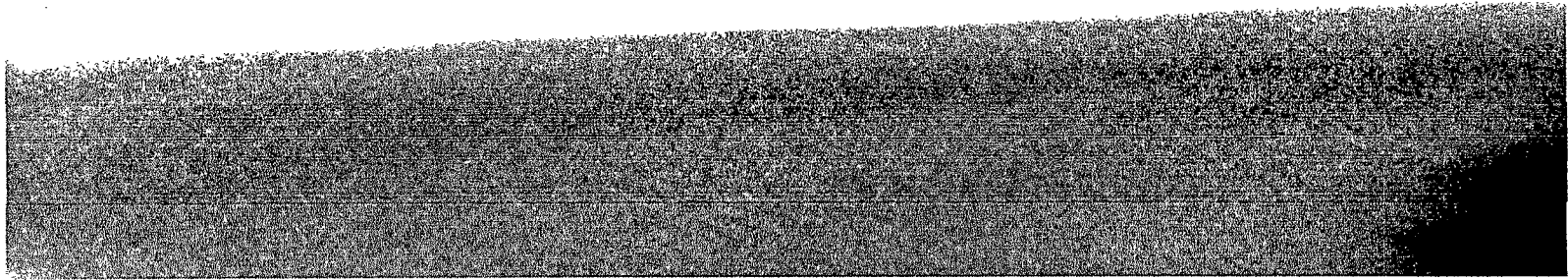
s/ *Bobby P. Ruff*
Bobby P. Ruff, #185024
HA250/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

CERTIFICATE OF SERVICE

I hereby certify that I, Bobby P. Ruff, #185024, on the 9th day of October, 2013, in Kershaw, SC, served a copy of the foregoing notice of appeal continuance on all parties to this matter by depositing the same in the U.S. Mail, postage prepaid, or in the mail room of the undersigned's institution and addressed as follows: Office of General Counsel.

SCDPPPS
P.O. Box 50666
Columbia, SC 29250

s/ *Bobby P. Ruff*
Bobby P. Ruff, #185024



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

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

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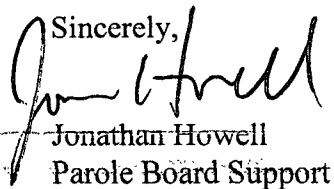
September 19, 2013

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

RE: Request for Parole Packet

Dear Mr. Ruff,

I am responding on behalf of Mr. Patton, Director of Parole Board Support. I am in receipt of your letter requesting materials from your Parole File. Please be advised that once information is submitted to the file, we are unable to return that information. At that time, it becomes an official record of the department and is not allowed to be returned or disseminated.

Sincerely,

Jonathan Howell
Parole Board Support

November 8, 2013

Kela E. Thomas, Director
SCDPPPS
P.O. Box 50666
Columbia, SC 29250

RE: *Reconsideration for Conditional Parole*

Dear Ms. Thomas:

My Name is Bobby P. Ruff, SCDC #185024, at the Kershaw Correctional Institution. On September 4, 2013, I appeared before the Parole Board based on my eligibility for parole status. The monitor froze up several times, and I was asked by a board member if I could hear them. The complications with the monitor hindered my ability to effectively communicate to the board. Nevertheless, I sent letters about my residence, future employment, and about myself, my feelings, and about my past, along with my journey, and who I am now.

I was truly let down when none of that info was brought up or presented at my hearing. I was at a lost and not allowed to speak on factors I've presented in my parole packet. As such, I'm respectfully asking for reconsideration for conditional parole so that I can represent myself to the board with my packet presented to them. I believe that the key factors that were inadvertently overlooked are relevant in my particular case, and would require review for reconsideration for conditional parole.

Enclosed is a copy of my parole packet that include a letter in support for parole on my behalf from Senior Chaplain Potoka dated 8/22/13, and a letter in support for parole on my behalf from Nicholas Moore, CEO of MANDate Ministries, dated 8/21/13, along with a notarized letter from my sister Laraine Brooks-Tyner, dated 10/25/13. The foregoing material documents were not presented to the Board, nor did anyone in Mr. Patton's section contact Mr. Ed Jenkins regarding the information from my sister or their conversation they had regarding factors are favorable for me seeking conditional parole, and that the Board favors these factors because they will help me stay out of prison and become a productive member in society.


Jonathan Howell, Parole Board Support contacted me via letter dated 9/19/13 informing me that he was unable to return a copy of my parole packet to me because it is not allowed to be returned to me. I requested for a copy of it, and by his failure to return a copy to me causes me to believe that it is misplaced or was not available nor presented to the Board for review.

