

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Philip Lenski, Administrative Law Judge
Case No. 14-ALJ-15-0026

Appellate Case No. 2014-002592

Alfonso Ware, 168464,

Appellant,

v.

South Carolina Dept of Probation
Parole and Pardon Services,

Respondent.

REPLY BRIEF OF APPELLANT

Alfonso Ware, J

Alfonso Ware
BRCI/Monticello 242; 168464
4460 Broad River Road
Columbia, SC 29210

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SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CASES	PG 3
ISSUES ON APPEAL	PG 4
ARGUMENT	PG 5
CONCLUSION	PG 8

TABLE OF CASES

<u>CASES:</u>	<u>PAGE(S):</u>
Atlantic Const. Builder and Contractor's, L.L.C. v. Lewis, 2012 WL 1700145	6
Bagley v. S.C.D.P.P.P.S., 2014 WL 4217379	6
Barton v. S.C.D.P.P.P.S., 2013 WL 3366669	6
Cooper v. S.C.D.P.P.P.S., 661 SE2d 106 (2008)	6
Divine v. Robbins, 385 SC 23, 683 SE2d 286 (Ct. App. 2009)	5
Hawkins v. Bruno Yacht Sale Inc., 353 SC 174, 420 SE2d 843	5
Media Gen. Commc'ns, Inc. v. S.C. Dept of Revenue, 388 SC 138, 694 SE2d 529 (2010)	5
McKinney v. Pedery, 2013 WL 4082327	6
Miranda v. Nissan Motor Co. Ltd., 714 SE2d 30	6
S.C. Dept of Soc. Serv. v. Basnighgt, 346 SC 241 551 SE2d 274 (Ct. App. 2001)	7
S.C. Code Ann. §24-21-640	5,7
S.C. Appellate Court Rules, Rule 208 (B)(1)(D)	5

ISSUES ON APPEAL

Did the South Carolina Dept. of Probation, Parole, and Pardon Services apply improper criteria in deciding Appellant's parole, thereby making Appellant ineligible for parole?

Did the South Carolina Dept. of Probation, Parole, and Pardon Services go outside of the criteria for the granting of parole, when the parole board asked the Appellant about the victim when they knew that the victim is deceased?

ARGUMENT

DID THE SOUTH CAROLINA DEPT. OF PROBATION, PAROLE, AND PARDON SERVICES APPLY IMPROPER CRITERIA IN DECIDING APPELLANT'S PAROLE, THEREBY MAKING APPELLANT INELIGIBLE FOR PAROLE?

The point in this issue is clear, as explained in Appellant's Initial Brief. The General Assembly gave the parole board the power to create a criteria for the granting of parole §24-21-640. What the Board by it's own admission has created is a criteria for the consideration of parole. As explained in Appellant's Initial Brief two very different criteria's. And not what the General Assembly gave the parole board the power to create. "We must employ the rule of statutory construction to ascertain and effectuate the intent of the General Assembly." See Hawkins v. Bruno Yacht Sale Inc., 353 S.C. 174, 420 SE2d 843. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature" Media Gen. Commc'ns, Inc. v. S.C. Dept of Revenue, 388 S.C. 138, 694 SE2d 529 (2010).

The Respondents have not addressed this issue. By not addressing a valid critical appeal issue within their formal brief the Respondents have abandoned the issue. See, S.C. Appellate Court Rules, Rule 208 (B)(1)(D), Divine v. Robbins, 385 S.C. 23, 683 SE2d 286 (Ct.App.2009)(noting when a party fails to cite authority or when the argument is simply a

conclusory statement, the party is deemed to have abandoned the issue on appeal, and therefore not reserved for our review).

Law of the Case Doctrine applies here because the Respondents' have failed to address the issue raised before the A.L.C.. An unappealed ruling right or wrong is the law of the case. See, Atlantic Const. Builder and Contractor's, L.L.C. v. Lewis, 2012 WL 1700145. The Appellate Court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case and the Law of the Case Doctrine, both apply when a party does not challenge an issue on appeal where there has been an opportunity to do so. See, McKinney v. Pedery, 2013 WL 4082327; Miranda v. Nissan Motor Co. Ltd, 714 SE2d 30.

Our State's highest courts have ruled that the Board must follow the intent of the General Assembly in statutory interpretation. See, Cooper v. S.C.D.P.P.P.S., 661 SE2d 106 (2008), Barton v. S.C.D.P.P.P.S., 2013 WL 3366669, and Bagley v. S.C.D.P.P.P.S., 2104 WL 4217379.

DID THE SOUTH CAROLINA DEPT. OF PROBATION, PAROLE, AND PARDON SERVICES GO OUTSIDE OF THE CRITERIA FOR THE GRANTING OF PAROLE, WHEN THE PAROLE BOARD ASKED THE APPELLANT ABOUT THE VICTIM, WHEN THEY KNEW THAT THE VICTIM IS DECEASED?

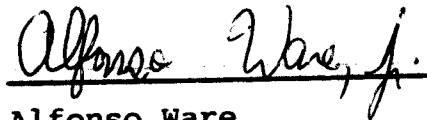
The question by the parole board went beyond the record and into the facts of the condition of the victim. What must be considered is the offense and not the facts surrounding the

offense. Nowhere in the statute §24-21-640 or any of the Amendments thereto, is it permitted to use the consideration of the facts in making the parole decision. The record of the Appellant before, during and after incarceration, are a part of the records to be considered, but for the parole board asked about the physical condition of someone they knew was deceased. This line of questioning is outside of the criteria that was intended by the General Assembly.

Res Judicata precludes parties from subsequently relitigating issues actually litigated, and those that might have been litigated in a prior action. S.C. Dept. of Soc. Serv. v. Basnight, 346 S.C. 241, 551 SE2d 274 (Ct.App.2001).

CONCLUSION

The issues represented in this appeal effect many other similarly situated individuals. All of these issues should be remanded for a decision consistent with criteria and law as the General Assembly intended.



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CERTIFICATE OF SERVICE

Alfonso Ware, 168464, declare under the penalty of perjury, that he mailed a copy of his Reply Brief, to the parties listed below, by placing this in the U.S. Mail, clearly addressed.

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S.C. Dept of Probation, Parole
and Pardon Services
Tommy Evans Jr., Esquire
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Columbia, South Carolina 29250

February 11, 2015
COLUMBIA, SOUTH CAROLINA

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February 11, 2015

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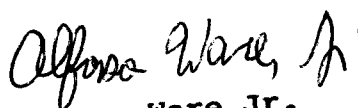
RE: Alfonso Ware, 168464 v. SCDPPPS
Appellate Case No. 2014-002592

Dear Ms. Kitchings:

Enclosed you will find the Appellant's Reply Brief to be filed
and also enclosed is a copy to be clock-stamped and returned for
my records in the S.A.S.E. please.

I thank you for all of your efforts and assistance in this
matter; it is greatly appreciated. Thank you.

Sincerely,


Alfonso Ware Jr.

cc: Tommy Evans Jr., Esquire
File

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