

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

RECEIVED
MAY 12 2015
S.C. Supreme Court

PHILLIP A. BROWN

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002400

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

MEGAN HARRIGAN JAMESON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEXi

APPLICATION FOR POST-CONVICTION RELIEF 1

RETURN AND MOTION TO DISMISS.....8

POST-CONVICTION RELIEF HEARING TRANSCRIPT (DATED July 21, 2014)..... 14

STATE’S EXHIBIT#1 24

ORDER OF DISMISSAL 47

APPLICANT’S RULE 59 (e) MOTION TO ALTER OR AMEND..... 54

RETURN TO APPLICANT’S RULE 59 (e) MOTION TO ALTER OR AMEND58

ORDER DENYING APPLICANT’S RULE 59 (e) MOTION TO ALTER OR AMEND 63

NOTICE OF APPEAL.....67

INDICTMENTS69

FORM 5

STATE OF SOUTH CAROLINA)
County of Richland)

IN THE COURT OF COMMON PLEAS

Phillip Brown # 118100)
Full name and prison number (if any) of Applicant)

v.)
State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2011 OCT 26 AM 10:36
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber C.I.
2. Name and location of Court which imposed sentence General Sessions Court in Richland County
3. Name(s) of co-defendant(s) (if any) Dale Brown, Myra Jackson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 82-65-28-153 (Murder, Burglary 1st, Armed Robbery)

(b) N/A

(c) N/A

5. The date upon which sentence was imposed and the terms of the sentence:

(a) June 23, 1983

(b) Life sentence for murder, life sentence for burglary

(c) and twenty-five years for armed robbery

6. Check whether a finding of guilty was made:

(a) after a plea of guilty plea of guilty

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) wasnt informed that I could

- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Denial of Due Process in Parole Revocation
- (b) Denial of assistance of Counsel at same
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Parole unlawfully revoked without minimal due process
- (b) Denied Counsel for revocation hearing
- (c) N/A

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. Denial of Due Process PCR
 - ii. Ineffective assistance of Counsel
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Court of Common Pleas, County of Richland
 - ii. N/A
 - iii. N/A

iv. N/A

(c) the disposition thereof:

i. Dismissed with prejudice

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. November 10, 2010

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Ground(s) not cognizable until DPPS failed to provide
- (b) a revocation hearing and the assistance of counsel on
- (c) 7-28-10

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? NO
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. N/A
 - ii. N/A
 - iii. N/A
- (b) the proceedings at which each such attorney represented you:
 - i. N/A
 - ii. N/A
 - iii. N/A

19. State clearly the relief you seek in filing this application:

Reinstatement of parole which was illegally rescinded without a due process revocation hearing or the assistance of counsel

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Richland)

VERIFICATION

I, Phillip Brown, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Phillip Brown

SWORN to and subscribed before me this 22nd day of August, 2011.

Queleen Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Phillip Brown, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Phillip Brown
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of August, 2011.

Lucrecia Bryant
Notary Public

My Commission Expires: May 26, 2020

RICHLAND COUNTY
FILED
2011 OCT 26 AM 10:36
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2011CP4007160

BROWN Phillip A, 118100

Applicant,

v.

RETURN AND MOTION TO
DISMISS

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed October 26, 2011 the Respondent would show the following.¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The procedural history, apart from what the Applicant claims, is limited. The Kershaw County Clerk of Court indicates that 1982GS2800153 was a guilty plea to murder before The Honorable Walter T. Cox on June 23, 1983, he was sentenced to "HIS NATURAL LIFE." The Applicant did not appeal his conviction or sentence.²

¹
<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2011CP4007160&CourtType=G&CaseType=Civil&CourtAgency=40002>

² Phillip A. Brown v. SCDC, 322 S.C. 189, 191, 470 S.E.2d 848, 849 (1996) (emphasis added): Phillip A. Brown began serving a life sentence for murder and armed robbery in 1982. He escaped from prison in 1983 and 1985. In addition, he attempted escapes in 1990 and 1991. Brown's escapes were major offenses as set forth in the policies of the South Carolina Department of Corrections (SCDC). As a result of his escape history, Brown was

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, and/or the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

According to the South Carolina Department of Corrections, the Applicant is serving the following sentence:

Offender Type Adult-straight Sentence Offense Murder Sentence Start Date 06/15/1982
Sentence Length LIFE SENTENCE Admission Date 06/24/1983 Committing County Richland
Location Lieber Projected Release Date Not Eligible Projected Parole Eligibility 09/08/2011
Supervised Furlough Eligibility Not Eligible Sex Offender Registry No

<https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00118100>

The Applicant's prior PCR matter was dismissed via summary judgment (as untimely) on November 10, 2010 (2009CP4001103).

II.

In his current application for post conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

PCR application allegation(s):

The Applicant claims that his parole was unlawfully revoked without minimal due process and that he was denied counsel for his revocation proceeding.

considered to be a maximum security risk and was given a ML5 classification-the highest maximum security and custody classification.

III.

Timeliness – S.C. Code §17-27-45(a)

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). For the purposes of this Return, the Applicant's conviction/sentence was finalized on the date of his conviction or the date of the Remittitur from any direct appeal, whichever was later, i.e. June 23, 1983 or N/A. Adding one (1) year per S.C. Code § 17-27-45(a) and one (1) day per Rule 6(a), SCRPC means that this PCR application had to be filed by July 1, 1996. This Application was filed on October 26, 2011, which was beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985)

authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

PAROLE

The Applicant is serving a life sentence, he has never been released on parole, i.e. there has not been a “parole revocation” within the legal definition. At best, the Applicant has simply been denied parole via the normal institutional parole hearings. Aside from two matters specifically mentioned in the statute, post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). A credit-related claim or challenge to other conditions of confinement are administrative matters and, thus, cannot be raised in a post conviction relief proceeding. Id. Likewise, a challenge to the conditions upon which parole eligibility is determined or decided is not cognizable in a post-conviction relief application. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired and for any other reasons as explained above.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 

Attorneys for the Respondents

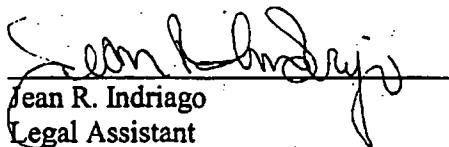
November 1, 2011

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
)	
BROWN Phillip A -)	2011CP4007160
# 00118100,)	
)	
Applicant,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
State of South Carolina,)	
)	
Respondent.)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

BROWN Phillip A, #118100
 Lieber Correctional Institution
 Ridgeville, SC 29472

DATED November 2, 2011.


 Jean R. Indriago
 Legal Assistant

1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
 2 COUNTY OF RICHLAND) COURT
 3)
 4 PHILLIP A. BROWN,)
 5) TRANSCRIPT
 6 -V-) OF
 7) RECORD
 8 STATE OF SOUTH CAROLINA,) 2011-CP-40-7160
 9 DEFENDANT.)

10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

JULY 17, 2014
 RICHLAND, SOUTH CAROLINA

B-E-F-O-R-E:
 HONORABLE CASEY L. MANNING, JUDGE;
 A-P-P-E-A-R-A-N-C-E-S:
 FOR THE PLAINTIFF:
 MR. TESH, ESQ.
 FOR THE DEFENDANT:
 MS. HARRIGAN, ESQ.

I-N-D-E-X.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MOTION:

PG.
3

CERTIFICATE OF REPORTER:

1 (The following proceedings were held on
2 July 17, 2014.)