In addition, the Board inadvertently overlooked a key factor that is required under §24-21-640, my after prison record or record of rehabilitation in light of the the American Disabilities Act (ADA). I'm a Vietnam Veteran eligible for

reentry programs. The Board did not have any information pertaining to my veteran vietnam combat status that I believe have intrinsic satisfaction for the Board to grant conditional parole, because the measures mentioned in my parole packet becomes most important as an after prison record or record of rehabilitation for an extrinsic and external factors to be considered satisfactory.

Thank you for reconsideration of this matter to grant conditional parole.

Respectfully submitted,


Bobby P. Ruff, 185024
KER.CI/HA250
4848 Goldmine Hwy.
Kershaw, SC 29067

P.s. Please be informed that I'm willing to accept out-of-state parole to Schaumburg, Illinois upon reconsideration.

Enclosures

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South Carolina
Department of Probation, Parole and Pardon Services

Provisional Parole Packet

TO: Parole Board

Through: Kela E. Thomas, Director

From: Bobby P. Ruff, SCDC #185024
Kershaw Corr. Inst.

Subject: Request for Conditional Parole

Date: November 8, 2013

I would like to start by letting it be known that I'm truly sorry for the hurt I've caused in others' lives. My grandsons only know me from being in prison for doing very bad things. With all my heart I would love to show them that I've become a loving and caring grandfather.

There is a change in me, my life is now on point, my faith is strong. I follow rules without trying to get around them. I've grown spiritually, feeling comfort in knowing and doing what's right.

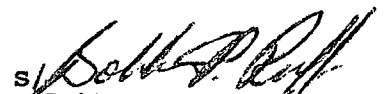
I know myself inside out, drugs and drinking were my main cause for criminal thinking, feeling like I could get away with most anything. N.A. and A.A. over the years has helped me facing recovery. This is a cited factor will help me upon release avoid going back to drugs and alcohol, because I've have contact with the parole officer, and I will avoid old neighborhoods, and I have a strong family relationship, faith and spirituality, housing, support from mentors and chaplains, a highly structured residential treatment program, i.e. V.A. Hospital Reentry Program, Mandate Program, and Zacchaeus Program.

I've completed Workkeys, and earned my G.E.D.. Also, being in the Long Term Offenders Program (Mandate Project) has truly helped me with life skills for employment, and putting me on the right path to re-enter society.

Being a Vietnam Vet, I need to tell my true story to other vets with the hope to reach some of them, maybe helping them from crime and prison.

I pray that by growing into the man I've become after 21 plus years, conditional parole is granted.

Thank you for your time. God bless.


Bobby P. Ruff, 185024
KER.CI/HA-250
4848 Goldmine Hwy.
Kershaw, SC 29067

Copy

12

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

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

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December 18, 2013

Mr. Bobby P. Ruff(#185024)
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

Dear Mr. Ruff:

I am in receipt of your recent letter dated November 8, 2013, in reference to a rehearing.

A request for a rehearing should be submitted in writing to this agency within thirty (30) days of your parole rejection. Your parole hearing was held on September 4, 2013; therefore you are ineligible to be considered for a rehearing. You will be notified thirty (30) days prior to your next scheduled parole reconsideration date.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry R. Patton, Jr.".

Larry R. Patton, Jr.
Director Of Parole Board Support

LRP/eaw

December 31, 2013

THROUGH: Kela E. Thomas, SCDPPPS Director

TO: Larry R. Patton, Jr., Director of Board Support

FROM: Bobby P. Ruff (#185024)
Kershaw Correctional Institution

SUBJECT: PAROLE RECONSIDERATION

Dear Mr. Patton:

I'm in receipt of your letter dated 12/18/13, in which you informed me that a request for a rehearing should be submitted in writing within 30 days of my parole rejection.


Be that as it may, your findings will show that I requested for you to return a copy of my parole packet contents to me in an effort so that I could request for a rehearing, but your office failed to return my parole packet, and it was several weeks before I received a reply from your office via a Mr. Howell stating that SCDPPPS do not return documents that are placed in prisoners files. Additionally, my request was made pursuant to the Freedom of Information Act (FOIA) of South Carolina and Federal Law. The delay of the reply from your office impeded my request, along with the 18 day institutional lock-down that was under quarantine because of the influenza breakout at the facility. There was no movement nor anyway to contact your office because of the institutional shut-down.

