

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APR 24 2015

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph K. Anderson, III

APPELLATE CASE NO. 2013-001380

Unpublished Opinion No. 2015-UP-204
Submitted March 1, 2015 – Filed April 15, 2015

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES.....RESPONDENT

v.

ROBERT F. SPIGNER.....APPELLANT

PETITION FOR REHEARING

Respondent, the South Carolina Department of Probation, Parole and Pardon Services (Department) respectfully petitions the Court for a rehearing pursuant to Rule 221(a), SCACR. This petition is submitted on the grounds that the Appellant recently appeared before the Parole Board, in which a COMPAS assessment was considered. The decision of the Court remanding the case to the Board for a new hearing should be considered moot. The fact he would receive a subsequent hearing pursuant to South Carolina law was something this Court was not aware of prior to making this decision. Based on the reasons set forth below, the Department respectfully

asks this Court to grant this Petition for Rehearing and reconsider their prior decision remanding the case to the Board for another hearing.

Procedural History

On September 8, 1971, the Appellant Robert Spigner appeared before the Honorable Wade Weatherford for the offense of murder. Pursuant to South Carolina law, the Court sentenced the Appellant to a term of imprisonment for the remainder of his natural life. At the time he committed this offense, South Carolina law allowed a person serving a life sentence for murder parole eligibility upon the service of ten years.

The Appellant appeared before the Board on October 10, 2012, parole was denied due to, 1) the nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; 3) the use of a deadly weapon in this or a previous offense; 4) a prior criminal record indicating poor community adjustment; and 5) a failure to successfully complete a community supervision program. Upon receiving this denial the Appellant filed a notice of appeal before the Administrative Law Court (ALC). In the ALC appeal, the Appellant alleged the Board failed to consider a risk assessment pursuant to South Carolina law.¹ On May 24, 2013, the Honorable Ralph K. Anderson, III issued an order affirming the decision of the Parole Board.

This decision was appealed to this Court. This court decided without oral argument pursuant to Rule 215, SCACR² that the Board failed to complete or consider a risk assessment in violation of South Carolina law. On April 15, 2015, this court issued an unpublished opinion

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, including additional objective criteria that may be used in parole decisions. S.C. Code Ann. §24-21-10(F)(1)(2012)

² The appellate court may decide any other case without oral argument if it determines that oral argument would not aid the court in resolving the issues. Rule 215 SCACR.

reversing in part and remanding the case to the Parole Board for another hearing. This petition for rehearing follows.

Request for Reconsideration

This Court made the determination that the Board erred in denying parole without considering a risk assessment, and ordered a new hearing in which a risk assessment must be considered.

Prior to this decision, the Appellant again appeared before the Board on January 15, 2015. Before this hearing a parole examiner met with the Appellant to complete a COMPAS risk assessment. Upon completion of this assessment the results was provided to the Board. These results were considered prior to the denial of parole. Since the Appellant has appeared before the Board, where COMPAS was considered, the decision of this Court is now moot, so we respectfully request this Court reconsider its prior decision.

The Department argues this case should be considered moot because its ruling will not change the Appellant's current situation. The Department does not expect the Board to release the Appellant on parole with the identical facts they considered only four months ago. A case becomes moot when judgment, if rendered will have no practical effect upon the existing controversy. *Mathis v. South Carolina State Highway Dept.*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). Since he just had a hearing where a COMPAS assessment was considered, this ruling does not present the Appellant any relief. Before any action can be maintained, there must exist a justiciable controversy. *Midland Guardian Co. v. Thacker*, 280 S.C. 563, 567, 314 S.E.2d 26, 28 (Ct. App.) *cert. denied*, (1984). A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination as distinguished from a dispute or difference of a contingent hypothetical or abstract character. *Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co.*, 249

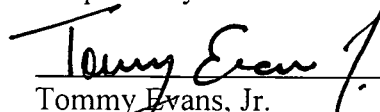
S.C. 561, 155 S.E.2d 618 (1967). The Appellant has just appeared before the Board in January. It is highly unlikely that the Board would award parole to a prisoner they just denied only months ago unless new facts are presented. There will be no new factors presented in a second hearing. The decision of the Court would not bring any relief to the Appellant, so this case should be considered moot and reconsidered by this Court.

Due to its mootness, and in the interest of judicial economy, the Department respectfully requests this Court reconsider its previous decision. The Department requests the Court not order the commencement of another hearing. The Department wishes this Court grants this motion and allow the current decision to remain, except the order of commencing another Parole hearing. A hearing has just been held, in which the Board has considered all the criteria including a risk assessment denied parole. It would be unnecessary to conduct another hearing, which would garner an identical result.

Conclusion

WHEREFORE, the State respectfully requests this Court grant the Petition for Rehearing, and reconsider its earlier decision remanding the case back to the Parole Board for another hearing.

Respectfully submitted



Tommy Evans, Jr.
Assistant General Counsel

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Parole and Pardon Services
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Attorney for the Respondent

Columbia, South Carolina
April 23, 2015

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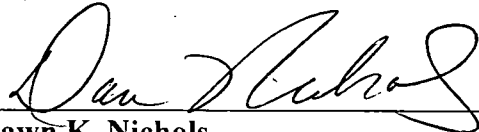
ROBERT F. SPIGNER.....APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, certify that I have served the within Petition for Rehearing, dated April 23, 2015, by depositing a copy of the same in the United States mail, postage prepaid, this 23rd day of April, 2015, addressed to:

Robert Spigner, #65500
Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210

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



Dawn K. Nichols
Executive Administrative Assistant

State of South Carolina
Department of Probation, Parole and Pardon Services

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SC Court of Appeals

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

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April 23, 2015

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Robert Spigner v. SCDPPPS

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the *Petition for Rehearing*, dated April 23, 2015, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Tommy Evans, Jr." with a stylized flourish at the end.

Tommy Evans, Jr.
Assistant General Counsel

Enclosures

cc: Robert Spigner