STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FOR THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT
DEBORAH B. Durden, Administrative Law Judge

Appellate Case Number 2015-000478

Bernard Bagley, #175851, Appellant,

v.

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

INITIAL BRIEF OF APPELLANT

Bernard Bagley
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2. THE ALC JUDGE ERRED IN FAILING TO FIND THE PAROLE BOARD WAS REQUIRED TO CONSIDER THE CRIMINAL RISK FACTORS ACCORDING TO §24-21-5(2), OF S.C. CODE OF LAWS.

3. THE ALC JUDGE ERRED IN FAILING TO FIND THE BOARD'S DEFECTIVE NOTICE OF REJECTION DATED 1/15/15, DID NOT PROVIDE A DETAILED CONCLUSION AND FINDING REGARDING THE LAW OF THE CRIMINAL RISK FACTORS AS OUTLINED IN §24-21-5(2), AND THE EVIDENCE ACT EXCEPTION ACCORDING TO §19-5-510, OF S.C. CODE OF LAWS.

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8. THE ALC JUDGE ERRED IN FAILING TO FIND THE BOARD DEMONSTRATED A RATIONAL NEXUS BETWEEN APPELLANT'S CURRENT BEHAVIOR OBSERVATIONS AND HIS BEHAVIOR PROBLEM RELATED TO THE COMMITMENT OFFENSE IMMUTABLE FIXED FACTORS 1,2,3, AND 7 AS OUTLINED IN FORM 1212.

9. THE ALC JUDGE ERRED IN FAILING TO FIND THE BOARD PROTECTED APPELLANT'S EQUAL PROTECTION RIGHT WHEN THE APPELLANT WAS DISCRIMINATED AGAINST IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT (ADA); AND DID NOT HAVE THE ABILITY TO PRESENT EVIDENCE OR A WITNESSES IN MITIGATION WHOSE TESTIMONY RELATES TO THE LAW AND CAPACITY, AND TREATMENT AS OUTLINED IN §16-25-90.

10. THE ALC JUDGE DECISION IS MADE UPON UNLAWFUL PROCEDURE.

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 Police Academy. Mary and the baby stayed in South Carolina. A few months lates, Mary traveled from Eastover to Durham to talk to the Appellant, and they again reconciled, and May 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 discivered that Mary and the baby were gone, he immediately drove to eastover, took the baby, and returned to durham. Mary telephoned him 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 of the household money belong to Bernard); 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 Bernard, and he inquired her about having an affair with Donald Dubose, and told her that he would not allow another man to raise his daughter, and then in 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.

FACTUAL/PROCEDURAL HISTORY

The Appellant made his initial appearance before the Parole Board on September 8, 2010. Upon the conclusion of this hearing, the Board denied the Appellant an opportunity to participate in the provisional parole program on the basis of three (3) immutable fixed factors: (1) nature and seriousness of the current offense; (2) use of deadly weapon in this or previous offense; and (3) indication of violence in this or previous offense. He later appeared before the Board on October 10, 2012. The Appellant was once again denied provisional parole due to two (2) immutable fixed factors: (1) the nature and seriousness of the current offense; and (2) the use of a deadly weapon in this or previous offense. Upon receiving the notice of rejection, the Appellant filed a notice of appeal before the Administrative Law Court (ALC). On December 27, 2012, Judge Ralph K. Anderson, III, issued an order ruling that the Respondent had shown all of the procedures were followed prior to the denial of parole, so he dismissed the appeal. The Appellant filed a notice of appeal before the South Carolina Court of Appeals. On August 27, 2014, in an unpublished opinion (2014-UP-326), the court of appeals reversed and remanded Bagley v. SCDPPPS, and because they (court) were reversing Bagley's 2012 denial of parole, they directed the parole board not to consider the 2012 denial as a prejudicial factor in reaching its decision at the upcoming proceeding or in future decisions. (Appellate Case No. 2013-000042). The Appellant later appeared before the Board on January 14, 2015. The Board once again denied the Appellant an opportunity to participate in the parole program. The

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 filed a notice of appeal before the ALC, in which Judge Deborah B. Durden was assigned. On February 12, 2015, Judge Durden dismissed the appeal, five (5) days after the appeal was filed. Judge Durden ruled that the procedure was followed and that it was a routine denial of parole which the ALC has no jurisdiction to hear. The Apellant submitted his notice of appeal dated February 23, 2015, before this Court. The initial brief of the Appellant follows:

NOTE: The Appellant submitted his initial brief to the ALC dated February 13, 2015, in which he invoked the jurisdiction of the ALC to rule on all issues to preserve for appeal or appellate review in an effort to prevent evading review by the ALC and this Court because this matter is a parole hearing that Bagley was discriminated, retaliated against and wrongfully made ineligible and denied parole. The ALC failed to follow its own procedures to allow the Appellant to file a brief in the appeal. The Board has discriminated against Bagley based on his disabilities, and retaliated against him because he redress the wrongfully denial of parole.

