

Ronald Tate, #114188
Perry Correctional
Institution Q-2 B-220
430 Oaklawn Road
Pelzer, S.C. 29669
January 2, 2015

Honorable V. Claire Allen
Deputy Clerk
South Carolina Court
of Appeals P.O. Box 11629
Columbia, S.C. 29211

RE: Ronald Tate, v. SCDPPPS (4)
Appellate Case No. 2014-001047

Dear Ms. Claire:

It has become obvious to Appellant that this Court has misplaced Appellant's Initial Brief and Designation of Matter and Motion to Accept Filing of Appellant's Initial Brief and Designation of Matter Out of Time dated and filed on September 17, 2014, along with proof of service dated September 17, 2014.

On September 8, 2014, Appellant received a letter and order from this Court Dated September 5, 2014, advising him that his initial brief and designation of matter are due within ten (10) days from the date of the order.

With limited time to prepare, Appellant complied with the order and letter by filing his Initial Brief of Appellant and Designation of Matter and Motion to accept Filing of Appellant's Initial Brief and Designation of Matter Out of Time, both dated and filed on September 17, 2014, with certificate of service certifying same.

On September 17, 2014, Appellant received the Initial Brief of Respondent and Designation of Matter, along with proof of service dated October 16, 2014.

Thereafter on October 31, 2014, Appellant filed his Initial Reply Brief of Appellant, along with proof of Service dated October 31, 2014.

On November 21, 2014, Appellant received a letter of deficiency that had to be corrected in ten (10) days stating that the document has not been timely filed. A motion to allow the late filing will have to be made.

Appellant advised the Court in a letter dated November 25, 2014, begging the Court's attention that he had filed his Initial Brief Out of Time and honored the Court's letter. (See enclosed copy of same).

On December 12, 2014, Appellant received an Order from this Court dated December 9, 2014, that his initial brief and designation of matter are considered served and filed. (Copy Enclosed)


However, on December 29, 2014, Appellant received a letter from

this Court advising him that his Appeal should have been served and a proof of service filed with the Court. (See enclosed copy of same.)

Appellant has diligently met with all requests by this Court and have copies of all his filings with proof of service. Enclosed is a copy of Appellant's original Initial Brief of Appellant and Designation of Matter and Motion to Accept Filing of Appellant's Initial Brief and Designation of Matter Out of Time dated September 17, 2014, along with proof of service in the above referenced case.

Appellant has diligently complied with all request by this Court, and prays that this Court will honor it's Order dated December 9, 2014, by having his appeal proceed as Ordered.

Sincerely,


Ronald Tate, #114188
As Addressed Above

This 2, Day of January 2014

at Pelzer, South Carolina.

cc: S. Phillip Lenski
Tommy Evans

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JAN 02 2015
PCI Mailroom

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 13-ALJ-15-0027-AP
Appellate Case No. 2014-001047

RECEIVED

JAN 07 2015

SC Court of Appeals

Ronald Tate, #114188,.....Appellant

v.

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

CERTIFICATE OF SERVICE

I, Ronald Tate, #114188, (Appellant), hereby certify that I have served the within Initial Brief of Appellant and Designation of Matter dated September 12, 2014, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to the attorney of record. Also, a copy of same to S. Phillip Lenski, ALCJ, as addressed below:

Tommy Evans, Legal Counsel
2221 Devine St., Suite 600
SCDPPP'S, P.O. Box 50666
Columbia, S.C. 29250

Hon. S. Phillip Lenski
Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, S.C. 29201

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

RECEIVED

SEP 17 2014

P.C.I. MAILROOM

Ronald Tate

Ronald Tate, #114188
Appellant

Perry Correctional
Institution Q2 B220
430 Oaklawn Road
Pelzer, S.C. 29669

ADDENDUM: Also, Motion to Accept Filing of Appellant's Initial Brief and Designation of Matter Out of Time dated September 17, 2014, with the above proof of service.

Ronald Tate, #114188
Perry Correctional
Institution Q-2 B-220
430 Oaklawn Road
Pelzer, S.C. 29669
January 2, 2015

Honorable V. Claire Allen
Deputy Clerk
South Carolina Court
of Appeals P.O. Box 11629
Columbia, S.C. 29211

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SC Court of Appeals

RE: Ronald Tate, v. SCDPPPS (4)
Appellate Case No. 2014-001047

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With limited time to prepare, Appellant complied with the order and letter by filing his Initial Brief of Appellant and Designation of Matter and Motion to accept Filing of Appellant's Initial Brief and Designation of Matter Out of Time, both dated and filed on September 17, 2014, with certificate of service certifying same.