3 THE COURT: Everybody ready?

4 MS. HARRIGAN: Yes.

5 THE COURT: You ready?

6 MR. TESH: Yes, Your Honor.

7 MS. HARRIGAN: Your Honor, this is Phillip Brown
8 v. State of South Carolina, docket number 2011-CP-40-7160.
9 Mr. Brown was indicted by the Kershaw County Grand Jury for
10 murder, burglary in the first degree, and armed robbery.
11 The State notified Mr. Brown and his attorney of their
12 intention to seek the death penalty. On June 23rd, 1983,
13 Mr. Brown appeared before the Honorable Walter T. Cox, and
14 pled guilty as indicted.

15 THE COURT: Walter Cox, what was that 20 years
16 ago?

17 MS. HARRIGAN: It was June 23rd of 1983, Your
18 Honor.

19 THE COURT: I'm sorry, go ahead.

20 MS. HARRIGAN: Judge Cox sentenced Mr. Brown to
21 life imprisonment for murder, consecutive life sentence for
22 a burglary in the first degree, and to a concurrent 25-year
23 sentence for armed robbery. Thereafter, Mr. Brown escaped
24 from incarceration and committed several other offenses for
25 which he received a consecutive 22-year sentence on the back

1 end of his already consecutive two life sentences.

2 On July 13th, 1993, Mr. Brown filed a petition for
3 habeas corpus and a subsequent petition for writ of mandamus
4 on May 17th, 1993. A hearing was held on July 12th, 1994,
5 where the Court granted the State's motion to dismiss the
6 action. The South Carolina Supreme Court affirmed the
7 Court's dismissal of his habeas action in a published
8 opinion issued May 13th, 1996.

9 Thereafter, Mr. Brown filed an initial application
10 for post-conviction relief on February 19th, 2009. The
11 State moved to dismiss this action, and on November 10th,
12 2010, the action was dismissed by the Court.

13 On April 14th, 2010, Mr. Brown, along side
14 counsel, appeared for a parole hearing. At the conclusion
15 of the hearing, the parole board decided to conditionally
16 award parole upon the satisfaction of several conditions.
17 Once notification of the conditional parole was delivered to
18 the victim's family, the Kershaw County Sheriff's
19 Department, and the solicitor's office, the victim's family
20 and the sheriff's office informed the parole board that they
21 had never received proper notification as required under
22 South Carolina law.

23 A subsequent parole hearing was held on September
24 8th, 2010, at which time, the parole board rescinded its
25 conditional-granted parole and denied Mr. Brown parole. Mr.

1 Brown appealed this decision to the Administrative Law Court
2 and while the Administrative Law Court action was pending,
3 Mr. Brown filed his current application for post-conviction
4 relief on October 26th, 2011, alleging that his parole was
5 unlawfully revoked without minimal due process. The State
6 made its return and motion to dismiss on November 1st, 2011.

7 On March 20th, 2012, the Honorable Allison Lee,
8 acting in her capacity as chief administrative judge, signed
9 a conditional order of dismissal provisionally denying the
10 application, but granting Mr. Brown a hearing as to whether
11 or not his parole had been unlawfully revoked.

12 A hearing was held on March 4th, 2013, before
13 Judge Lee, at which time, Judge Lee stayed the present PCR
14 action during the pendency of the Administrative Law Court
15 action. And on October 14th, 2013, the Administrative Law
16 Court dismissed Mr. Brown's appeal determining that his
17 parole had been denied, not revoked. The order was upheld
18 by the South Carolina Court of Appeals in an unpublished
19 opinion filed June 5th, 2013. Subsequent petitions for
20 rehearings and reinstatements of his appeal were denied and
21 remittitur was, ultimately, issued on January 13th, 2014.

22 And it's not part of the record before your Honor
23 that was passed up, but the State would like to make a
24 record all of the PPP documents from his appeal. We think
25 they're pertinent to this matter. And I've provided a copy

1 to opposing counsel.

2 MR. TESH: I have no objection, Your Honor.

3 THE COURT: Okay.

4 MS. HARRIGAN: It's an entire packet with all the
5 pertinent documents.

6 THE COURT: Okay.

7 MS. HARRIGAN: And here's a copy for Your Honor.

8 It's at this time, the State would review its
9 motion to dismiss Mr. Brown's PCR action in full on two
10 grounds. First, the State would argue this is not a proper
11 action for post-conviction relief under 17-27-20. As a
12 threshold matter, the State submits that the application
13 must be dismissed because the Administrative Law Court and
14 the Court of Appeals has already determined that parole was
15 never granted and revoked, rather, parole was denied. And
16 17-27-20 allows that post-conviction relief actions to be
17 filed when parole is revoked.

18 But here, the Court has already determined that
19 Mr. Brown was never granted parole. He was denied parole.
20 It's already been determined by the Administrative Law Court
21 and upheld by the Court of Appeals. So the State's position
22 is that Mr. Brown is estopped from arguing that his parole
23 was revoked and, therefore, the application is not proper
24 and must be dismissed.

25 And furthermore, any arguments regarding his right

1 to counsel and right to due process were already properly
2 addressed in the Administrative Law Court's opinion, which
3 is in that packet handed up to Your Honor, and was affirmed
4 by the Court of Appeals. The State moves to dismiss on both
5 of those grounds.

6 MR. TESH: Your Honor, I have explained the
7 posture of this case to my client and, perfectly frank, I am
8 of the opinion that procedurally, I think we are stuck. Mr.
9 Brown has indicated that he would like new counsel --

10 THE COURT: Would like what?

11 MR. TESH: New counsel. And I told him that I
12 would ask to give him an opportunity to address the Court.

13 THE COURT: Mr. Brown, do you have anything you
14 wish to say?

15 THE APPLICANT: Your Honor, listening to the
16 solicitor and my attorney, I have prepared a petition for
17 substitution of counsel. I already had signed everything.
18 I do agree with her version of events. You know, I am
19 procedurally estopped and I do understand this procedure.
20 What I wish to do today is to enter into the court record
21 certain facts that were not in the record to start with,
22 were never addressed by the Administrative Law Court and the
23 Court of Appeals, which was, basically, that the time limit
24 for requesting a rehearing had already passed whenever I had
25 been notified that the -- that I was due up for a new

1 hearing.

2 Like they said, I was granted parole April 14th,
3 2010. I had six conditions. Two of the conditions, I had
4 to meet while I was still incarcerated. One was to take and
5 pass a psychological test, and I did that on May 26th.
6 Well, the 30 days requested ended May 14th. They had plenty
7 of time to notify the parole board -- you know, the victim's
8 family, the sheriff, and the solicitor had plenty of time to
9 notify the parole board that, you know, they had not been
10 properly notified. I took the psychological May 26th.

11 I left from Lieber Institution to enter the Lee
12 County Institution to enter the AD program June 14th. And
13 it was July 28th before I was notified of anything before
14 the subsequent hearing on September 8th.

15 My contention is that the time limit had passed.
16 They were procedurally --

17 THE COURT: Estopped.

18 THE APPLICANT: Yes, sir. They were procedurally
19 estopped from stating that they were improperly notified.

20 And, also, sir, according to the operations
21 manual, I have both versions of it, the 2014 and the 2009
22 manual that they were going by whenever I was taken off of
23 parole in 2010, that the parole board notifies the victim's
24 family, the sheriff, and the solicitor 30 days beforehand
25 and they have 30 days after the parole hearing to request a

1 hearing. None of this was -- you know, no one made a
2 protest until well after 106 days after the parole granted
3 -- the initial granted parole that I was notified that would
4 be a rehearing.