In addition, the Appellant requested the Board to investigate his parole file because what's not in the file and being incomplete, and contains several errors and other inaccuracies. As of this date, the Board has not notified Bagley of the action taken. On February 20, 2015, the Board denied Appellant's request for a rehearing, in which he received notice of the same on the 27th of February, 2015.

Also, the trial judge informed the jury that malice may be inferred from the use of a deadly weapon, and that they could consider a lesser included offense of murder where evidence was presented that would reduce, mitigate, excuse, or justify a killing caused by the use of a deadly weapon. SEE: State v. Belcher, 685 S.E.2d 802 (2009). Bagley's case come under Belcher catergory of cases. State v. Bagley, 92-UP-165 (1992).

ARGUMENT (1)

THE ALC JUDGE DID ERRED IN FAILING TO FIND THE PAROLE BOARD WAS NOT REQUIRED TO CONSIDER AN INAPPROPRIATE FACTOR, THE 2012 DENIAL AS A PREJUDICIAL FACTOR IN REACHING ITS DECISION AT THE 2015 PAROLE PROCEEDING.

The Appellant asserts that the Board retaliated against him because of this Court's reversal of his 2012 denial of parole. As a result, the Board considered the 2012 denial as a prejudicial factor in reaching its decision at the 2015 parole proceeding. (Bagley v. SCDPPPS, Appellate Case No. 2013-000042, 2014-UP-326, (8/27/14)).

This Court specifically directed the parole board not to consider the 2012 denial as a prejudicial factor in reaching its decision, in which it did as outlined in form 1212 number 15, "other factors considered relevant in a particular case by the Board." Bagley specifically argues that form 1212 number 15 applies, and require reversal because of the board's arbitrary or capricious and abuse of discretion as outlined in S.C. Code Ann. §1-23-610(B)(f). The ALC review was conducted under an error of law, as outlined in in the Administrative Procedures Act (APA) §1-23-610(B)(d).

ARGUMENT (2)

THE ALC JUDGE DID ERRED IN FAILING TO FIND THE PAROLE BOARD WAS REQUIRED TO CONSIDER THE CRIMINAL RISK FACTORS ACCORDING TO §24-21-5(2), OF S.C. CODE OF LAWS.

Bagley challenge the accuracy of the pre-investigation process that Parole Examiner Sandra Ryan was designated and trained to administer the COMPAS Evaluation 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). Additionally, Appellant specifically argues that §24-21-5(2) applies. Indeed, the language of §24-21-5(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 evaluater on 6/6/13. Nevertheless, the issue here is whether a failure to follow the requirements of §24-21-5(2) requires reversal of the results reached.

The ALC actions in not applying the special appeal is arbitrary and capricious and an error of law for failure to adhere to the APA.

ARGUMENT (3)

THE ALC JUDGE DID ERRED IN FAILING TO FIND THE BOARD'S DEFECTIVE NOTICE OF REJECTION DATED 1/15/15, DID NOT PROVIDE A DETAILED CONCLUSION AND FINDING REGARDING

THE LAW OF THE CRIMINAL RISK FACTORS AS OUTLINED IN §24-21-5(2), 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 deliberation in their defective decision making process. The process was incomplete based on the failure to examine the criminal risk factors objectives.

The mandatory criteria can not demonstrate nor determine the criminal risk factors in §24-21-5(2), based on its own standing. Section 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 defective decision making process. The board did not address or check for a change as outlined in §24-21-5(2).

Nonetheless, the issues here are whether the notice of rejection include the criminal risk factors outlined in §24-21-5(2), characteristics and behaviors, which it does not. The other issue is whether a failure to follow the requirements of §24-21-5(2) requires reversal of the results reached as outlined in the APA §1-23-610(B)(a)(c)(d)(f), and according to the Evidence Act Exception §19-5-510, of S.C. Code of Laws.