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Appellant advised the Court in a letter dated November 25, 2014, begging the Court's attention that he had filed his Initial Brief Out of Time and honored the Court's letter. (See enclosed copy of same).

On December 12, 2014, Appellant received an Order from this Court dated December 9, 2014, that his initial brief and designation of matter are considered served and filed. (Copy Enclosed)


However, on December 29, 2014, Appellant received a letter from

this Court advising him that his Appeal should have been served and a proof of service filed with the Court. (See enclosed copy of same.)

Appellant has diligently met with all requests by this Court and have copies of all his filings with proof of service. Enclosed is a copy of Appellant's original Initial Brief of Appellant and Designation of Matter and Motion to Accept Filing of Appellant's Initial Brief and Designation of Matter Out of Time dated September 17, 2014, along with proof of service in the above referenced case.

Appellant has diligently complied with all request by this Court, and prays that this Court will honor it's Order dated December 9, 2014, by having his appeal proceed as Ordered.

Sincerely,


Ronald Tate, #114188
As Addressed Above

This 2, Day of January 2014
at Pelzer, South Carolina.

cc: S. Phillip-Lenski
Tommy Evans

RECEIVED
JAN 02 2015
PCI Mailroom

Ronald Tate, #114188
Perry Correctional
Institution Q-1 B-220
430 Oaklawn Road
Pelzer, S.C. 29669

September. 17, 2014

The Honorable Jenny Kitchings
Clerk, of the S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211


RE: Ronald Tate v. SCDPPPS (4)
APPELLANT CASE No. 2014-001047

Honorable Kitchings:

Per the Court's letter dated September 5, 2014, please find enclosed the original of the Initial Brief of Appellant and Designation of Matter and Motion to Accept Filing of Appellant's Initial Brief and Designation of Matter Out of Time dated September 17, 2014, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,


Ronald Tate, #114188
Appellant

cc : S. Phillip Lenski
Tommy Evans

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 13-ALJ-15-0027-AP
Appellate Case No. 2014-001047

RECEIVED

JAN 07 2015

SC Court of Appeals

Ronald Tate, #114188,.....Appellant,

v.

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

MOTION TO ACCEPT FILING OF APPELLANT'S INITIAL BRIEF
AND DESIGNATION OF MATTER OUT OF TIME

Comes now, Ronald Tate, #114188, Appellant, respectfully makes this Motion to Accept the filing of Appellant's Initial Brief and Designation of Matter Out of Time.

Appellant received a letter from this Court along with an Order granting him forma pauperis on September 8, 2014. The letter and Order were dated September 5, 2014, advising him that the appellant's initial brief and designation of matter are due within (10) days from the date of this order.

Therefore, the Appellant respectfully requests the court accept the filing of Appellant's Initial Brief Out of Time dated September 17, 2014, and served on the same date.

September 17, 2014

RECEIVED

SEP 17 2014

Ronald Tate
Ronald Tate, #114188
Appellant

P.C.I. MAILROOM

Ronald Tate, #114188
Perry Correctional
Institution Q-2 B-220
430 Oaklawn Road
Pelzer, S.C. 29669

November 25, 2014

The Honorable Jenny Kitchings
Clerk, of the S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RE: Ronald Tate v. SCDPPPS (4)
Appellate Case No. 2014-001047

Dear Ms. Kitchings:

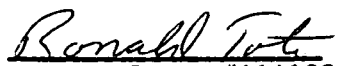
I received your letter dated November 20, 2014, which stated upon review of my initial brief a deficiency have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within (10) days of the date of this letter:

The document has not been timely filed. A motion to allow the late filing will have to be made.

I beg the Court's attention in this matter. Appellant filed his Initial Brief and Designation of Matter along with a Motion to Accept filing of Appellant's Initial Brief and Designation of Matter "Out of Time" dated September 17, 2014, as verified by the proof of service. See the first page and the last page of Appellant's Initial Brief and Designation of Matter dated September 17, 2014. The final page of the Initial Brief contained said Motion and an Addendum was made on the certificate of service certifying same.

