STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bernard Bagley, # 175851, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No. 15-ALJ-15-0003-AP **ORDER OF DISMISSAL**

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Bernard Bagley (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On January 15, 2015, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) had rejected him for parole. Appellant filed an appeal with the ALC on January 27, 2015. Appellant challenges the Board's denial of parole based on the procedure employed by the Board in reaching its decision.

The Supreme Court of South Carolina has spoken clearly concerning the jurisdiction of the Administrative Law Court in cases such as this.

> 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 procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

Cooper v. S.C. Dept. of Probation Pardon and Parole Services, 377 S.C. 489, 66 S.E.2d 106 (2008). The Cooper decision was underscored by Compton v. S.C. Dept. of Probation Pardon and Parole Services, 385 S.C. 476, 685 S.E.2d 175 (2009), as follows:

> In Cooper, we held that if the Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate's right to parole eligibility and infringes on a state-created liberty interest, warranting

minimal due process protection. Because the Parole Board in Cooper neither offered an explanation nor indicated it had considered the statutory criteria or the criteria set forth in Form 1212, we had no other choice but to determine the order was defective and the decision was arbitrary and capricious. We emphasized that this result could be avoided in the future if the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212, and that if the Parole Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC will have limited authority to review the decision.

Moreover, S.C. Code Ann. § 1-23-600(D) (Supp. 2014) provides, "An administrative law judge shall not hear...an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services." Thus, this Court's authority to review a decision of the Board is limited to determining if the Board followed the proper procedure and considered the relevant factors. If that procedure was followed, any decision of the Board constitutes a routine denial of parole which this Court has no jurisdiction to hear.

The Notice of Rejection dated January 15, 2015, states that the parole board considered the fifteen factors and § 24-21-640, mentioned above. Thus, this is a routine denial of parole, and the ALC has no authority to consider this appeal.

ORDER

IT IS THEREFORE ORDERED that this appeal is **DISMISSED**, with prejudice.

AND IT IS SO ORDERED.

Deborah Brooks Durden
Administrative Law Judge

February 12, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 12th day of February 2015

By: C. E. C.
Judicial Law Clerk

Dear Appellant:

2/3/2015

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

Case number	Inmate number	Inmate first name	Inmate last name	Grievance No	Respondent	Filing date	Date Assigned	Judge last name
15P003	175851	BERNARD	BAGLEY	KRCI	PPPS	1/27/2015	2/5/2015	DURDEN

You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Deputy Director of Legal Services. Dept. of PPPS, PO Box 50666, Columbia, SC 292501.

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number: 15-ALC-15-0003-AP

APPEAL OF FINAL DECISION
South Carolina Department of Probation, Parole and Pardon Services

Bernard Bagley, (#175851), Appellant,

v.

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

PRINCIPAL BRIEF OF APPELLANT

STATEMENT OF THE CASE

The Appellant and his wife married in 1986. They lived in Columbia, where Bernard worked as a city police officer. In 1987, the Bagleys' separated and Bernard moved to Sumter to become a deputy with the Sumter County Sheriff's Department. Mary discovered that the Appellant was living in Sumter and she moved there, eventually, they reconciled where their daughter was born. However, they continued to have marital difficulties and separated numerous times. In August 1989, Appellant accepted a position with Durham North Carolina Police Department. About a week before the scheduled move, the two quarreled and a fight ensued. The police were called. When they arrived, they placed Mary under arrest for criminal domestic violence and assaulting the arresting police officer. Thereafter, Appellant moved to Durham joining the police force and to enter the North Carolina Criminal Justice Academy. Mary and the baby stayed in South Carolina. A few months later, Mary traveled from eastover to Durham to talk to the Appellant, and they again reconciled, and Mary and the baby joined Bernard in Durham.

On Sunday, August 1990, the Bagleys' again quarreled. The next morning, while Bernard was at the academy, Mary took the baby and returned to her mother's home in Eastover, South Carolina. When Appellant discovered that Mary and the

baby were gone, he immediately drove to Eastover, took the baby, and returned to Durham. Mary telephoned on Tuesday to apologize for leaving and asked if he would come back to Eastover to pick her up. Bernard drove to Eastover on Wednesday, and the two returned to Durham late that evening. The next morning, on August 23, 1990, when Bernard was at the academy, Mary again packed her belongings and took the baby to Eastover. The Appellant discovered that Mary resigned from her job; withdrew all the money from their bank account; took all of the emergency household money ($700.00 belong to Bagley); and all the baby belongings.