As such, I'm respectfully requesting for a rehearing based on the foregoing extraordinary circumstances that impeded my efforts to make a request for a rehearing in a timely manner as required by SCDPPPS within 30 days of my parole rejection. Due to the hardship beyond my circumstances I was unable to submit a request for a rehearing in writing to your office; therefore, if you may, reconsider your letter dated the 18th based on your findings as mentioned herein.

Mr. Patton, the institution still was on modify controlled conditions after the 18th day lockdown, and your office did not reply to me in a reasonable time upon my request for a copy of my parole packet.

Hopefully this will clarify the reasons why the request for a rehearing was not submitted to your office in writing within 30 days of the parole rejection.

Thank you for your interest and consideration.

Sincerely,

 Bobby P. Ruff, (#185024)

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Docket No. 13-ALJ-15-0047-AP

Bobby Ruff, 185024,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Bobby Ruff ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. On September 4, 2013, the South Carolina Department of Probation, Parole and Pardon Services ("Department") notified Appellant that the South Carolina Parole Board ("Board") rejected him for parole. On October 8, 2013, the Appellant filed a Notice of Appeal with the Court. The Appellant seeks judicial review of the procedure utilized by the Board in denying the Appellant parole.

DISCUSSION

An individual has a right to ALC review of a final decision of the Board only when that decision affects a liberty interest for which due process is required. See Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146, 149, 150 (2003); see also Sullivan v. South Carolina Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review). In Furtick, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, the statute creates no such liberty interest in the granting of parole itself. Furtick, 352 S.C. at 598, 576 S.E.2d at 149 n.4. Therefore, claims arising from the Board's decision denying parole are not appealable to the ALC, only claims that the Board failed to consider the appropriate criteria so as to be tantamount to an abrogation of parole eligibility. Cooper v. S.C. Dep't. of Probation, 377 S.C. 489, 661 S.E.2d 106 (2008).

Ex Post Facto Violation

The Appellant argues that the retroactive application of S.C. Code Ann. § 24-21-610 to the Appellant's case constitutes an ex post facto violation because it creates a presumption in favor of parole suitability only when certain designated findings are made. Specifically, the Appellant asserts that the requirement that the Board first receive a report attesting to the Appellant's mental health and ability to adjust to life outside prison before releasing the Appellant on parole is in violation of the law.

An Ex Post Facto violation occurs when "a change in the law retroactively alters the definition of a crime or increases the punishment for a crime. E.g., Lynce v. Mathis, 519 U.S. 433, 117 S.Ct. 891, 137 L.Ed.2d 63 (1997); California Dep't of Corrections v. Morales, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995); Farris v. State, 334 S.C. 21, 511 S.E.2d 688 (1999). Regarding the issue of increase of punishment, the relevant inquiry is whether the legislative amendment 'produces a sufficient risk of increasing the measure of punishment attached to the covered crimes.' Morales, 514 U.S. at 509, 115 S.Ct. at 1603, 131 L.Ed.2d at 597. If the amendment produces only a 'speculative and attenuated possibility' of increasing an inmate's punishment, then there is no ex post facto violation. Id. A court should look at the effect of the statute on the 'quantum of punishment' to determine whether an amendment offends the Ex Post Facto Clause. Lynce, 519 U.S. at 444-45, 117 S.Ct. at 897, 137 L.Ed.2d at 73." See Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000).

Section 24-21-610 provides that:

Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist.

S.C. Code Ann. § 24-21-610 (Supp. 2013).

In this case, the Appellant committed the crimes of Murder, First Degree Burglary and Grand Larceny on November 9, 1991. On July 29, 1993, the Appellant was sentenced for the commission of these criminal offenses. In order for an ex post facto violation to be found, the retroactive application of a "change in the law" must be evident. Section 24-21-610 has been amended several times; however, the requirement that a qualified psychiatrist or psychologist

provide a report to the Board detailing an inmate's mental health before an inmate may be released on parole was the law when the Appellant committed his offenses.¹ Thus, the application of Section 24-21-610 to the Appellant's case is not retroactive and no ex post facto violation has occurred in this regard.

Reliance on Fixed Factors

In Cooper the Supreme Court gave specific guidance as to what would constitute a sufficiently detailed order by the Board:

We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedures. Cooper, 661 S.E.2d at 112.