The Appellant argues that the ALC did not follow the requirements of special appeals as outlined in the APA.

ARGUMENT (4)

THE ALC JUDGE DID ERRED IN FAILING TO FIND THAT THE APPELLANT APPEARED AT THE HEARING UNDER INFLUENCE OF A PHYSICAL AND EMOTIONAL HEALTH IMPAIRMENT.

The Appellant asserts that he appeared at the hearing in severe chronic pain, pressured speech, being verbally overproductive, flight of ideas, and poor circulation. Although prior to arriving to the hearing area at 9:00 am, he was feeling alright, but during the course of the day, he was experiencing severe chronic pain, in which he is prescribed the medication Mobic, and he did not have on a back support. He further 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, verbally overproductive, flight of ideas, poor circulation, and chronic pain. On February 20, 2015, the board denied Appellant's request for a re-hearing. Appellant also asserts that he is excluded from participation in or denied the benefits of the services, programs, or activities of a public entity in violation of the Americans With Disabilities Act (ADA) because his parole file is incomplete and inaccurate

regarding information and evidence that he is a qualified individual with disabilities. All factors and other factors such as Appellant's disabilities are the contributing reason the board denied him parole and a re-hearing as it relates to the law outlined in the ADA. An individual qualified with disabilities shall by no reasons of such disabilities be excluded from participation in or denied the benefits of the servives, programs, or activities, of a public enitity. The issue here is whether the ADA is a state created liberty interest upon findings that Bagley is a qualified individual with disabilities.

The ALC did not follow the requirements of the special appeals as outlined in the APA.

ARGUMENT (5)

THE ALC DID ERRED IN FAILING TO FIND THAT THE BOARD FAILED TO FIND APPELLANT ELIGIBLE FOR CONSIDERATION OF PAROLE UNDER THE PROVISIONS OF ARTICLE 24-21-700.

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 denying his request to be considered as outlined in §24-21-700. Bagley argues that the Board did not determine his eligibility as outlined in §24-21-700, because the information pertaining to him as being a veteran was withheld and excluded from his parole file.

The unique criteria and factors outlined in this particular statute of law should have been followed by the department to comply with administrative law, and not doing so, the Board arbitrary or capricious committed error of law of a state created interest, in which Bagley is entitled under the law. The Board failure to seek approval by the VA or to a committee appointed, or representative to commit Bagley to a V.A. Hospital denied him eligibility for the same. Section 24-21-700, justify the duly appointment of a committee, guardian, or next friend to protect the interest on behalf of a disabled incarcerated veterans as outlined in Title II of the ADA, and extends to prisoners as outlined in the Rehabilitation Act of Article 12, §2 of the S.C. Constitution, along with state statutes.

Bagley has a history of an emotional and mental condition which will justify a standing to raise this issue. Parole is a regulated privilege that has a protected interest essential for freedom of action. 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." Bagley also contends that he has an essential protected interest in a regualted privilege to be consider for parole and to be release on parole based on his file/record prior to imprisonment, during imprisonment, and after imprisonment upon appearing to the legal satisfaction of the Board as outlined in §24-21-640, and 700. The ALC failed to take Judicial Notice as outlined in §19-3-120, of S.C. Code of Laws, and §1-23-610(B), and as a result,

created an error of law arbitrary and capriciously. The Appellant argues that the pre-parole investigation conducted in his case withheld and excluded favorable mitigating information and evidence from his parole file regarding his military DD 214 Honorable Discharge; Veterans Affairs Incarcerated Veterans Parole Re-Entry Program Eligibility Status; justification of appointment of committee, representative, guardian, or next friend as outlined under eligibility for consideration of parole according to the provisions of Article 24-21-700. In addition, the notice of rejection dated 1/15/15 did not provide a detailed conclusion and finding regarding the law of Bagley's eligibility for consideration of the unique criteria and factors as outlined in §24-21-700.

ARGUMENT (6)

THE ALC JUDGE ERRED IN FAILING TO FIND PAROLE BOARD FAILED TO REVIEW APPELLANT'S CASE EVERY TWO (2) YEARS FOR THE PURPOSE OF A DETERMINATION OF PAROLE AS OUTLINED IN §24-21-645, AND §16-1-60, OF S.C. CODE OF LAWS.