5 THE COURT: Thank you, sir.

6 Anything further?

7 MS. HARRIGAN: No, Your Honor, the State would
8 rely on the previous arguments.

9 THE COURT: I will take all these matters into
10 consideration that I've heard here today and review the
11 file, Mr. Brown, and I will let you know my decision in due
12 course.

13 THE APPLICANT: Yes, sir.

14 THE COURT: I haven't made up my mind yet. I've
15 got to review everything and I'll let you know, okay?

16 THE APPLICANT: Okay. Thank you.

17 THE COURT: Good luck to you, sir.

18 END OF PROCEEDINGS

19

20

21

22

23

24

25

1 COUNTY OF RICHLAND)

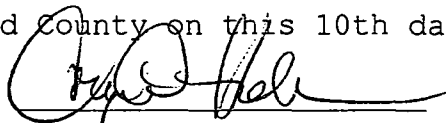
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify That I reported
4 the preceding case entitled Phillip A. Brown Vs. State of
5 South Carolina Case No. 2011-CP-40-7160, at the Richland
6 County Courthouse, July 17, 2014.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 10 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 10th day of March, 2015.



15
16 Crystal Holmes, Official Court Reporter

17
18
19
20
21
22
23
24
25



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 13, 2014

The Honorable Jana E. Shealy
Edgar A. Brown Building
1205 Pendleton Street
Suite 224
Columbia SC 29201

REMITTITUR

Re: Phillip Brown v. SCDPPPS (2)
Lower Court Case No. 2013ALJ150020AP
Appellate Case No. 2013-002195

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Handwritten signature of Jenny A. Kitchings in cursive.

CLERK

Enclosure

Handwritten note "State #1" enclosed in a hand-drawn oval.

cc: Phillip Brown, 118100
Tommy Evans, Jr., Esquire

The South Carolina Court of Appeals

Phillip Brown, #118100, Appellant,

v.

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

Appellate Case No. 2013-002195

The Honorable Deborah Brooks Durden
Trial Court Case No. 2013ALJ150020AP

ORDER

Appellant has failed to provide the notice of appeal filing fee, and to timely serve and file the appellant's initial brief and designation of matter as required by Rules 203, 208, and 209 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED

SF 12/18/13

cc:

Phillip Brown, 118100
Tommy Evans, Jr., Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 18, 2013

Phillip Brown, 118100
Lieber Correctional Institution
PO Box 205
Ridgeville SC 29472

Re: Phillip Brown v. SCDPPPS (2)
Appellate Case No. 2013-002195

Dear Mr. Brown:

The Court will take no action on the Motion to Rehear Denial of In Forma Pauperis Status. This decision is based upon the authority of Rule 240 (i), SCACR. The action of the Court in its order filed November 14, 2013, did not dismiss or finally decide the appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Tommy Evans, Jr., Esquire

The South Carolina Court of Appeals

Phillip Brown, #118100, Appellant,

v.

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

Appellate Case No. 2013-002195

The Honorable Deborah Brooks Durden
Trial Court Case No. 2013ALJ150020AP

ORDER

Appellant has failed to provide the notice of appeal filing fee, and to timely serve and file the appellant's initial brief and designation of matter as required by Rules 203, 208, and 209 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED

SF 12/18/13

cc:
Phillip Brown, 118100
Tommy Evans, Jr., Esquire

The Supreme Court of South Carolina

Phillip Brown, Petitioner,

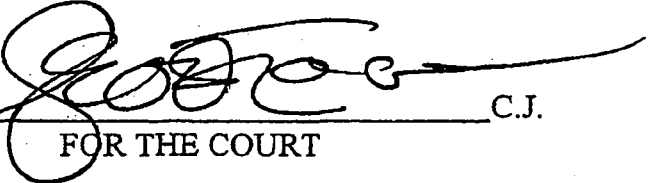
v.

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

Appellate Case No. 2013-002337

ORDER

Petitioner has filed a motion to reinstate this matter. The motion is denied.


C.J.
FOR THE COURT

Columbia, South Carolina

December 5, 2013

cc:

Tommy Evans, Jr., Esquire
Phillip Brown, 118100



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 13, 2013

The Honorable Jana E. Shealy
1205 Pendleton Street
Columbia SC 29201

REMITTITUR

Re: Brown, Phillip v. SCDPPPS
Lower Court Case No. 2011ALJ150030AP
Appellate Case No. 2011-203266

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Phillip Brown, 118100
Tommy Evans, Jr., Esquire

The Supreme Court of South Carolina

Phillip Brown, Petitioner,

v.

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

Appellate Case No. 2013-002337

The Honorable John D. McLeod
Trial Court Case No. 2011ALJ150030AP

ORDER

The South Carolina Court of Appeals denied the petition for rehearing in this matter on September 27, 2013.¹ Therefore, any petition for a writ of certiorari to review the decision of the Court of Appeals had to be served and filed by October 28, 2013. Rules 242(c) and 263 of the South Carolina Appellate Court Rules (SCACR). Since the petition for a writ of certiorari was not served until October 29, 2013, this matter is dismissed under Rule 260(a), SCACR.

FOR THE COURT

BY

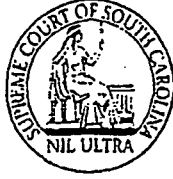


CLERK

Columbia, South Carolina
November 7, 2013

cc: Tommy Evans, Jr., Esquire
Mr. Phillip Brown, 118100
The Honorable Jenny Kitchings

¹ The Appellate Case Number before the Court of Appeals was 2011-203266



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

November 01, 2013

Mr. Phillip Brown, #118100
Lieber Correctional Institution
P. O. Box 205
Ridgeville SC 29472

Re: Phillip Brown v. SC Department of Probation
Appellate Case No. 2013-002337

Dear Mr. Brown:

Upon reviewing your Petition for a Writ of Certiorari and Appendix, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

•\$100.00 filing fee not enclosed.

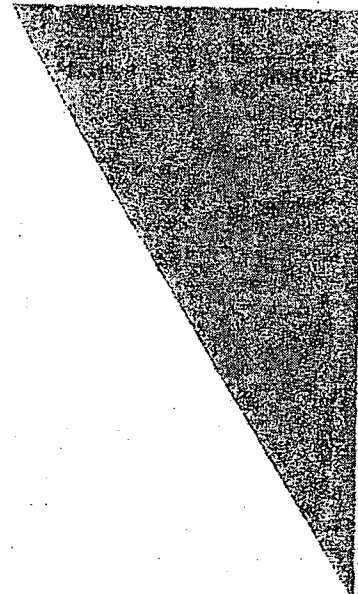
Very truly yours,

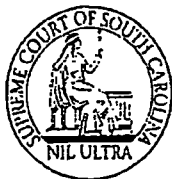
CHIEF DEPUTY CLERK

cc:

Tommy Evans, Jr.

The Honorable Jenny Kitchings





The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1489
www.sccourts.org

November 01, 2013

Mr. Phillip Brown, #118100
Lieber Correctional Institution
P. O. Box 205
Ridgeville SC 29472

Re: Phillip Brown v. SC Department of Probation
Appellate Case No. 2013-002337

Dear Mr. Brown:

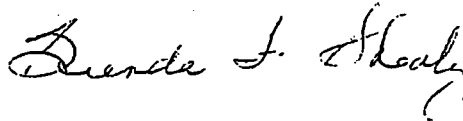
This Court has received your Petition for a Writ of Certiorari and Appendix, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm.

Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Brenda J. Healy".