In this appeal, the Appellant challenges the sufficiency of the Board's order based on the fact that the two reasons for rejection stated by the Board in its decision are all "fixed as of the date of the offense and can never be changed by the actions of [the Inmate] while incarcerated." See Cooper, 661 S.E.2d at 111-112. While the Cooper court used the above-quoted language which would seem to criticize a decision denying parole supported solely by the circumstances of the crime, the Court went on to state, "These reasons would be sufficient to deny parole in the Board's discretion, if the Board's decision evinced consideration of Section 24-21-640 and its own criteria." Cooper, 661 S.E.2d at footnote 5. Therefore, the Board has the discretion to deny parole based solely on the nature and seriousness of the Appellant's current offense and indication of violence in this or a previous offense so long as it considers all the factors required by statute.

Failure to Consider "Special Factors" and Post-Imprisonment Record

The Appellant also argues that the Board failed to consider the "special factor" that the Appellant is a Vietnam Veteran suffering with Post Traumatic Stress Disorder ("PTSD") who would be eligible for conditional parole under Section 24-21-700.

¹ "The law existing at the time of the offense, not the time of sentencing, determines whether an increase of punishment or reduction of benefits constitutes an ex post facto violation." Elmore v. State, 305 S.C. 456, 409 S.E.2d 397 (1991) citing Miller v. Florida, 482 U.S. 423, 107 S.Ct. 2446, 96 L.Ed.2d 351 (1987).

Section 24-21-700 states that:

Any prisoner who is otherwise eligible for parole under the provisions of this article, except that his mental condition is deemed by the Probation, Pardon and Parole Board to be such that he should not be released from confinement may, subject to approval by the Veterans Administration, be released to the custody of the Veterans Administration or to a committee appointed to commit such prisoner to a Veterans Administration Hospital. Such a special parole shall be granted in the sole discretion of the Board...

S.C. Code Ann. § 24-21-700 (emphasis added). Despite the Appellant's assertion that he is eligible for conditional parole release under Section 24-21-700, the Board, in its discretion, has determined that the Appellant is not eligible for parole, and therefore, release to the custody of the Veterans Administration is not an option for the Appellant at this time.

Finally, the Appellant asserts that the Board failed to properly consider his "record after imprisonment" during his parole hearing. In his brief, the Appellant describes that he compiled a Provisional Parole Packet which included information concerning his accomplishments, substance abuse treatment, military service, and PTSD, as well as letters attesting to his good character from Nicholas C. Moore, of MANDate Ministries and Senior Chaplain Gerald Potoka, of Kershaw Correctional Institution. The Appellant contends that he has evidence that this information was never brought before the Board for consideration, and that there is nothing in the Record or the Board's denial letter which reflects that this information was ever considered.

Section 24-21-640 provides that:

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.

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

The Court's review of this matter is limited to the Record presented, and therefore, the Court cannot consider any fact or evidence which does not appear in the Record.² The Record

² See ALC Rule 65, "The Administrative Law Judge may affirm any ruling, order or judgment upon any


does include the Board's letter of decision which explicitly states that the Board considered all the factors published on the parole consideration form, as well as the factors outlined in Section 24-21-640 of the South Carolina Code of Laws. Therefore, the Court finds that the Board's review process of the Appellant's case sufficiently meets the standard set forth in Cooper.

ORDER

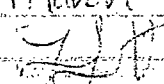
For the foregoing reasons,

IT IS HEREBY ORDERED that the Department's decision denying the Appellant parole is **AFFIRMED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

March 25, 2014
Columbia, South Carolina

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This 05 March 2014
BY: 

SOUTH CAROLINA COURT OF APPEALS
In The State of South Carolina

Appeal for the Administrative Law Court
Shirley C. Robinson, Administrative Law Judge
Appellate Case Number 2014-000811

Bobby Ruff, #185024,

Appellant,


v.

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

Respondent.

CERTIFICATE [PRO SE] COUNSEL

The undersigned proposes the contents in the record on appeal to be included in the appeal, in which both parties agree with the same.

s/ 
Bobby Ruff, 185024
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Kershaw, SC 29067

December 8, 2014

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SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS
In the State of South Carolina

Appellate Case Number 2014-000811

Bobby Ruff, 185024,

Appellant,

v.

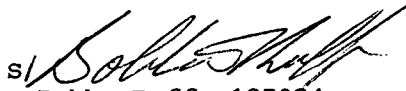
South Carolina Department of Probation,
Parole, and Pardon Services,

Respondent.

PROOF OF SERVICE

I, Bobby Ruff, appellant, certify that on December 8, 2014, I served the Record on Appeal, the foregoing or attached upon the Respondent by mailing a copy, postage prepaid, to the following address: Thomas Evans, Jr.

Assistant General Counsel
SCDPPPS
P.O. Box 50666
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s/ 

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