Appellant left the academy and drove to Eastover to talk to Mary and not to intend to harm anyone. Upon arrival, Bernard could hear Mary talking on the phone inside the house, and he heard her laughing about how she tricked him to get the baby back, and took all of his and her money. He kicked in the door, and a heated argument occurred, she laughed and said some offensive, artrocious, devastating, and bad words to Bagley, and he inquired her about having a possible affair with Donald Dubose, and told her that he would not allow another man to raise his daughter, and then distraught, stressed, and some other emotional reaction thus shot her twice causing Mary's death. The Appellant was indicted and tried for murder in the Richland County Court of General Sessions. He appeared before Judge Dan Laney to answer to the offense. Bagley pled nolo contendere to voluntary manslaughter. The jury found Appellant guilty of murder, and Judge Laney sentenced him to imprisonment for the remainder of his natural life. At the time the Appellant committed the offense, South Carolina law allowed an individual serving a sentence of life with eligibility for parole upon the service of twenty (20) years.

The Appellant made his initial appearance before the Parole Board on 9/8/10. Upon conclusion of this hearing, the Board denied the Appellant an opportunity to participate in the parole program. He later appeared before the Board on 10/10/12. The Board again denied the Appellant an opportunity to particapate in the parole program. Upon receiving the order of denial, the Appellant filed a notice of appeal before the ALC. On 12/27/12, ALC Judge Ralph K. Anderson, III, dismissed the appeal. The Appellant filed a notice of appeal before the S.C. Court of Appeals. The Court reversed and remanded the case Bagley v. SCDPPPS, Appellate case No. 2013-000042, in an Unpublished Opinion No. 2014-UP-326, dated 8/27/14, for Bagley to receive a new parole hearing. The Appellant later appea-

red before the Board on January 14, 2015. The Board once again denied the Appellant an opportunity to participate in the parole program. The Board's reasoning: (1) the nature and seriousness of the current offense; (2) indication of violence in this previous offense; and (3) use of deadly weapon in this or previous offense. The Appellant has now filed a notice of appeal before this Court, in which the case is assigned to Judge Durden. NOTE: The final decision of SCDPPPS dated 1/15/15, and Appellant received it on 1/22/15.