CHIEF DEPUTY CLERK

cc:

Tommy Evans, Jr., Esquire
The Honorable Jenny Kitchings



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 27, 2013

Phillip Brown, 118100
Lieber Correctional Institution
PO Box 205
Ridgeville SC 29472

Re: Brown, Phillip v. SCDPPPS
Appellate Case No. 2011-203266

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. See Rule 219, SCACR.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

cc: Tommy Evans, Jr.

The South Carolina Court of Appeals

Phillip Brown, #118100, Appellant,

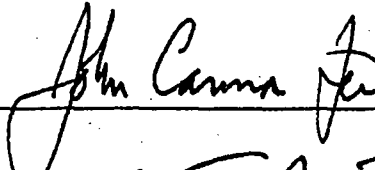

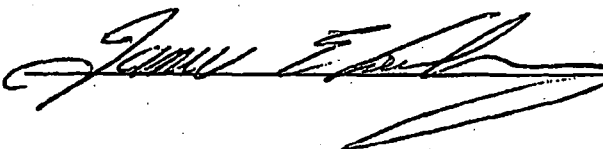
v.

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

Appellate Case No. 2011-203266

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	_____	C.J.
	_____	J.
	_____	J.

Columbia, South Carolina

cc: Phillip Brown, 118100
Tommy Evans, Jr.

FILED
September 27, 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Phillip Brown, Appellant,

v.

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

Appellate Case No. 2011-203266

Appeal From the Administrative Law Court
John D. McLeod, Administrative Law Judge

Unpublished Opinion No. 2013-UP-233
Submitted April 1, 2013 – Filed June 5, 2013

AFFIRMED

Phillip Brown, pro se.

Tommy Evans, Jr., of the South Carolina Department of
Probation, Parole and Pardon Services, of Columbia, for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *Sanders v. S.C. Dep't of Corr.*, 379 S.C. 411, 417, 665 S.E.2d 231, 234
(Ct. App. 2008) ("In an appeal of the final decision of an administrative agency,

the standard of appellate review is whether the AL[C]'s findings are supported by substantial evidence."); *id.* ("In determining whether the AL[C]'s decision was supported by substantial evidence, this court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the AL[C] reached."); *James v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 376 S.C. 392, 396, 656 S.E.2d 399, 401 (Ct. App. 2008) ("[A]n inmate has a liberty interest in gaining access to the parole board, although there is no protected right to parole."); *Greenholtz v. Inmates of Neb. Penal and Corr. Complex*, 442 U.S. 1, 9 (1979) ("There is a crucial distinction between being deprived of a liberty one has, as in parole, and being denied a conditional liberty that one desires."); *Jago v. Van Curen*, 454 U.S. 14, 17-21 (1981) (holding no liberty interest or due process protections were implicated when an inmate was initially granted parole but the order was rescinded at a later meeting without providing the inmate a hearing); *id.* at 17 ("We do not doubt that respondent suffered 'grievous loss' upon [the board's] rescission of his parole."); *id.* ("But we have previously 'reject[ed] . . . the notion that any grievous loss visited upon a person by the State is sufficient to invoke the procedural protections of the Due Process Clause.'" (quoting *Meachum v. Fano*, 427 U.S. 215, 224 (1976))); *id.* at 19 ("We would severely restrict the necessary flexibility of . . . parole authorities were we to hold that any one of their myriad decisions with respect to individual inmates may . . . give rise to protected 'liberty' interests which could not thereafter be impaired without a constitutionally mandated hearing under the Due Process Clause.").

AFFIRMED.¹

FEW, C.J., and GEATHERS and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Phillip Brown, #118100,)	
)	Docket No. 11-ALJ-15-0030-AP
Appellant,)	
)	
vs.)	ORDER OF DISMISSAL
)	
South Carolina Department of Probation, Parole and Pardon Services,)	
)	
Respondent.)	
)	

This case is before the Administrative Law Court (ALC) pursuant to the appeal of Phillip Brown (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On September 9, 2010, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Board of Pardons and Paroles (Board) had rejected him for parole. Appellant challenges the Board's denial of parole as well as its procedures related to his parole eligibility hearing.

BACKGROUND

On April 14, 2010, the Board made a decision to grant parole to Appellant upon the satisfaction of eight specific criteria. However, upon notification to the victim's family and the Kershaw County Sheriff's Department, both informed the Board that they received no prior notification of Appellant's parole hearing. Pursuant to state law, victims and/or their family, the solicitor, and law enforcement are required to be notified prior to an inmate's parole hearing.¹ Both the victim's family and the sheriff's department requested to be heard by the Board prior to it issuing a final decision regarding Appellant's parole. A second hearing was held by the Board on September 8, 2010, and the victim's family, the Kershaw County Sheriff, and the Fifth Circuit Solicitor were allowed to present opinions to the Board concerning the release of the Appellant on parole. Upon the conclusion of this rehearing, the Board denied parole to Appellant based upon the reasons set forth in its September 9, 2010 denial letter.

Subsequently, Appellant filed a motion with the Board requesting reconsideration of its earlier decision. The Board denied Appellant's motion. Appellant later notified the Board that

¹ Cf. §24-21-610 S.C. Code Ann.

FILED

OCT 14 2011

SC ADMIN. LAW COURT

his parole was "unlawfully revoked" and Appellant further requested the information contained within his file. The Board denied his request for information and informed Appellant that no response would be made to any additional inquiries regarding his latest parole hearing.

Based upon the Board's final decision, Appellant filed a notice of appeal with the ALC on May 4, 2011.

DISCUSSION

Board's Order

An individual has a right to ALC review of a final decision of the Department only when that decision affects a liberty interest for which due process is required. See Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146, 149, 150 (2003); see also Sullivan v. S.C. Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review). In Furtick, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, the statute creates no such liberty interest in the granting of parole itself. Furtick, 352 S.C. at 598, 576 S.E.2d at 149 n.4. Therefore, claims arising from the Board's decision denying parole are not appealable to the ALC.

Appellant challenges the Board's procedures regarding his parole hearing by essentially arguing that the Board's order did not comply with Cooper and South Carolina law because it did not use any specific criteria or procedure with regard to his parole hearing. However, the Board's decision clearly states that it considered all of the criteria listed with Section 24-21-640 and the factors published in Department Form 1212 in reaching its decision. Thus, its decision to deny Appellant's parole sufficiently complied with the Court's decision in Cooper v. South Carolina Department of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008) (stating that an inmate's state-created liberty interest is infringed upon if the Board does not render an inmate's parole determination after consideration of the appropriate criteria) and Compton v. South Carolina Department of Probation, Parole and Pardon Services, 385 S.C. 476, 685 S.E.2d 175 (2009) (stating that the result in Cooper "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.").

Parole Hearing

Appellant argues that the denial of parole was done without the benefit of a hearing, and thus, violated his due process rights. This argument must fail. Appellant was allowed to appear before the Board at the first hearing, but, because the requirements of § 24-21-610 relative to notice to the Solicitor, law enforcement and victims family had not been met, the hearing was not complete. There is no requirement that Appellant must appear at the same hearing at which the victim's family, solicitor's office, and law enforcement appear. Appellant appeared before the Board prior to it making a decision regarding his parole, and it considered all the evidence and arguments by the individuals appearing before the Board, on both dates. Because Appellant has no right to cross-examine at the parole hearing, there was no due process violation in Appellant's absence from the September 8, 2010 Board hearing. See Fleming v. Murray, 888 F.Supp.734 (D.C. Vir. 1994). Even if there were a due process violation, Appellant has not shown how he was prejudiced by such violation. Leventis v. S.C. Dep't of Health and Envtl. Control, 340 S.C. 118, 131-32, 530 S.E.2d 643, 650 (Ct. App. 2000) ("To prove the denial of due process in an administrative proceeding, a party must show that it was substantially prejudiced by the administrative process.").

