STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from the Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Appellate Case No: 2015-000196

James Tinsley, # 171943, ... Appellant,

-vs-

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

REPLY BRIEF OF APPELLANT

James Tinsley, #171943,
Allendale C.I. F2B6
P.O. Box 1151
Fairfax, S.C. 29827

Appellant Pro se

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STATEMENT OF CASE

On April 9, 2014, Appellant was denied parole on the sole ground that he had failed to successfully complete a prior supervision program. Appellant contends that this is false and that the parole board either relied upon the misunderstanding of expunged records or that they utilized information pertaining to someone else.

On June 13, 2014, Appellant filed a notice of appeal to the Administrative Law Court seeking review of the boards "use of false information" in making its decision and an order directing the board to remove any false information from his records.

The ALJ filed an order on January 14, 2015 affirming the parole boards actions on the basis that the ALC has limited authority to review "denial of parole" and must uphold the boards decision so long as the board considered the appropriate criteria.

The Appellant sought an appeal because he believed that the board did not consider the appropriate criteria if they relied upon false information and that the ALC was not required to address the denial of parole, but could have simply determined whether or not the board can utilize or maintain false information in a parolees files.

The Respondents filed their Initial Brief dated March 18, 2015, following the Appellants Initial brief dated February 23, 2015. This reply brief follows:

ARGUMENT

DID THE ADMINISTRATIVE LAW JUDGE ERR IN FINDING THAT THE ALC WAS WITHOUT AUTHORITY TO REVIEW A PAROLE BOARDS USE OF FALSE INFORMATION ?

In the Respondents Initial Brief, they have argued that Appellant was given adequate opportunity at his parole hearing in which he could have challenged the boards use of the information or presented evidence proving that the information was false, (Initial Brief of Respondents page 6, ¶2), and because he did not, he has failed to carry his burden of proof.*

This is untrue. The DPPPS has a policy that prevents prisoners from reviewing their records or the information that will be used to determine their eligibility for parole. They claim such information is protected under the privacy act. During the hearing there was no mention of any failure to complete a supervision program. It was days later that Appellant received a letter denying parole and giving the specific reason for its denial - the failure to complete a prior community supervision program. (ROA pg. 3). This came as a complete surprise and shock to Appellant and he believes it was unfair to consider information without allowing Appellant

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* The DPPPS also suggest that Appellant was convicted of either stealing or possessing a stolen $ 218,000.00 motorhome. This is also untrue and has no relevancy in this case other than their attempts to make Appellant look sinister. (See: Appellants Criminal Record, ROA pgs. 20-25). It does indicate however that they have some other persons information confused with Appellant and continue to use false information against him.

the opportunity to present witnesses or evidence to refute it.

From that day onward, Appellant has complained that this is false and that he has never failed to complete a supervision program. While some discussion has been made concerning Appellants expunged convictions, (only because it was initially unclear what information the board was relying on), it appears that that was not the information relied upon by the DPPPS. For they now claim Appellant violated "parole" four (4) times. (Initial Brief of Respondent pg. 2, ¶ 3).

In conversations with Appellants father, the DPPPS stated that they were relying upon parole violations from 1988-1990 (ROA pg. 27, ¶¶ 25-28). Appellant did not even get convicted until 1993 when he went to prison for the first time. (ROA pages 35-36)and was released on parole for the first time in 2003 and sucessfully completed supervision. (Id.).

It appears that the boards claims have nothing to do with the expunged convictions that have been briefly mentioned in the lower court, but rather, the DPPPS claims seem to apply to some other James Tinsley or person who committed crimes when Appellant was probably still a minor.

In any event, it is the DPPPS who have failed to provide any proof that the information they utilized was accurate, applied to Appellant, or was more than some lay persons opinion. Reviewing Courts need not accept an agencies findings of fact if those findings are not supported by substantial evidence. Lark v. Bi-lo, 276 S.C. 130, 276 S.E.2d 304 (1981); Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742, 756 (2000).

Appellant on the other hand, did provide several affidavits and his criminal records which prove that Appellant has never failed to successfully complete supervision. (ROA pgs. 16-34).

Nevertheless, the ALJ's decision did not confirm the DPPPS beliefs that Appellant had failed to complete a prior supervision program or that the information relied upon by the DPPPS was accurate. Instead, the lower court simply believed that because the DPPPS considered the necessary criteria under S.C. Code, § 24-21-620, that the ALC was prohibited from reviewing their "decision to deny parole".

This is basically the same argument put forth by the Probation Department in Monroe v. Thigpen, 932 F.2d 1437, 1442 (1991). There, the court found however, that even though the board considered the correct criteria, by relying upon false information, the board cannot be said to have considered the criteria appropriately. Likewise, § 24-21-620 cannot be read as granting the board the discretion to rely upon false information in determining whether to grant parole. Such actions are constitutionally offensive because the use of false information is malicious and must be considered bad faith. Therefore, the ALC erred in finding that the DPPPS had considered the appropriate criteria.

Moreover, the DPPPS suggest that Appellant was not treated differently because the identical criteria was followed in his case as in all other cases brought before the parole board. The DPPPS fail to realize that the disparate treatment comes in the fact that the board used "false information" against Appellant but not against the others. Therefore, there was unfairness shown

toward Appellant and the use of false information is malicious and considered bad faith exercise of authority in the present case.

Secondly, Furtick v. SCDPPPS, 352 S.C. 594, 576 S.E.2d 146 (2003) and Cooper v. SCDPPPS, 377 S.C. 489, 661 S.E.2d 106 (2008) only apply to cases where the ALC is reviewing the "denial of parole". If the ALC disregarded the "denial of parole" factor and simply addressed Appellants claim of "using and maintaining false information in appellants records", the Respondent and ALJ's positions would loose its force.

The DPPPS are of the opinion that Steele v. Benjamin, 362 S.C. 66, 606 S.E.2d 499 (2004) and Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000), are not relevant to this case because they deal with a decision to change from an annual parole review to a biannual review which is missing from this case.

The DPPPS counsel fails to realize that the relevancy of these cases is not in the fact that those cases deal with the timing of review, but in that those cases deal with circumstances not connected to any "denial" of parole". Likewise, the retention and use of false information is a separate and distinct cause of action from any claim of a "denial of parole".

Based upon this reasoning, the lower court did have authority to determine whether it was error for the parole board to retain or use false information against a prospective parolee- either because it is unfair and malicious or because it constitutes a failure to consider the criteria appropriately.

CONCLUSION

For the foregoing reasons, Appellant believes this court should find that the ALC erred in finding that it did not have the authority to consider the issues before it. The case should be remanded for further findings unless this court believes that it can make the findings on the record before it and dispose of the case in a more timely fashion.

Respectfully submitted,

March 25, 2015

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Appellant Pro se

CERTIFICATE OF SERVICE

I, James Douglas Tinsley, II, hereby certify that I did receive the Respondents Initial BRIEF on March 24, 2015 and that I did cause the Foregoing "Reply BRIEF" to be served upon counsel OF Record this 28th day OF OF March, 2015, by placing a true and correct copy in the prison mail personels hands for mailing, with proper postage pre-paid and affixed thereto, and addressed as follows:

Tommy Evans, Jr.
Legal Counsel For SCOPPS
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Columbia, S.C. 29250
(803) 734-9220

James Douglas Tinsley, II

CLERK OF COURT:

Please Find enclosed

the Appellants Reply Brief and

certificate of service for filing

in this case.

Thank you,

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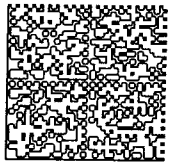

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