STATEMENTS OF THE ISSUES ON APPEAL

1. THE BOARD IS ARBITRARY AND CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN IT CONSIDERED THE 10/10/12 DENIAL AS A PREJUDICIAL FACTOR IN REACHING ITS DECISION AT THE 1/14/15 PAROLE PROCEEDING, MAKING BAGLEY INELIGIBLE FOR THE PRIVILEGE TO GRANT HIM PAROLE.
2. THE BOARD IS ARBITRARY OR CAPRICIOUS AND COMMITTED ERROR OF LAW FOR FAILURE TO PROPERLY CONSIDER THE RESULTS OF BAGLEY'S RISK USING THE VALIDATED INDIVIDUALIZED RISK ASSESSMENT EVALUATION THAT MADE BAGLEY INELIGIBLE FOR THE REGULATORY PRIVILEGE TO GRANT HIM PAROLE AS OUTLINED IN §24-21-5(2).
3. THE BOARD IS ARBITRARY OR CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN BAGLEY'S PROCEDURALLY DEFECTED NOTICE OF REJECTION DATED 1/15/15 DID NOT PROVIDE A DETAILED CONCLUSION REGARDING THE LAW OF THE CRIMINAL RISK FACTORS AS OUTLINED IN §24-21-5(2), OF S.C. CODE OF LAWS AND THE EVIDENCE ACT EXCEPTION ACCORDING TO §19-5-510, OF S.C. CODE OF LAWS.
4. THE BOARD IS ARBITRARY AND CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN APPELLANT'S PROCEDURALLY DEFECETED NOTICE OF REJECTION DATED 1/15/15, DID NOT PROVIDE A DETAILED FINDINGS REGARDING THE CRIMINAL RISK FACTORS OUTLINED IN §24-21-5(2), OF S.C. CODE OF LAWS.
5. THE BOARD IS ARBITRARY AND CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN APPELLANT APPEARED AT THE HEARING IN SEVERE CHRONIC PAIN, PRESSURED SPEECH, BEING VERBALLY OVERPRODUCTIVE, FLIGHT OF IDEAS, AND POOR CIRCULATION IN VIOLATION OF TITLE II OF THE AMERICAN WITH DISABILITIES ACT (ADA).
6. THE BOARD IS ARBITRARY OR CAPRICIOUS WHEN IT FAILED TO SEEK APPROVAL BY THE VETERANS AFFAIRS COMMITTEE APPOINTED TO COMMIT APPELLANT TO THE V.A. HOSPITAL AS OUTLINED IN §24-21-700, OF S.C. CODE OF LAWS.
7. THE BOARD IS ARBITRARY OR CAPRICIOUS AND COMMITTED ERROR OF LAW IN AN UNLAWFUL PROCEDURE WHEN IT FAILED TO REVIEW APPELLANT'S PAROLE CASE EVERY TWO (2) YEARS FOR THE PURPOSE OF A DETERMINATION OF PAROLE, THUS, MAKING HIM INELIGIBLE FOR THE INTEREST TO A PAROLE HEARING IN A TIMELY MANNER AS OUTLINED IN §24-21-645, and §16-1-60, OF S.C. CODE OF LAWS.
8. THE BOARD IS ARBITRARY AND CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN IT FAILED TO ADHERE TO ITS OWN POLICY AS OUTLINED IN ITS OPERATION MANUAL ON AFTER-ACQUIRED INFORMATION AND MATERIAL EVIDENCE AFTER THE BOARD MADE ITS FINAL DECISION ON 1/15/15.

9. THE BOARD IS ARBITRARY OR CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN ITS UNLAWFUL PROCEDURE EMPLOYED MADE THE APPELLANT INELIGIBLE FOR A REGULATORY PRIVILEGE TO GRANT HIM PAROLE WHEN IT FAILED TO DEMONSTRATE A RATIONAL NEXUS BETWEEN APPELLANT'S CURRENT BEHAVIOR AND HIS BEHAVIOR RELATED TO THE COMMITMENT OFFENSE IMMUTABLE FIXED FACTORS AS OUTLINED IN §19-5-510, OF S.C. CODE OF LAWS.
10. THE BOARD IS ARBITRARY OR CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN IT CONSIDERED INAPPROPRIATE FACTOR(S), APPELLANT'S 2012 DENIAL OF PAROLE IN MAKING ITS DETERMINATION, THUS, MAKING APPELLANT INELIGIBLE FOR THE REGULATORY PRIVILEGE TO BE GRANTED PAROLE.
11. THE BOARD IS ARBITRARY OR CAPRICIOUS WHEN IT DENIED APPELLANT PAROLE IN VIOLATION OF THE EQUAL PROTECTION CLAUSE WHEN THE APPELLANT DID NOT HAVE THE ABILITY TO PRESENT EVIDENCE OR A WITNESS IN MITIGATION WHOSE TESTIMONY RELATES TO THE LAW AS OUTLINED IN §16-25-90, OF S.C. CODE OF LAWS.

ARGUMENTS

1. THE BOARD IS ARBITRARY AND CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN IT CONSIDERED THE 10/10/12 DENIAL AS A PREJUDICIAL FACTOR IN REACHING ITS DECISION AT THE 1/14/15 PAROLE PROCEEDING, MAKING BAGLEY INELIGIBLE FOR THE PRIVILEGE TO GRANT HIM PAROLE.

Appellant will challenge the pre-parole investigation and argue that the Board has negatively retaliated and denied him parole on 1/14/15 because the Court of appeals reversed his 2012 denial of parole. As a result, by considering this other factor prepared through a pre-parole investigation conducted by the parole agents and examiner, Appellant did not enjoy the right in the parole process of the Board exercising its discretion in an non-abusive and non-prejudicial deliberation upon a relevant reasonable probability that Bagley will not again violate the law. Bagley further contends that the Board treated him differently by the prejudicial factor in reaching its decision in the 2015 proceeding in excess of the statutory authority of the department form 1212 Criteria for Parole Consideration, §24-21-640, administrative law, due process of law, and equal protection of the laws. Appellant invokes §1-23-380(A)(6)(a)(b). Parole Examiner Davis and Parole Examiner Burch are witnesses upon whose pre-parole investigations, reports, recommendations, and and parole case summary, along with their testimony can substantiate this finding as outlined in §19-5-510, and 610 of S.C. Code of Laws. Failure to follow court ruling and requirement in Bagley v. SCDPPPS, 2014-UP-326 (8/27/14). The issue here is whether the prejudicial factor is excess of the statutory authority of SCDPPPS.