Conditional Parole

Appellant next argues that he had a vested interest in the granting of his conditional parole, and the Board's decision violated his right to due process. I disagree. In Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972), the United States Supreme Court acknowledged that a person facing a revocation of parole has minimal due process rights. However, a distinction between a person currently on parole and a person seeking parole was made in the case of Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S.1, 99 S.Ct. 2100 (1979). In Greenholz, the Court determined that there is no constitutional or inherent right of the convicted person to be conditionally released before the expiration of a valid sentence. Thus, in the present case, Appellant's argument that he had a vested liberty interest in the granting of his conditional parole is simply without merit.² No individual has a right to be

² Appellant cites Tippins v. Luther, 869 F.Supp. 331 (W.D. Pa. 1994) to support his argument that he is entitled to some due process protections in a parole rescission hearing. However, this case is distinguishable from the instant case. First, Tippins does not provide any specific analysis of what due process protections are required to be provided in a parole rescission hearing. Furthermore, Appellant is given due process protections within the

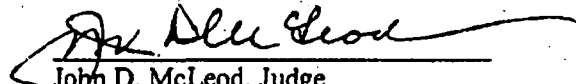
awarded parole; rather, the individual has right to a hearing. Because Appellant was never released on parole, the rights established under Morrissey do not apply in the instant case.

Assistance of Counsel

Appellant next argues that he was denied due process of law because he was not allowed to have counsel present at the September 8, 2010 Board hearing. I disagree. A parole hearing is not a formal trial. There is . . . [no] right to attend in person or to have counsel at a parole hearing." Fleming, 888 F.Supp. at 738. As noted above, there was no right of Appellant to appear at the September 8, 2010 Board hearing.

ORDER

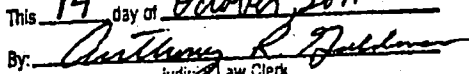
IT IS THEREFORE ORDERED that this appeal is dismissed with prejudice.
AND IT IS SO ORDERED.


John D. McLeod, Judge
S.C. Administrative Law Court

October 14, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this 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 14 day of October, 2011
By: 
Judicial Law Clerk

administrative hearing and appeals process. Appellant provided no evidence that the due process protections discussed in Tippins drastically differ from those afforded to Appellant and how he was prejudiced by those differences, if any. Second, the inmate in Tippins had not been release from prison, but his date of parole had been approved. Here, Appellant was not given a date certain for his parole.

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

NIKKI HALEY
 Governor



KELA THOMAS
 Director

2221 DEVINE STREET, SUITE 600
 POST OFFICE BOX 50666
 COLUMBIA, SOUTH CAROLINA 29250
 Telephone: (803) 734-9220
 Facsimile: (803) 734-9440
www.state.sc.us/ppp

February 24, 2011

Phillip A. Brown, #118100
 Lieber Correctional Institution-CB-12
 PO Box 205
 Ridgeville, South Carolina 29472

Dear Mr. Brown:

I have been asked to respond to your letter addressed to Kela Thomas dated February 18, 2011, concerning your last parole hearing. According to your letter, you feel that the denial of parole was done in error and that proper procedures were not followed. In April of 2010, the Parole Board granted you a conditional parole. However, on July 28, 2010, the Board decided to rescind your parole and scheduled another hearing. On September 8, 2010, the Board reviewed your case again and decided to reject you for parole. The Board was acting within its authority to rescind your conditional parole and rehear your case because you had not been released, and therefore, had not yet acquired a "liberty interest" under the U.S. Constitution.

In response your request for all information and documents relating to your parole hearing, all of this information is contained in your offender file and it is exempt from disclosure. See S.C. Code Ann. § 30-4-40(a)(4) (1991) (allowing exemption of matters specifically exempted from disclosure by statute or law). Pursuant to statute, all information and data obtained in the discharge of his official duty by a South Carolina probation agent is privileged information and may not be disclosed directly or indirectly to anyone other than the judge or others entitled to receive reports, unless ordered by the court or the director. S.C. Code Ann. § 24-21-290 (Supp. 2008). See also *State v. Hook*, 356 S.C. 421, 590 S.E.2d 25 (2003). Investigating parole cases referred by the director, keeping detailed records of his or her work, making reports in writing, and performing other duties as the director may require are part of the official duties of a probation agent. S.C. Code Ann. § 24-21-280 (Supp. 2007). Therefore, the Department is under no obligation to disclose the information you requested.

Sincerely,

J. Benjamin Aplin
 Assistant Chief Legal Counsel

JBA:dn

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

MARK SANFORD
 Governor



SAMUEL B. GLOVER
 Director

2221 Devine Street, Suite 600
 Post Office Box 50666
 Columbia, South Carolina 29250
 Telephone: (803) 734-9220
 Fax: (803) 734-9440
 www.dppps.sc.gov

September 9, 2010

Mr. Phillip Brown #00118100
 Lee Correctional Institution
 990 Wisaky Hwy.
 Bishopville, SC 29010

RE: NOTICE OF REJECTION

Dear Mr. Brown:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following **CONCLUSION OF LAW**:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
 Indication Of Violence In This Or Previous Offense
 Use Of Deadly Weapon In This Or Previous Offense
 Prior Criminal Record Indicates Poor Community Adjustment

Sincerely,

A handwritten signature in cursive script that reads 'Heyward A. Hinton'.

Heyward A. Hinton
 Director of Hearings & Parole Board Support

South Carolina Department of Probation, Parole and Pardon Services

Columbia, South Carolina

ORDER OF PAROLE

It having to be made appear to the satisfaction of the Board that

Phillip Ansel Brown is eligible for parole and has shown a disposition to reform; that there is a reasonable probability that said prisoner will remain at liberty without violating the law; that release is not incompatible with the welfare of society; and that the prisoner will not become a public charge upon release; and that the prisoner will keep the conditions on the reverse side of this order inviolate, and understands that the violation of any of the conditions will constitute a breach of faith and be sufficient grounds for the revocation of the parole issued, and the execution of the original sentence imposed.

It is therefore ordered that Phillip Ansel Brown be released on Parole the _____ day of _____, 20____ subject to said prisoner's agreement to abide by the conditions listed on the reverse side of this order, which parole is to expire _____. This parole is granted by [the full board or a panel of the full board].

Ordered this _____ day of _____, 20____

Karen A. Waldo
Chairman

Rescinded on
September 8, 2010
Vice Chairman

James H. Wilkins

Louayne M. Tan

Orton Bellomy

DeLodas

Re-hearing on
Sept. 8, 2010.
Rejected
GAB

STATEMENT OF THE CONDITIONS UNDER WHICH PAROLE IS GRANTED

1. I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my release or not later than 8:30 am on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.
2. I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
3. I shall not use controlled substances, except when properly prescribed by a licensed physician, not consume alcoholic beverages to excess nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis or blood test when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing.
4. I shall not possess or purchase any firearms, knives or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
5. I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
6. I shall not violate any Federal, State, or Local laws, and I shall contact my Agent if I am arrested or questioned by a law enforcement official for any reason whatsoever.
7. I shall pay a supervision fee as determined by the Department.
8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the court, or by a warrant.
9. I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its' Agents.