However, appellant will honor the Court's letter with the hope that the enclosed Motion to allow the late filing of the Initial Brief of Appellant and Designation of Matter dated September 17, 2014, be accepted by the filing of the enclosed Motion to Accept Filing of Appellant's Initial Brief and Designation of Matter Out of Time, dated November 25, 2014, along with proof of service in the above referenced case.

Sincerely,


Ronald Tate, #114188
Appellant

cc = S. Phillip Lenski
Tommy Evans Jr., Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 13-ALJ-15-0027-AP
Appellate Case No. 2014-001047

Ronald Tate, #114188,.....Appellant,

v.

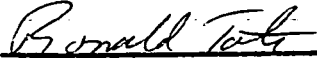
S.C. Dept. of Probation,
Parole and Pardon Services.....Respondent.

MOTION TO ACCEPT FILING OF APPELLANT'S INITIAL BRIEF
AND DESIGNATION OF MATTER OUT OF TIME

Comes now, Ronald Tate, #114188, Appellant respectfully makes this Motion dated November 25, 2014, to Accept the Filing of Appellant's Initial Brief and Designation of Matter Out of Time.

Appellant served and filed an Initial Brief and Designation of Matter Out of Time on September 17, 2014. The Respondent timely filed their Initial Brief and Designation of Matter on October 16, 2014. Appellant timely filed an Apply Brief on October 31, 2014; however, after receiving the Court's letter of November 20, 2014, indicated that a deficiency have been noted, the document has not been timely filed. A motion to allow the late filing will have to be made. Therefore, Appellant respectfully requests the Court accept the filing of Appellant's Initial Brief Out of Time dated September 17, 2014, and served on the same date.

November 25, 2014


Ronald Tate, #114188
Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 13-ALJ-15-0027-AP
Appellate Case No. 2014-001047

Ronald Tate, #114188,.....Appellant,

v.

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

CERTIFICATE OF SERVICE

I, Ronald Tate, #114188, (Appellant), hereby certify that I have served the within Motion to Accept Filing of Appellant's Initial Brief and Designation of Matter Out of Time dated November 25, 2014, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to the attorney of record. Also, a copy of same to S. Phillip Lenski, ALCJ, as addressed below:

Tommy Evans, Jr., Esquire
2221 Devine St., Suite 600
SCDPPP'S P.O. Box 50666
Columbia, S.C. 29250

Hon. S. Phillip Lenski
Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, S.C. 29201

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

RECEIVED

NOV 25 2014

P.C.I. MAILROOM

Ronald Tate
Ronald Tate, #114188
Appellant

Perry Correctional
Institution Q2 B220
430 Oaklawn Road
Pelzer, S.C. 29669



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 20, 2014

Ronald Tate, 00114188
Perry Correctional Institution
Q-2 B-221
430 Oaklawn Road
Pelzer SC 29669

Re: Ronald Tate v. SCDPPPS (4)
Appellate Case No. 2014-001047

Dear Mr. Tate:

Upon reviewing your appellant's initial brief, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The document has not been timely filed. A motion to allow the late filing will have to be made.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Tommy Evans, Jr., Esquire

The South Carolina Court of Appeals

Ronald Tate, #114188, Appellant,

v.

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

Appellate Case No. 2014-001047

The Honorable S. Phillip Lenski
Trial Court Case No. 2013ALJ150027AP

ORDER

Appellant filed a motion to accept filing of appellant's initial brief and designation of matter out of time. The motion is hereby Granted and the appellant's initial brief and designation of matter are considered served and filed.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED

SF 12/9/14

cc:

Ronald Tate, 00114188

Tommy Evans, Jr., Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 23, 2014

Ronald Tate, 00114188
Perry Correctional Institution
Q-2 B-221
430 Oaklawn Road
Pelzer SC 29669

Re: Ronald Tate v. SCDPPPS (4)
Appellate Case No. 2014-001047

Dear Mr. Tate:

Our records reflect your record on appeal should have been served and a proof of service filed with the Court. Within ten days of the date of this letter, you must serve your record on appeal and file a proof of service along with a motion requesting permission to file the document out-of-time. Your appeal will be dismissed if no motion is made within ten days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Cc: Tommy Evans, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 13-ALJ-15-0027-AP
Appellate Case No. 2014-001047

RECEIVED
JAN 07 2015
SC Court of Appeals

Ronald Tate, #114188,.....Appellant,

v.