2. THE BOARD IS ARBITRARY OR CAPRICIOUS AND COMMITTED ERROR OF LAW FOR FAILURE TO PROPERLY CONSIDER THE RESULTS OF BAGLEY'S RISK USING THE VALIDATED INDIVIDUALIZED RISK ASSESSMENT EVALUATION THAT MADE BAGLEY INELIGIBLE FOR THE REGULATORY PRIVIELEGE TO GRANT HIM PAROLE AS OUTLINED IN §24-21-5(2).

Bagley challenge the accuracy of the pre-investigation process that Parole Examiner Sandra Ryan was designated and trained to administer the COMPAS as

required by §24-21-5(2), and the department policy. Bagley asserts that the hearing was an unlawful procedure since the COMPAS screening evidence on characteristic and behavior was not produced by the Parole Board nor addressed by the Board regarding Bagley's personality, values, beliefs, thinking, or level of employment or education. The Board did not address the criminal risk factors as outlined in §24-21-5(2). Appellant specifically argues that §24-21-5(2) applies. Indeed, the language of §25-21-5(2) on its face makes the procedure applicable to all parole process or proceedings. Further no evidence establishes that the Parole Examiner Sandra Ryan was a designated and COMPAS evalu ater on 6/6/13, in which the issue here is whether a failure to follow the requirements of §24-21-5(2) requires reversal of the results reached.

3. THE BOARD IS ARBITRARY OR CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN BAGLEY'S PROCEDURALLY DEFECTED NOTICE OF REJECTION DATED 1/15/15 DID NOT PROVIDE A DETAILED CONCLUSION REGARDING THE LAW OF THE CRIMINAL RISK FACTORS AS OUTLINED IN §24-21-5(2), OF S.C. CODE OF LAWS AND THE EVIDENCE ACT EXCEPTION ACCORDING TO §19-5-510, OF S.C. CODE OF LAWS.

Bagley argues that he has a right to require the parole board to adhere to statutory requirements in rendering its decision, and failure by the board to consider the requisite statutory criminal risk factors constitutes an infringement of a state-created liberty interest and warrants due process procedures as outlined in §24-21-5(2). The board failed to address Bagley's personality, values, beliefs, etc., with him during the hearing, and there was no way §24-21-5(2) had any practical effect during or after the hearing for delieberation in their decision making process. The mandatory criteria can not determine the criminal risk factors in §24-21-5(2), based on its own standing. §24-21-5(2) require the board to address the characteristics and behaviors that affect a person's risk for committing crimes with the individual before the board, and afterwards, deliberate the same as outlined in §24-21-640, and along with form 1212 criteria to include in its decision making process. The board did not address or check for a change as outlined in §24-21-5(2). Nonetheless, the notice of rejection does not include the criminal risk factors outlined in §24-21-5(2), characteristics and behaviors. The issue here is whether a failure to follow the requirements of §24-21-5(2) requires reversal of the results reached as outlined in §1-23-350, and 380(A)(6).

4. THE BOARD IS ARBITRARY AND CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN APPELLANT'S PROCEDURALLY DEFECTED NOTICE OF REJECTION DATED 1/15/15, DID NOT PROVIDE A DETAILED FINDINGS REGARDING THE CRIMINAL RISK FACTORS OUTLINED IN §24-21-5-(2), OF S.C. CODE OF LAWS.

Bagley argues verbatim argument number 3, in which he incorporates herein argument number 4.

5. THE BOARD IS ARBITRARY AND CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN APPELLANT APPEARED AT THE HEARING IN SEVERE CHRONIC PAIN, PRESSURED SPEECH, BEING VERBALLY OVERPRODUCTIVE, FLIGHT OF IDEAS, AND POOR CIRCULATION IN VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA).