ADDITIONAL CONDITIONS:

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Phillip A. Brown, SCDC #118100,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2011-CP-40-07160

ORDER OF DISMISSAL

2011 SEP 21 PM 12:19
 RICHLAND COUNTY
 FILED
 JENNIFER S. HARRIGAN
 C.C.P. CLERK

This matter comes before the Court by way of an application for post-conviction relief filed on October 26, 2011. Respondent filed a Return and Motion to Dismiss on November 1, 2011, seeking to summarily dismiss this application for failure to state a claim upon which relief can be granted Under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160.

A hearing on Respondent's Motion to Dismiss was convened on July 17, 2014, at the Richland County Courthouse. Applicant was present at the hearing and represented by counsel, Adam S. Tesh. Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office appeared on behalf of Respondent. After listening to the argument from both parties, this Court is granting Respondent's motion to dismiss this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland¹ County Clerk of Court. Applicant was indicted by the Kershaw County Grand Jury for Murder, Burglary in the First Degree, and Armed Robbery (1982-GS-28-00153). The State notified Applicant and his attorneys of its intention to seek the death penalty. On June 23, 1983,

¹ Applicant was indicted by the Kershaw County Grand Jury for Kershaw County offenses. However, on June 13, 1983, the Honorable Dan F. Laney, acting in his capacity as Chief Administrative Judge for the Fifth Judicial Circuit, signed an Order transferring venue to Richland County upon Applicant's motion and a subsequent hearing.

Applicant appeared before the Honorable Walter T. Cox, where he pled guilty as indicted. Judge Cox sentenced Applicant to life imprisonment for murder, to a consecutive life sentence for burglary, and to a concurrent twenty-five year sentence for Armed Robbery. No direct appeal was taken.²

On July 13, 1993, Applicant filed a Petition for Habeas Corpus and a subsequent Petition for Writ of Mandamus on May 17, 1993. A hearing was held on July 12, 1994, where the court granted the Respondent's Motion to dismiss the action. The South Carolina Supreme Court affirmed the court's dismissal of his habeas action in a publish opinion issued May 13, 1996.

Phillip A. Brown v. SCDC, 322 S.C. 189, 191, 47- S.E.2d 848, 849 (1996).

Thereafter, Applicant filed an initial application for post-conviction relief on February 19, 2009. The State moved to summarily dismiss this action as untimely. On August 27, 2010, the Honorable Alison R. Lee, acting in her capacity as Chief Administrative Judge of the Fifth Judicial Circuit, signed a Conditional Order of Dismissal, provisionally dismissing the application but allowing Applicant twenty days to show why the dismissal should not become final. This Conditional Order of Dismissal was served on Applicant on September 14, 2010. After receiving no response from Applicant, a Final Order of Dismissal was entered on November 10, 2010.

In the interim, on April 14, 2010, Applicant, alongside counsel, appeared for a parole hearing. At the conclusion of the hearing, the parole board decided to conditionally award parole to Applicant upon the satisfaction of several conditions. Once notification of conditional parole was delivered to the victim's family, the Kershaw County Sheriff's Office, and the Fifth Circuit Solicitor's Office, the victim's family and the sheriff's office informed the parole board that they

² Thereafter, Mr. Brown escaped from incarceration and committed several additional offenses for which he received a consecutive twenty-two year sentence. See Applicant's SCDC records; Phillip A. Brown v. SCDC, 322 S.C. 189, 191, 47- S.E.2d 848, 849 (1996).

were never notified of the parole hearing in violation of as required under S.C. Code Ann. § 24-21-610. A subsequent parole hearing was held on September 8, 2010, at which time the parole board rescinded its conditional grant of parole and denied Applicant parole. Applicant appealed this decision to the South Carolina Administrative Law Court.

While the Administrative Law Court action was pending, Applicant filed this current application for post-conviction relief on October 26, 2011, alleging that his parole was unlawfully revoked without minimal due process. Respondent made its Return and Motion to Dismiss on November 1, 2011. On March 20, 2012, Judge Lee, acting in her capacity as chief administrative judge for the Fifth Judicial Circuit, signed a Conditional Order of Dismissal, provisionally denying the application but granting Applicant a hearing as to whether his parole had been unlawfully revoked. This hearing was held on March 4, 2013, before Judge Lee. Applicant was present and represented by counsel, Adam S. Tesh. Respondent was represented by Assistant Attorney General Robert D. Corney. After listening to argument from both parties, Judge Lee stayed the present action for the pendency of the Administrative Law Court action, of which this issue is also the sole issue to be determined.

On October 14, 2011, the Administrative Law Court dismissed Applicant's appeal, determining that his parole had been denied, not revoked. This Order was upheld by the South Carolina Court of Appeals in an unpublished opinion filed June 5, 2013. Subsequent petitions for rehearing and reinstatements were denied and a Remittitur was issued on January 13, 2014.³

A subsequent hearing on was held on July 17, 2014 before this Court. Applicant was present alongside counsel and Respondent was represented by Assistant Attorney General Megan E. Harrigan. At the start of the hearing, Respondent's renewed its Motion to Dismiss.

³ A complete copy of all documents pertaining to the Administrative Law Court action was introduced as Respondent's Ex. No. 1 (without objection from Applicant) so as to provide this Court with a complete record of Applicant's numerous cases and filings.

After hearing argument from Respondent, Applicant conceded and stated that he understands that he is procedurally estopped from proceeding forward on this application in light of the rulings in his Administrative Law Court action finding that he was denied parole. After the record in its entirety and the documents and argument set forth at the hearing, this Court is granting Respondent's motion to dismiss this application with prejudice.⁴

FINDINGS OF FACT AND CONCLUSION OF LAW

The Court has reviewed the pleadings, all relevant supporting documents, and the arguments at the hearing. Pursuant to S.C. Code Ann. § 17-27-70(b) (2003), the Court makes the following findings of fact and conclusions of law:

This Court finds that this application must be summarily dismissed as improperly filed pursuant to S.C. Code Ann. § 17-27-20. Under § 17-27-20,

(A) Any person who has been convicted of, or sentenced for, a crime and who claims:

- (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, *parole or conditional release unlawfully revoked*, or he is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may

⁴ On August 26, 2014, Applicant filed a "Rule 59(e) Motion to Alter or Amend," which is signed by him personally and not counsel, although counsel Tesh did sign a coversheet and submit the document to this Court and the Richland County Clerk of Court for filing. This Court declines to address the issues in this motion, finding that the Motion was prematurely as there has been no entry of judgment. Rule 59, SCRCP. Applicant has also filed a *pro se* motion to substitute counsel. This Court finds that Applicant is represented by seasoned and competent legal counsel and denies this motion.

institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

(B) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

S.C. Code Ann. § 17-27-20 (emphasis added). Applicant is collaterally estopped from arguing that his parole was unlawfully revoked, as this issue has already been fully litigated and previous courts have determined that Applicant was rather *denied* parole. See Respondent's Ex. No. 1. Therefore, Applicant's application, solely challenging what he characterized as a unlawful parole revocation, must be denied and dismissed with prejudice.

CONCLUSION

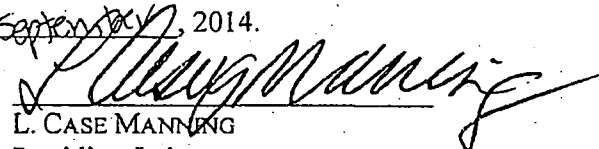
Based on all the foregoing, this Court finds and concludes that Respondent's motion to dismiss must be granted and that this application for post-conviction relief must be dismissed in full.