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

APPELLANT'S INITIAL BRIEF

Ronald Tate, #114188
Appellant
Perry Correctional
Institution Q-2 B-220
430 Oaklawn Road
Pelzer, S.C. 29669

STATEMENT OF ISSUE ON APPEAL

1. The retroactive application of the violent crime definition is an Ex Post Facto violation as it applies to appellant.
2. Appellant is being denied of liberty interest in parole by the current version of 24-21-40 instead of the version in effect at the time he committed his offense.
3. Respondent has not followed the law as it applies to appellant appearing before the parole board on an annual basis.
4. South Carolina's parole laws have been changed numerous times and create a significant risk of increased punishment.

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Appellant contends that the parole board's retroactive application of section 16-1-60 of the South Carolina Code of Laws redefining his offense as violent is in violation of the ex post facto clause....2

Appellant contends that the parole boards use of the current statute instead of the statute in effect at time of his offense deprive's him of liberty interest in parole and violate's the ex post facto clause.....3

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Conclusion.....6

Argument

Respondent has denied appellant annual parole review pursuant to South Carolina Law.....4

TABLE OF AUTHORITIES

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STATUTES

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24-21-620.....4
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24-21-645.....1,2,4,5

OTHER

U.S. Const.....2,4,6
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STATEMENT OF THE CASE

Appellant was indicted at the 1982 term of the Greenville County grand jury for the offenses of murder, assault and battery with intent to kill, armed robbery, housebreaking, grand larceny of a vehicle. Appellant appeared before the Honorable Frank Epps, on December 18, 1982, and proceeded to a jury trial and was sentenced shortly thereafter for all of the offenses and received a life sentence plus fifty-five years.

At the time of appellant's conviction and sentence, S.C. Law provided that an individual serving a life sentence for murder would be eligible for parole following completion of twenty-years of his sentence. Appellant initially appeared before the Board of Probation, Parole and Pardon Services (the Parole Board) on April 1, 1998, after completing sixteen (16) years of his sentence through the award of earned work credits. The parole board denied appellant parole following that hearing, and on thirteen subsequent occasions.

The reasons for denial was due to 1) nature and seriousness of current offense; and, 2) the use of deadly weapon in this offense or previous offense; and 3) indication of violence in this offense or previous offense. Appellant's most recent appearance before the Board on June 12, 2013, is at issue here.

Appellant contends that the Respondent's fail to follow the mandatory criteria promulgated by parole board in 1982 and applied an amended version of section 24-21-645 instead. Appellant contends that he is being treated as a violent offender when appearing before the parole board. Appellant contends that the Board alters the frequency of his parole eligibility each year denying him annual 12 month parole hearings.

Finally, appellant contends that the cumulative changes in the parole laws and amendments when considered in total since his offense and conviction produces a sufficient risk of increasing the measure of punishment attached to his crime, violating Federal and State ex post facto clauses as applied retroactively. U.S.C.A. Const. Art. 1, § 10, cl. 1; const. Art. 1. § 4; Code 1976, § 24-21-645.

APPELLANT CONTENDS THAT THE PAROLE BOARD'S RETROACTIVE APPLICATION OF SECTION 16-1-60 OF THE SOUTH CAROLINA CODE OF LAWS REDEFINING HIS OFFENSE AS VIOLENT IS IN VIOLATION OF THE EX POST FACTO CLAUSE..

Appellant claims that the retroactive application of the violent crime definition in section 16-1-60 (1986) for the purposes of parole violates the ex post facto clause of the State Constitution. The ALC was misled by the parole board and erred in his findings by a clear and erroneous view of the reliable, probative, and substantial evidence on the whole record.

At time of appellant's offense and conviction (1982), he was not classified as violent under the laws of the State of South Carolina. The statute defining crimes as violent was enacted in 1986 and retroactively applied to appellant as evident in his initial appearance before Parole Board on April 1, 1998, and all subsequent hearings to date. Respondent asserts that appellant is not being classified as violent by the Department (SCDPPP'S), as it pertains to his parole eligibility, or hearings". However, respondent applies the definition of 16-1-60 in the parole rejection notification form citing (indication of "violence" in this offense or previous offense; as a finding of fact, after appellant's appearance before a Board comprised of seven members whereby two-thirds of the members must authorize and sign orders approving parole for persons convicted of a "violent crime" as defined in section 16-1-60 of the S.C. Code. & S.C. Code § 24-21-645(A) (Supp. 2012.