Bagley argues that though he appeared at his parole hearing, that he was experiencing severe chronic pain, in which he is prescribed the medication Mobic. Bagley asserts that he had not taken the medication the night before the hearing, but instead took the med prior to arriving to the hearing area at 9:00 am, in which he had not eaten anything. The hearing for him started after 2:00, pm, and the Appellant contends that he was experiencing anxiety, pressured speech, being verbally overproductive, flight of ideas, poor circulation and chronic pain, whereby, he petitioned the board through Mr. Larry R. Patton, Jr., Director of Board Support Services for a re-hearing of parole case as outlined in the department policy operations manual according to after-acquired information about the prisoner. The petition is pending with the department at this current time. Appellant specified the exact reasons why the Board should reconsider its decision. As stated, Appellant has not received a the notice of the decision as of this date. The re-hearing is regulated by SCDPPPS policy, and request for the reconsideration because the hearing on 1/14/15 was affected by other error of law, and clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, as outlined in §1-23-380(A)(6)(d)(e), administrative law regarding an agency is obligated to follow its own rules and regulations that are founded in principles of administrative law. Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision, 332 S.C. 551, 505 S.E.2d 598, 603 (Ct.App.1998). SCDPPPS must show that the failure to follow the procedure in dispute has a basis reason as opposed to capriciousness, regarding an established procedure. Appellant asserts that he is a qualified individual with disabilities, and shall by no reasons of such disabilities be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity. ADA extends to prisoners. All factors and other factors such as Appellant's disabilities are the contributing reason the board denied him parole relates to the law outlined in the ADA.

6. THE BOARD IS ARBITRARY OR CAPRICIOUS WHEN IT FAILED TO SEEK APPROVAL BY THE VETERANS AFFAIRS COMMITTEE APPOINTED TO COMMIT APPELLANT TO THE V.A. HOSPITAL AS OUTLINED IN §24-21-700, OF S.C. CODE OF LAWS.

The Appellant who is otherwise eligible under the provisions of article 24-21-700, was willfully deprived to participate in the special parole program, in which he challenge the procedure employed by the Board in denying his request to be considered as outlined in §24-21-700. Bagley further asserts that the Board did not determine his eligibility as outlined in §24-21-700. The unique criteria and factors outlined in this particular statute of law should have been follow by the department to comply with administrative law, and not doing so, the Board arbitrary or capriscious committed an error of law for failure to seek approval by the VA or to a committee appointed to commit Bagley to a V.A. Hospital, thus, denying him eligibility for the same. Parole is a regulated privilege that has a protected interest essential for freedom of action. As such, this regulated privilege was created by law. The 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." In addition, Bagley asserts that he has an essential protected interest on a regulated privilege to be release on parole based on his record prior to imprisonment, during imprisonment, and after imprisonment as outlined in §24-21-640, and 700.

7. THE BOARD IS ARBITRARY OR CAPRICIOUS AND COMMITTED ERROR OF LAW IN AN UNLAWFUL PROCEDURE WHEN IT FAILED TO REVIEW APPELLANT'S PAROLE CASE EVERY TWO (2) YEARS FOR THE PURPOSE OF A DETERMINATION OF PAROLE, THUS, MAKING HIM INELIGIBLE FOR THE INTEREST TO A PAROLE HEARING IN A TIMELY MANNER AS OUTLINED IN §24-21-645, and §16-1-60, of S.C. CODE OF LAWS.

Appellant's initial parole hearing date was on 9/8/10, and the court of appeals ruled on 8/27/14, in Bagley v. SCDPPPS, 2014-UP-326, reversed and remanded the 10/10/12 hearing, and in doing so, directed the parole board not to consider the 2012 denial of parole as a prejudicial factor in reaching its decision at the upcoming proceeding or in future decisions. On 1/14/15, Bagley appeared before the board four (4) years and four (4) months after his initial parole hearing established date of 9/8/10. Section 16-1-60 of S.C. Code of Laws as outlined require an individual serving time for a violent offense to be heheard for parole two (2) years following the date of parole rejections. Section 24-21-645, of S.C. Code of Laws as outlined require upon a negative determination of 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. Bagley specifically argues that both of the statutes applies, and that the issue is whether a failure to follow the requirements of both statutes made him ineligible for parole as required by law. Bagley contends reversal is required.