The Appellant argues with all do respect depict ALC Judge ruling as a kind of social disease complete with antecedents and symptoms, that demonstrate a high probability of a bad decision. Bagley'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, Nagley appeared before the board four (4) years and four (4) months after his initial parole hearing established date of 9/8/10. The record shows that he appeared again before the board on 1/15/15 when his initial date was 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 reheard for parole two (2) years following the date of aprole 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 every two years. Bagley contends reversal is required.

ARGUMENT (7)

THE ALC JUDGE ERRED IN FAILING TO FIND THE BOARD INVESTIGATED APPELLANT'S INQUIRY REGARDING HIS PAROLE FILE BEING INCOMPLETE AS TO WHAT'S NOT IN THE FILE, AND CONTAINING ERRORS, AND OTHER INACCURACIES.

Bagley's argument number 7 is based on the Board's decision to deny him parole was upon incomplete information, and failure of the pre-parole investigation conducted by parole officials to produce favorable mitigating information and evidence in his parole file. The pre-parole investigation withheld and excluded favorable mitigating information and evidence from his file that upon a reasonable probability that he will can not again violate the law to the legal satisfaction of the Board. Appellant's DD 214 Honorable Discharge; Veterans Affairs Incarcerated Veterans Re-entry Parole Program Eligibility Status; justification of appointment of committee, representative, guardian, or next friend. All information pertaining to Anger Management I; II, and III department of corrections programs Bagley completed under the department of social workers. Also, reality therapy and conflict resolution programs that are accredited and sanctioned by the department of corrections.

Appellant asserts that the pre-parole investigation placed unlawful inference of an offense exceeding minimum elements that are disproportionate of elements pertaining to lifers that the parole board granted parole. Also, the pre-investigation has placed an unlawful probation sentence in his file that infers he was on probation at the time of the offense; numerous prior acts of violence that are unfounded, along with an unlawful inference of a greater culpability than the conviction offense; and a unlawful sentence enhancement use of deadly weapon.

Parole officials have information that is in error from sources, such as former inmates, and possibly inmates that disliked law enforcement officers and will do and say anything in an attempt to make him appear unfavorable before the board. The board has not investigated the inquiry nor have they contacted the Appellant of the action taken. Bagley asserts that he has been prejudiced and wrongfully denied parole because of the foregoing matter. Bagley is not asking to inspect his parole file, but his file should be corrected with all information favorable in his behalf, as outlined in §19-5-510, of the Evidence Act Exception.

ARGUMENT (8)

THE ALC JUDGE ERRED IN FAILING TO FIND THE BOARD DEMONSTRATED A RATIONAL NEXUS BETWEEN APPELLANT'S CURRENT BEHAVIOR OBSERVATIONS AND HIS BEHAVIOR PROBLEM RELATED TO THE COMMITMENT OFFENSE IMMUTABLE FIXED FACTORS, 1,2,3, AND 7 AS OUTLINED IN FORM 1212.

The Appellant argues that the ALC Judge did erred in failing to follow the requirements of special appeals Rule 60, 61, and 58, whereby the ALC has jurisdiction to review this issue. The ALC has not considered that the Appellant has the right to present evidence on his own behalf. The Appellant challenges SCDPPPS Form 1212, and the pre-parole investigation procedure 1, 2, 3, and 7 factors.

SCDPPS Form 1212 procedure factor # 1, the risk the inmate poses to the community; factor # 2, the nature and seriousness of his offense, along with circumstances surrounding the offense; factor # 3, his prior criminal records, along with previous supervision; and factor # 7, his physical, mental, and emotional health are the reasons provided in the notice of rejection dated 1/15/15, for Bagley's denial of parole. Bagley argues that the Board decision is made upon

an unlawful procedure, and arbitrary and capricious procedure because the factors created an unlawful inference that violate his right to present witnesses and mitigating evidence that is favorable on his behalf, and as a result, in violation of constitutional or statutory provisions. Bagley further argues that he was not allowed or given the opportunity to receive the evidence from the department of corrections, or the court as outlined in §195-510, 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 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 to the legal satisfaction of the board. However, the pre-parole investigation failed to produce the favorable and mitigating evidence by withholding and excluding that Bagley poses a low risk of reoffending.