This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR: Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That Respondent's Motion to Dismiss shall be granted and this application for post-conviction relief shall be dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED this 19 day of ~~September~~ September, 2014.


L. CASE MANNING
Presiding Judge
Fifth Judicial Circuit Court

Columbia, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2011-CP-40-07160

Phillip A. Brown, # 118100 Appellant,

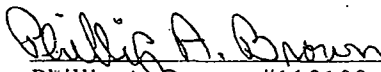
v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Phillip A. Brown appeals the order of the Honorable L. Casey Manning dated September 19, 2014. Appellant received written notice of entry of this order on September 2, 2014.

October 10, 2014



Phillip A. Brown, #118100
Lieber Correctional Institution SA-23
Post Office Box 205
Ridgeville, South Carolina 294762-0205
APPELLANT

Other Counsel of Record:

Megan E. Harrigan
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29221-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Phillip A. Brown (SCDC #118100),

Plaintiff,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-40-7160

RULE 59(E) MOTION TO ALTER OR AMEND

The Applicant, by and through his attorney, hereby moves this honorable court to alter or amend the judgment or amend the Judgment of this Court, dated 9/25/2014 based on the following grounds:

1. PCR Court failed to address the issue that the Parole Board ("Board") violated its Operations Manual Policy, page 47, section 3. INITIATING THE PROCESS OF REHEARING CASES.

2. PCR Court failed to address the issue that the Solicitor, Sheriff, and victim's family stated that the Board failed to follow its Operations Manual, page 20, section 2(B), NOTICE REQUIREMENTS.

3. PCR Court failed to address the issue that the Board violated the contractual agreement it entered into upon signing the Order of Parole, Operations Manual, page 37, CONDITIONS OF PAROLE.

4. PCR Court did not address the issue regarding the transcript of the meeting when the decision was made by the Board to rescind Applicant's parole violating Operations Manual, page 18, section 3. INFORMATION RELEASEABLE ON REQUEST.

GROUND 1

PCR Court failed to address the issue that the Board violated its Operations Manual, page 47, section 3. INITIATING THE PROCESS OF REHEARING PAROLE CASES. "A requesting party has 30 days to send a petition or letter after the parole rejection".

The PCR Court refused to hear the issue that the Board violated its policy by allowing the petitions of the requesting parties to be heard after the thirty-day time limit had expired. 59 Am. Juris.2d Pardons and Paroles §101. "If the offender is initially granted parole, but the Board subsequently decides to deny parole, there is only a very small window of time which the Board may do so".

Applicant was granted parole on April 14, 2010, took the required psychological test on May 26, 2010 and began the Addiction Treatment program, as stipulated by the Board, on June 14, 2010. Applicant was not notified of a rehearing of his parole case until July 28, 2010. The date that the Board received notice from the requesting parties has not been disclosed. Applicant has requested the information through his attorney and the F.O.I.A.

GROUND 2

PCR Court failed to address the issue that the Solicitor, Sheriff, and victim's family state that the Board failed to follow its Operations Manual, page 20, section 2(B), "the Director of Victims Services is responsible for giving adequate and timely notice at least 30 days before the date of the hearing".

PCR Court refused to hear the issue of Applicant's evidentiary facts and dismissing the issue without making a factual finding pursuant to SCRCP Rule 52(a) upon which an appeal may be based. This constitutes an inadequate state corrective process. The PCR Court is required to

make a factual on each issue properly before the Court. See S.C. Code Ann. §17-27-80; Church v. McGee, 705 SE2d 481 (S.C. 2011); Pruitt v. State, 426 SE2nd 127 (S.C. 1992).

The Board and the PCR Court are in essence holding Applicant responsible for the Board's failure to notify the Solicitor, Sheriff, and victim's family. Any interested party is responsible for attending a parole hearing and voicing their opinion. A party's failure to attend cannot become the liability of the opposing party. The parties in question have 30 days before the hearing and 30 days after the hearing to notify the Board of their views.

Ground 3

PCR Court failed to address the issue that the Board violated the contractual agreement it entered into with the Applicant upon signing the "Order of Parole".

The Board entered into a contractual agreement with the Applicant as outlined in the Board's Operational Manual, page 37, CONDITIONS OF PAROLE. "Underlying every parole is the contractual agreement between the State and the parolee". Applicant upheld his agreement to the conditions set forth by the Board, i.e., take and pass a psychological test and attend and complete the Addition Treatment program (ATU) at Lee C.I. Applicant graduated from the ATU on December 17, 2010.

In this instant matter parole rescission and revocation are one and the same. To allow the Board to renege on its contractual agreement is a violation of the U.S. Constitution and the South Carolina Constitution. Morrisse v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, "Whether any procedural protections are due depends not on whether governmental benefit is characterized as "right" or "privilege" but whether the individual will be condemned to suffer grievous loss, and question is not merely of weight of individual's interest but whether the nature of interest is one within contemplation 'liberty or property' language of the Fourteenth Amendment." The

parolee has relied on at least an implicit promise that parole will be revoked or rescinded if he fails to live up to the parole conditions.

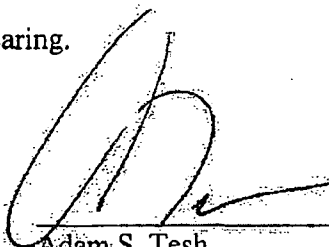
Ground 4

PCR Court did not address the issue regarding the meeting when the decision was made by the Board to rescind Applicant's parole in violation of Operations Manual, page 18, section 3. INFORMATION RELEASEABLE ON REQUEST.

Applicant requested the date and transcript of the Board hearing/meeting of when the decision was made by the Board to rescind Applicant's parole. Refusal to disclose this information is a violation of Operation Manual, page 18, section 3. INFORMATION RELEASEABLE ON REQUEST. "The following must be made available to any person who requests it... 'Any transcripts of hearings or meetings'".

Conclusion

Wherefore, based on the foregoing grounds, facts, and arguments, Applicant respectfully prays that this Honorable Court grants the relief prayed for in the original post-conviction application or orders a new evidentiary hearing.



Adam S. Tesh
Richardson, Plowden, & Robinson, P.A.
P.O. Drawer 7788
Columbia, SC 29202
(803) 771-4400

October 9, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Phillip A. Brown, SCDC #118100,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2011-CP-40-07160

**RETURN TO APPLICANT'S "RULE
 59(E) MOTION TO ALTER OR
 AMEND**

Respondent, by and through undersigned counsel, making its Return to "Applicant's "Rule 59(E) Motion to Alter or Amend," would respectfully show unto this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland¹ County Clerk of Court. Applicant was indicted by the Kershaw County Grand Jury for Murder, Burglary in the First Degree, and Armed Robbery (1982-GS-28-00153). The State notified Applicant and his attorneys of its intention to seek the death penalty. On June 23, 1983, Applicant appeared before the Honorable Walter T. Cox, where he pled guilty as indicted. Judge Cox sentenced Applicant to life imprisonment for murder, to a consecutive life sentence for burglary, and to a concurrent twenty-five year sentence for Armed Robbery. No direct appeal was taken.²

On July 13, 1993, Applicant filed a Petition for Habeas Corpus and a subsequent Petition for Writ of Mandamus on May 17, 1993. A hearing was held on July 12, 1994, where the court

¹ Applicant was indicted by the Kershaw County Grand Jury for Kershaw County offenses. However, on June 13, 2983, the Honorable Dan F. Laney, acting in his capacity as Chief Administrative Judge for the Fifth Judicial Circuit, signed an Order transferring venue to Richland County upon Applicant's motion and a subsequent hearing.

granted the Respondent's Motion to dismiss the action. The South Carolina Supreme Court affirmed the court's dismissal of his habeas action in a publish opinion issued May 13, 1996. Phillip A. Brown v. SCDC, 322 S.C. 189, 191, 47- S.E.2d 848, 849 (1996).