Here, by view of the probative and substantial evidence on the record. This Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach whether the parole board views appellant's crime as violent.

The statute defining violent crimes, S.C. Code Ann. § 16-1-60 was enacted in 1986, thus, the retroactive application of the violent crime definition in § 16-1-60 for the purposes of parole violates his ex post facto rights. A retroactive change in state law which inflicts a greater punishment for a crime than that which applied when the criminal act was committed violates the ex post facto clauses of the Federal and State Constitutions. U.S. Const. Art. I, § 10; S.C. Const. Art. I, § 4.

APPELLANT CONTENDS THAT THE PAROLE BOARDS USE OF THE CURRENT STATUTE INSTEAD OF THE STATUTE IN EFFECT AT TIME OF HIS OFFENSE DEPRIVE'S HIM OF LIBERTY INTEREST IN PAROLE AND VIOLATE'S THE EX POST FACTO CLAUSE.

Appellant is being deprived of liberty interest in parole by the current version of 24-21-640 instead of the version in effect at the time he committed his offense. Appellant's crime was committed in 1982 under S.C. Code Ann. § 55-612, as amended by addition of Act 100 of 1981, and criteria promulgated by Parole Board in 1982. The relevant parole standard in effect at that time provided:

The South Carolina Parole and Community Corrections Board is mandated under Code of Laws of South Carolina 1976 Section 24-21-640 to consider circumstances warranting parole:

The Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it shall appear 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.

The Board shall establish specific criteria for the "granting" of parole and provisional parole. Such criteria shall reflect all the aspects of this section. The criteria shall be made available to all prisoners at the time of their incarceration and the general public. Section 24-21-640 of Act 100 of 1981 (SCDC 19-109, Jan. 1982).

In contrast, the relevant parole standard in effect at the time of Appellant's initial hearing of April 1, 1998 and all subsequent hearings applied by the Parole Board changed shall to must and may. Thereafter, the Board established guidelines for the "denying" of parole, instead of specific criteria for the "granting" of parole. See section (1986); Act 462, § 30; 1990 Act 510, § 1. PE Form 6 July (1991), removing all language that Board was mandated to consider circumstances warranting parole".

The Parole Board asserts that the criteria's differ only by the word "shall" replaced by the word "may", and that this change is merely procedural and not an ex post facto violation. Appellant's claims are based on statutory changes that effects his substantial personal right to statutorily correct parole review. See Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs., 377 S.C. 489, 499, 661 S.E.2d 106, 111-12 (2008). In contrast to the Board's assertion, the ALC stated the current version of § 24-21-640 is substantially the same as § 55-612 which was in effect at the time of Appellant's conviction. The ALC's judgment is clearly arbitrary and erroneous. A change in language that instructed the parole board shall release the prisoner if certain conditions were met to language that the board may release" (emphasis added.) The statute

in effect at the time of Appellant's offense created an "expectancy of parole" protected by the Due Process Clause. Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 99 S.Ct. 2106. The Court held that the mandatory language and structure of a Nebraska parole-release statute created an "expectancy of release," a liberty interest entitled to protection under Due Process. U.S.C.A. Const. Amends. 5, 14; 42 U.S.C.A. § 1983.

When scrutinized under Greenholtz the statute created a constitutionally protected interest, the Court found significant its mandatory language—the use of the word "shall"—and the presumption created—that parole release must be granted unless one of four designated findings are made. Greenholtz, 442 U.S. 12, 99 S.Ct., at 2106.

RESPONDENT HAS DENIED APPELLANT ANNUAL PAROLE REVIEW PURSUANT TO SOUTH CAROLINA LAW.

Respondent has not followed the law as it applies to appellant appearing before the parole board on an annual basis pursuant to review schedule following a negative determination of parole in section(s) 24-21-620; 24-21-640; 24-21-645. The following is a list of Appellant's parole hearing's after denial of parole:

April 1, 1998; May 24, 2000, May 22, 2001; July 17, 2002; July 16, 2003; July 18, 2004; July 13, 2005; July 26, 2006; August 29, 2007; October 8, 2008; November 17, 2009; February 9, 2011; May 9, 2012 and June 19, 2013.