By withholding and excluding relevant and competent evidence that Bagley poses a low risk of reoffending, the pre-parole investigation conducted by the board created an unlawful inference proving Bagley is an unreasonable risk of dangerousness based solely on the immutable fact of the offense itself as outlined in factors 1,2,3, and 7 in form 1212.

The issue here is whether favorable mitigating evidence withheld and excluded from Bagley to present as a right to the board on his own behalf violates due process because his individual behavior observation risk or reoffending is arbitrary and fails the rational nexus relationship test.

Bagley asserts that he is serving a life sentence for the remainder of his natural life, his argument include that the natural life sentence can be served in the custody of the department of of probation and parole out of the department of corrections, but instead under supervision of the parole officials upon his duly appointed next friend or guardian, or representative.

Again, he argues that the pre-parole investigation evidentiary record withheld and excluded favorable evidence of Bagley's spotless record both and during his incarceration, thus, making the board's decision defective when it wrongly denied him parole without an iota of evidence of a rational nexus between Bagley's 1990 commitment offense and any dangerousness at this present time and on 1/14/15.

An additional issue here is whether favorable mitigating evidence withheld and excluded from Bagley's parole file created an unlawful inference proving that Bagley is an unreasonable risk of dangerousness based on factors 1,2,3, and 7 of SCDPPPS form 1212, thus, violating his right to present favorable and exculpatory (mitigating) evidence on his own behalf.

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, SCDPPPS general counsels, ALC Judge Deborah B. Durden. Model Rule 3.8 imposes disclosure obligations that are separate from and broader than the agency policy standards. The ABA require attorneys to adhere to a heightened standard of conduct.

Title II of the ADA protects the rights of prisoners with a history of a mental disorder, thus, mandating judicial review as outlined in §19-3-120, of S.C. Code of Laws. Denial if due process preddicated upon a violation of the ADA, in which

Bagley contends ALC Judge Durden and the board discriminated against him, an individual prisoner with a disabilit(ies) under Title II, physical and mental impairments that limits a major activity, in which a record of such impairment exist, i.e. speaking or communicating clearly to express himself orally, and as a result, reduces his credibility before the board at the hearing to present evidence and witnesses on his own behalf, regarding a rational nexus between his current behavior observation and his behavior problem related to the commitment offense immutable fixed factors 1,2,3, and 7 as outlined in form 1212. Reasons why this court must consider to find the rational nexus relationship test results.

ARGUMENT (9)

THE ALC JUDGE DID ERRED IN FAILING TO FIND THE BOARD PROTECTED APPELLANT'S EQUAL PROTECTION RIGHT WHEN THE APPELLANT WAS DISCRIMINATED AGAINST IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT (ADA), and DID NOT HAVE THE ABILITY TO PRESENT EVIDENCE OR A WITNESSES IN MITIGATION WHOSE TESTIMONY RELATES TO THE LAW AND CAPACITY, AND TREATMENT AS OUTLINED IN §16-25-90.

The ALC Judge did not make a specific finding on parole eligibility or ineligibility regarding Appellant's history of domestic violence at the hands of his victim, in an effort that will allow him access to a program designed to treat him whereby credible evidence trustworthy from a government agency or a non-profit organization may present to the board or that will allow him by right to present to the board on his own behalf.

Bagley asserts tha he is being denied judicial review by the ALC with regards to this issue. The court is evading review and the matter is repetitious.

Appellant argues verbatim argument number 8, in which he incorporates herein argument number 9.

ARGUMENT (10)

THE ALC JUDGE DEFECTIVE DECISION IS MADE UPON UNLAWFUL PROCEDURE.

The Appellant asserts that the analysis in this issue and this case is that the ALC decision to dismiss his appeal is carried out under unlawful procedure regarding all nine (9) issues on appeal before this court. Since the ALC judge did not follow the requirements of special appeals and invoked jurisdiction as outlined in Rules, 60, 61, and 58, her actions are arbitrary and capricious. The ALC actions in not applying the special appeals Rules 60, 61, and 58 are an abuse of discretion and error of law. Here, reversal is required.