8. THE BOARD IS ARBITRARY OR CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN IT FAILED TO ADHERE TO ITS OWN POLICY AS OUTLINED IN ITS OPERATION MANUAL ON AFTER-ACQUIRED INFORMATION AND MATERIAL EVIDENCE AFTER THE BOARD MADE ITS FINAL DECISION ON 1/15/15.

Appellant petitioned the board for a re-hearing through Larry R. Patton, Jr., Director of Board Support Services as oulined in the SCDPPPS policy operations manual according to after-acquired information about the prisoner. The petition is currently pending before the board. The department policy require that the prisoner may request for a reconsideration, in which the board is obligated to follow its own rules and regulations that are founded in principles of administrative law. Bagley ask that his 2012 denial of parole not to be consider as a prejudicial factor in reaching its decision in the rehearing for reconsideration of the 1/14/15 hearing. The issue is whther Bagley was wronglfully denied parole, holding after the court of appeals directed the parole board not to consider the 2012 denial as a prejudicial factor in reaching its decision in the 2015 proceeding. This process on 1/14/15 violated several legal protections, including double jeopardy, and administrative law of unwarranted exercise abuse of discretion.

9. THE BOARD IS ARBITRARY OR CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN ITS INLAWFUL PROCEDURE EMPLOYED MADE THE APPELLANT INELIGIBLE FOR A REGULATORY PRIVILEGE TO GRANT HIM PAROLE WHEN IT FAILED TO DEMONSTRATE A RATIONAL NEXUX BETWEEN APPELLANT'S CURRENT BEHAVIOR AND HIS BEHAVIOR RELATED TO THE COMMITMENT OFFENSE IMMUTABLE FIXED FACTORS AS OUTLINED IN §19-5-510, OF S.C. CODE OF LAWS.

The Appellant challenges SCDPPPS Form 1212, and the pre-parole investigation procedure factor # 2, the nature and seriousness of his offense, along with the circumstances surrounding the offense; factor #3, his prior criminal records, along with previous supervision; and factor #7, his physical, mental, and emotional health, because the notice of rejection dated 1/15/15, shows denial may had something to do with the board's consideration of factors 2, 3, and 7. Bagley argues that the Board decision is made upon an unlawful procedure because the factors are inaccurate based on favorable evidence and mitigating evidence willfully and intentionally withheld and not obtained nor produced by the pre-parole investigation conducted by Parole Examiner Sandra Ryan, Denond Davis, or other SCDPPPS agent as required by SCDPPPS policy and criteria for parole consideration. Indeed, the record shows that a pre-parole investigation is conducted by SCDPPPS agents. Further, no evidence establishes that the pre-parole investigation is complete, with no error, or accuracy, in which Bagley challenge the accuracy of the contents and information obtained by the SCDPPPS agents conducting the pre-parole investigation, whereas the Appellant believes his file is incomplete, contains errors, and other inaccuracy that the board has failed to investigate the inquiry and notify Bagley of the action taken as required by SCDPPPS form 1212. Bagley specifically argues that form 1212 applies. The issue here is whether a failure to follow the requirements of form 1212 requires a reversal of the decision reached, and reversal is required. The claim here is pursuant to administrative law regarding whether SCDPPPS is obligated to follow its own rules and regulations that are founded in the principles of administrative law. Moreover, the pre-parole investigation withheld and excluded favorable and mitigating evidence of a rational nexus between Bagley's 1990 commitment offense and any purported dangerousness at the present time on 1/14/15. Although, Appellant is serving a life sentence for the remainder of his natural life, his argument include that the natural life sentence is can be served in the custody of SCDPPPS and SCDC out on parole. Additionally, he argues that the pre-parole investigation evidentiary record witheld and excluded favorable and mitigating evidence of Bagley's spotless record both before and during his incarceration, thus, making the Board's decision to wrongly deny him parole clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record as outlined in §1-23-380(A)(6)(e). The Board's inference violate Appellant's right to present witnesses and mitigating evidence that is favorable on his behalf, and as a result, in violation of constitutional or statutory provisions and other error of law. Bagley further argues that he was not allowed the right to present evidence on his behalf because he was not allowed or given the ooportunity to receive the evidence from SCDC or the court as outlined in §19-5-510 and 610 to demonstrate that there is no evidence in his file of a nexus between his 1990 commitment offense and any purported dangerousness at the present time. Bagley's pre- and post-conviction records are blemish free, but unavailable for him to present the favorable results in mitigation on his own behalf to demonstrate upon the reasonable probability that he will not again violate the law. Based on the pre-parole investigation favorable and mitigating evidence withheld and excluded prejudiced him by proving an inference Bagley is an unreasonable risk of dangerousness based solely on the immutable fact of the offense itself as outlined in factors 2,3,7 in Form 1212, made upon unlawful procedure. The issue here is whether favorable mitigating evidence with-