Appellant has a total of fourteen (14) hearings since his initial hearing of April 1, 1998. If Appellant would have received annual hearings pursuant to the aforementioned statutes, he would have appeared before the Board sixteen (16) times. The math is simple. The review or consideration for parole is granted by statute. Upon a negative determination for parole, prisoners in confinement for a violent crime as defined in 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole, "except that prisoners who are eligible for parole pursuant to section 16-25-90, who are subsequently denied parole must have their cases reviewed every twelve (12) months for the purpose of a determination of parole". Section-24-21-645. If Respondent had followed the law as it applies to an annual twelve month review or re-hearing after rejection, in either of the above statutes, appellant would have appeared before the parole board

following the negative determination for the sixteenth (16) time on June 19, 2013.

The parole board admitted that appellant appeared yearly except for two occasions and that the hearings were postponed but immediately rescheduled. Absurd, there is no record of the 1999 or 2010 hearings as indicated above. The board went on to say that the statute does not require a hearing be held exactly every year. Admittedly, the Board unlawfully denied Appellant annual parole reviews pursuant to 24-21-645.

The ALC found that Appellant has been afforded a parole hearing every year since 1998 except for 1999 and 2010. Thereafter he agrees with the Board by stating appellant did not have a hearing due to "unforeseen circumstances". The ALC concluded that "it is unclear why the appellant did not have a parole hearing in 1999 and 2010.

The record before the court is clear, appellant has not received annual reviews pursuant to any of the above statutes. The frequency of his reviews have altered the conditions his pre-existing parole eligibility, that causes him to become parole ineligible by this unlawful procedure employed by the parole board. Thus, Appellant is being deprived of a state-created liberty interest which triggers due process requirements of judicial review.

The ALC's decision is in violation of constitutional and statutory provisions, made upon unlawful procedure and effected by other error of law. The validity under the statutory scheme in effect when Appellant committed his crime he was eligible for parole every twelve (12) months and statutes enacted or amended after a prisoner was sentenced cannot be applied to alter the conditions of pre-existing parole eligibility. Roller v. Cavanaugh, 984 F.2d 120 (4th Cir. 1993).

~~THE CUMULATIVE CHANGES IN THE PAROLE LAWS SINCE APPELLANT'S CONVICTION VIOLATE THE EX POST FACTO CLAUSE.~~

South Carolina parole laws have been amended and changed numerous times since appellant's crime in 1982; Courts must examine the cumulative changes in the parole laws since an inmate's conviction. Garner defined the framework for determining the requisite risk by instructing lower courts to first consider the risk inherent in the wording of the statute itself and then, alternately, to explore the evidence of the statute's practical implementation. 529 U.S. 255, 120 S.Ct. 1362. The rules of

constitutional law pronounced in Garner remains the proper standard by which to measure as ex post facto violation.

Since appellant's conviction, there have been major changes in the parole process that, taken together, create a sufficient risk of an increased penalty, as was with the passage of Act No. 462, of 1986, the Omnibus Criminal Justice Improvement Act that retroactively applied to all inmates. This act amended and changed all relative parole statutes since appellant's offense and have produced a sufficient risk of increasing the measure of punishment attached to covered crimes; any retroactive application of the above statutes as they were amended and applied to appellant constitute an ex post facto violation. The United States and South Carolina Constitutions specifically prohibit the passage of ex post facto laws. U.S. Const. art. 1, § 4.

CONCLUSION

The ALC failed to examine the factors in conjunction with the amendments decrease in frequency of hearings to determine whether the overall changes when considered in total have significantly disadvantaged appellant in violation of the Ex Post Facto Clause. The substantive rights of Appellant have been prejudiced because the finding, the conclusion, and decision of the ALC was affected by other error of law. Cooper, holding that an inmate has a state created liberty interest in requiring the parole board to adhere to statutory criteria in rendering a decision.

Therefore, Appellant is being unlawfully denied liberty and property interest in parole.

September 17, 2014

Ronald Tate
Ronald Tate, #114188
Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 13-ALJ-15-0027-AP
Appellate Case No. 2014-001047


Ronald Tate, #114188,.....Appellant,

v.

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

DESIGNATION OF MATTER

Appellant proposes no additional material be designated to be included in the Record on Appeal.


Ronald Tate, #114188
Appellant

September 17, 2014