The Appellant also argues that the ALC Judge Dureden abuse her discretion for failure to reply to his Rule 59(e)(g), Motion to alter and amend her order as required by South Carolina Rule of Civil Procedures (SCRCP), to address matters judicially noticed of the grounds he appealing on the record that are meritorious, as outlined in the ALC Rules 63, 58(c), and 65. The oversight and omission is arbitrary and capricious, because the defective notice of rejection dated 1/15/15, did not comply with this Court's ruling in Bagley v. SCDPPPS, 2014-UP-326 (8/27/14), that clearly to implement the finding as outlined in §24-21-10(F)(1), of S.C. Code of Laws, that requires the parole board to evaluate an inmate's risk using the department's adopted assessment tool in reaching a decision to grant or deny parole. See §24-21-10(F)(1), ("The Department must develop a plan that includes the establishment of a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions." (emphasis added))

Here, Bagley appeals the order of ALC Judge Durden affirming the denial of his parole, and she erred in failing to find the parole board was required to administer and consider a validated individualized risk assessment according to §24-21-10(F)(1), and §24-21-5(2), of S.C. Code of Laws. Reversal is required, and all grounds appealing on the record for consideration as a matter of law require En Banc as outlined in ALC Rule 78(A).

NOTE: The parole board's notice of rejection dated 1/15/15, does not comply with §24-21-10(F)(1).

CONCLUSION

Appellant seeks relief that this Court take judicial notice as outlined in §19-3-120, of S.C. Code of Laws, and invoke jurisdiction to certify this case for review because of Bagley's wrongful denial of his request for parole consideration not being a routine denial based on the board conclusion and findings in the defective notice of rejection dated 1/15/15. The ALC Judge Durden is evading review of §24-21-700, that implicates a state-created liberty interest and warrants due process procedures. as well as §24-21-5(2), §24-21-10(F)(1), Title II of the ADA, and Rehabilitation Art. 12, §2, §24-21-645, along with §16-1-60, and more importantly Bagley's right to present witnesses and evidence on his own behalf without interference from the department of parole, and the department of corrections, along with ALC Judge Durden's defective decision making to dismiss his appeal as required under ALC Rule 60(A), and Rule 65, where a matter of law is reviewable by the ALC, and the inmate's appeal also implicates a state-created liberty or property interest. WHEREFORE, the Appellant request that the Court reverse and remand and issue an order authorizing the Board to parole him the maximum term specified in his sentence in the custody of the department of parole under a duly appointed representative, guardian, or next friend.

March 10, 2015

Respectfully submitted,

Bernard Bagley
#175851/KER.CI

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FOR THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT
Deborah B. Durden, Administrative Law Judge

Appellate Case Number 2015-000478

Bernard Bagley, #175851, Appellant,

v.

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

PROOF OF SERVICE

I, Bernard Bagley, the Appellant, certify that I have served the within Initial Brief of Appellant, Designation of Matter, and Certificate of Counsel dated March 10, 2015, on Respondent this 10th day of March, 2015, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to:

Tommy Evans, Jr
SCDPPPS Legal Counsel
P.O. Box 50666
Columbia, SC 29250

s/
Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
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March 10, 2015

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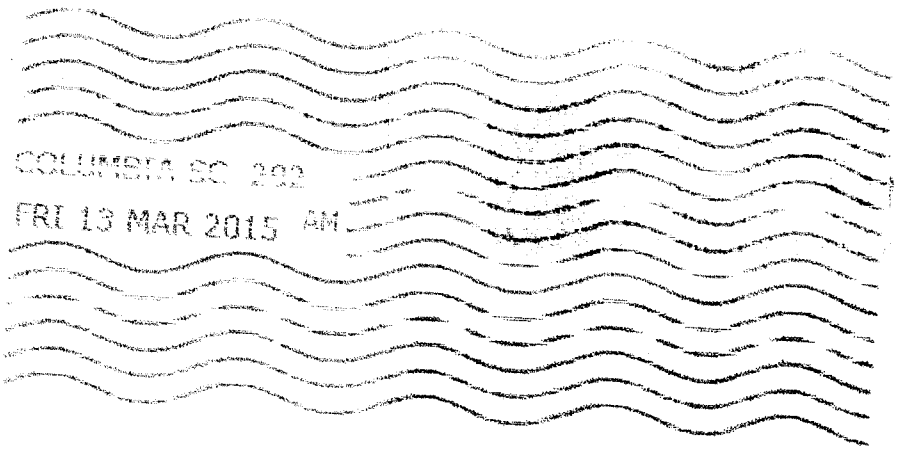
1.



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