held and excluded from his file pre-parole investigation inference prove that Bagley is an unreasonable risk of dangerousness based on factors 1,2,3, and 7 of SCDPPPS form 1212, that violates his right to present favorable and exculpatory (mitigating) evidence on his own behalf.

10. THE BOARD IS ARBITRARY OR CAPRICIOUS AND COMMITTED ERROR OF LAW WHEN IT CONSIDERED INAPPROPRIATE FACTOR(S), APPELLANT'S 2012 DENIAL OF PAROLE IN MAKING ITS DETERMINATION, THUS, MAKING APPELLANT INELIGIBLE FOR THE REGULATORY PRIVILEGE TO BE GRANTED PAROLE.

Appellant argues verbatim argument 1, in which he incorporates herein argument number 10. In addition, he asserts that the court of appeals three (3) panel justices reversed his 2012 denial of parole, and directed the parole board not to consider the 2012 denial as a prejudicial factor in reaching its decision at the 1/14/15 proceeding or in future decisions; however, the Board considered all factors which included his 2012 denial of parole, along with a sentence enhancement of use of a deadly weapon, greater inference culpability than the conviction offense, numerous acts of violence as egregious factors in a negative reprisal act because of his redress and 2012 reversal of denial of parole. The procedure was unlawful, and Bagley specifically argues that §19-3-120, and §1-23-380(A)(6)(c)(d)(f) applies. The issue is whether the Board considered the inappropriate factor(s) of Bagley's 2012 denial of parole in reaching its decision, thus, making him ineligible for parole on 1/14/15.

11. THE BOARD IS ARBITRARY OR CAPRICIOUS WHEN IT DENIED APPELLANT PAROLE IN VIOLATION OF THE EQUAL PROTECTION CLAUSE WHEN THE APPELLANT DID NOT HAVE THE ABILITY TO PRESENT EVIDENCE OR A WITNESS IN MITIGATION WHOSE TESTIMONY RELATES TO THE LAW AS OUTLINED IN §16-25-90, OF S.C. CODE OF LAWS.

The Appellant argues that his right to present favorable and credible evidence in his behalf as outlined in the 14th Amendment Equal Protection Clause prejudice him because there will be no administrative findings, conclusions, or decisions regarding the matter. Appellant require the court of common pleas to make a finding regarding this issue in an effort to present before the Board, because the evidence exist for mitigation purposes.

CONCLUSION

Appellant seeks relief that the ALC rule on all issues in order to preserve for appeal or appellate review and consideration. In addition, this case is reviewable as capable of repetition but evading review, jurisdiction must be invoked since this matter is a parole hearing in which Bagley was wrongfully made ineligible and denied parole upon error of law, and unlawful procedure. Appellant request for a rehearing within the next 30 days.

Respectfully submitted,

s/ Bernard Bagley
#175851/HD133/KER-CI

February 13, 2015

STATE OF SOUTH CAROLINA
In The Administrative Law Court

Docket Number: 15-ALC-15-0003-AP

APPEAL OF FINAL DECISION
South Carolina Department of Probation, Parole, and Pardon Services

Bernard Bagley, (#175851), Appellant,

v.

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

DESIGNATION OF MATTER

In addition to the matter designated by the Respondent, the Appellant proposes the following to be included in the Record of Appeal:

1. Parole Examiner's Recommendation for 1/14/15;
2. Bagley's prior criminal record;
3. Bagley's prior supervision history;
4. Bagley's institutional adjustment record;
5. Parole Members vote on 1/14/15;
6. Official statements from opposition stating their position on the parole for 1/14/15;
7. Parole COMPAS of Bagley's Assessment Recommendation for 1/14/15; and
8. Bagley's parole hearing transcript dated 1/14/15.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

S/ Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

February 13, 2015

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Docket Number: 15-ALC-15-0003-AP

APPEAL OF FINAL DECISION
South Carolina Department of Probation, Parole and Pardon Services

Bernard Bagley, (#175851), Appellant,

v.

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

CERTIFICATE OF SERVICE

I, Bernard Bagley, the Appellant, certify that I have served the within Principal Brief of Appellant, and Designation of Matter dated February 13, 2015, on Respondent this 13th day of February, 2015, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to:

Deputy Director of Legal Services
SCDPPPS
P.O. Box 50666
Columbia, SC 29250

S/
Bernard Bagley
(#175851)HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, S.C. 29067

February 13, 2015

February 20. 2015

Matthew C. Buchanan
SCDPPPS General Counsel
P.O. Box 50666
Columbia, SC 29250

Dear Mr. Buchanan:

I'm in receipt of your letter dated the 23rd of January, 2015, and with all do respect, I have a grave concern regarding the pre-parole investigation conducted in my case for the October 22, 2014, or the January 14, 2015 parole hearing.

Sir, the pre-parole investigation withheld and excluded favorable mitigating information and evidence from my parole file that upon a reasonable probability that I will not again violate the law to the legal satisfaction of the Board.

The pre-parole investigation also failed to produce the favorable mitigating information to the Board that would have appeared to the legal satisfaction of the Board. As a result, of the incomplete and inaccurate information the pre-parole ivestigation willfully and intentionally witheld and excluded from my parole file and failed to produce to the Board created an unlawful inference that I'm an unreasonable risk of danger based solely on the immutable fact of the offense itself as outlined in factors 1,2,3, and 7 of form 1212, Criteria for Parole Consideration. There was no information or evidence of a rational nexus between the 1990 commitment offense and any purported dangerousness at the time the pre-parole investigation was conducted. The information pertaining that there is no rational nexus between the 1990 commitment offense and my current behavior for dangerousness should have been produced to the Board, and included into my parole file based on it being favorable and mitigating information and evidence appearing to legal satisfaction that I will not again violate the law. As such, I'm challenging the inaccurate and incomplete information that is withheld and excluded from my parole file upon the pre-parole investigation.

In addition, I challenge the error and inaccurate information that the pre-investigation placed in my file, that have created unlawful inference of an offense exceeding minimum elements; probation at the time of the offense; numerous prior acts of violence; and inference of greater culpability than the conviction offense; and a sentence enhancement use of deadly weapon.

Please correct the errors in my parole file, and include the information and evidence that the pre-parole investigation withheld and excluded that will demonstrate a reasonable probability that will appear to the legal satisfaction of the Board that I will not again violate the law.

Mr. Buchanan, §19-5-510 and 610, as outlined in the Evidence Act Exception, the information and evidence withheld and excluded from my parole file and the parole board members is relevant and favorable mitigation material that there is no rational nexus that I'm not an unreasonable risk that will appear to the legal satisfaction of the Board that I will not again violate the law.

The American Bar Association Model Rules of Professional Conduct are widely recognized as the touchstone of ethical behavior for attorneys, and South Carolina has adopted the same. Model Rule 3.8 defines special ethical duties applicable to prosecutors, including among others. Model Rule 3.8 imposes disclosure obligations that are separate from and broader than the agency policy standards. ABA require attorneys to adhere to a heightened standard of conduct.

Thank you for your assistance, and I'm looking forward to hearing from your office at your earliest conveience. Please note that I submitted a petition to Mr. Patton requesting for a rehearing and reconsideration of the 1/14/15 hearing, based on after-acquired information relevant and favorable mitigation material that was inadvertently overlooked by the board based on the pre-parole investigation conducted which excluded and withheld favorable information and evidence from my parole file, and failed to produce the same to the board.

Again, thank you for considering this matter.

Respectfully submitted,

s/
Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

cc: S.C. Bar Association
S.C. Court of Appeals
Administrative Law Court (Judge Durden)
file