Thereafter, Applicant filed an initial application for post-conviction relief on February 19, 2009. The State moved to summarily dismiss this action as untimely. On August 27, 2010, the Honorable Alison R. Lee, acting in her capacity as Chief Administrative Judge of the Fifth Judicial Circuit, signed a Conditional Order of Dismissal, provisionally dismissing the application but allowing Applicant twenty days to show why the dismissal should not become final. This Conditional Order of Dismissal was served on Applicant on September 14, 2010. After receiving no response from Applicant, a Final Order of Dismissal was entered on November 10, 2010.

In the interim, on April 14, 2010, Applicant, alongside counsel, appeared for a parole hearing. At the conclusion of the hearing, the parole board decided to conditionally award parole to Applicant upon the satisfaction of several conditions. Once notification of conditional parole was delivered to the victim's family, the Kershaw County Sheriff's Office, and the Fifth Circuit Solicitor's Office, the victim's family and the sheriff's office informed the parole board that they were never notified of the parole hearing in violation of as required under S.C. Code Ann. § 24-21-610. A subsequent parole hearing was held on September 8, 2010, at which time the parole board rescinded its conditional grant of parole and denied Applicant parole. Applicant appealed this decision to the South Carolina Administrative Law Court.

² Thereafter, Mr. Brown escaped from incarceration and committed several additional offenses for which he received a consecutive twenty-two year sentence. See Applicant's SCDC records; Phillip A. Brown v. SCDC, 322 S.C. 189, 191, 47- S.E.2d 848, 849 (1996).

While the Administrative Law Court action was pending, Applicant filed this current application for post-conviction relief on October 26, 2011, alleging that his parole was unlawfully revoked without minimal due process. Respondent made its Return and Motion to Dismiss on November 1, 2011. On March 20, 2012, Judge Lee, acting in her capacity as chief administrative judge for the Fifth Judicial Circuit, signed a Conditional Order of Dismissal, provisionally denying the application but granting Applicant a hearing as to whether his parole had been unlawfully revoked. This hearing was held on March 4, 2013, before Judge Lee. Applicant was present and represented by counsel, Adam S. Tesh. Respondent was represented by Assistant Attorney General Robert D. Corney. After listening to argument from both parties, Judge Lee stayed the present action for the pendency of the Administrative Law Court action, of which this issue is also the sole issue to be determined.

On October 14, 2011, the Administrative Law Court dismissed Applicant's appeal, determining that his parole had been denied, not revoked. This Order was upheld by the South Carolina Court of Appeals in an unpublished opinion filed June 5, 2013. Subsequent petitions for rehearing and reinstatements were denied and a Remittitur was issued on January 13, 2014.³

A subsequent hearing on was held on July 17, 2014 before this Court. Applicant was present alongside counsel and Respondent was represented by Assistant Attorney General Megan E. Harrigan. At the start of the hearing, Respondent's renewed its Motion to Dismiss. After hearing argument from Respondent, Applicant conceded and stated that he understands that he is procedurally estopped from proceeding forward on this application in light of the rulings in his Administrative Law Court action finding that he was denied parole. This Court

signed an Order of Dismissal on September 19, 2014, which was filed with the Richland County Clerk of Court on September 24, 2014. On October 9, 2014, Applicant filed a "Rule 59(E) Motion to Alter or Amend."

II.

In this motion, Applicant sets forth four grounds upon which he asserts the post-conviction relief court failed to properly rule. Respondent submits that this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court fully ruled on all issues properly presented at the post-conviction relief hearing and that Applicant's "Motion for Rehearing pursuant to Rule 59(a), SCRPC, and Motion to Alter or Amend pursuant to Rule 59(e) SCRPC," should be denied. Respondent notes that Applicant expressly abandoned and waived all grounds at the hearing and conceded that he is procedurally barred.

Additionally, in this Motion, Applicant requests that this Court reconsider its Order of Dismissal and "grant the relief prayed for in the original post-conviction relief application." In this request, Applicant is not requesting an alteration or amendment to the Order, but rather, Applicant is asking the Court to reconsider its ruling and grant Applicant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court). Respondent submits

³ A complete copy of all documents pertaining to the Administrative Law Court action was introduced as Respondent's Ex. No. 1 (without objection from Applicant) so as to provide this Court with a complete record of Applicant's numerous cases and filings.

that this Court properly ruled on all issues after ample opportunity for Applicant to present all his issues and that this Motion should be denied in full.

III.

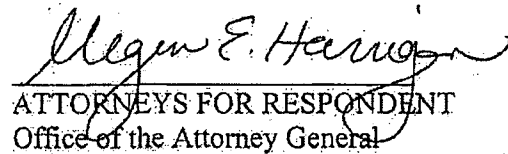
WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

October 17, 2014.

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Phillip A. Brown, SCDC #118100,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2011-CP-40-07160

ORDER DENYING APPLICANT'S "RULE 59(E) MOTION TO ALTER OR AMEND"

2011 JUN 23 11 09:51

This matter comes before this Court by way of Applicant's "Rule 59(E) Motion to Alter or Amend," asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

The records before this Court show that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland¹ County Clerk of Court. Applicant was indicted by the Kershaw County Grand Jury for Murder, Burglary in the First Degree, and Armed Robbery (1982-GS-28-00153). The State notified Applicant and his attorneys of its intention to seek the death penalty. On June 23, 1983, Applicant appeared before the Honorable Walter T. Cox, where he pled guilty as indicted. Judge Cox sentenced Applicant to life imprisonment for murder, to a consecutive life sentence for burglary, and to a concurrent twenty-five year sentence for Armed Robbery. No direct appeal was taken.²

On July 13, 1993, Applicant filed a Petition for Habeas Corpus and a subsequent Petition for Writ

¹ Applicant was indicted by the Kershaw County Grand Jury for Kershaw County offenses. However, on June 13, 1983, the Honorable Dan F. Laney, acting in his capacity as Chief Administrative Judge for the Fifth Judicial Circuit, signed an Order transferring venue to Richland County upon Applicant's motion and a subsequent hearing.
² Thereafter, Mr. Brown escaped from incarceration and committed several additional offenses for which he received a consecutive twenty-two year sentence. See Applicant's SCDC records; Phillip A. Brown v. SCDC, 322 S.C. 189, 191, 47-S.E.2d 848, 849 (1996).

SCANNED

of Mandamus on May 17, 1993. A hearing was held on July 12, 1994, where the court granted the Respondent's Motion to dismiss the action. The South Carolina Supreme Court affirmed the court's dismissal of his habeas action in a publish opinion issued May 13, 1996. Phillip A. Brown v. SCDC, 322 S.C. 189, 191, 47- S.E.2d 848, 849 (1996).

Thereafter, Applicant filed an initial application for post-conviction relief on February 19, 2009. The State moved to summarily dismiss this action as untimely. On August 27, 2010, the Honorable Alison R. Lee, acting in her capacity as Chief Administrative Judge of the Fifth Judicial Circuit, signed a Conditional Order of Dismissal, provisionally dismissing the application but allowing Applicant twenty days to show why the dismissal should not become final. This Conditional Order of Dismissal was served on Applicant on September 14, 2010. After receiving no response from Applicant, a Final Order of Dismissal was entered on November 10, 2010.

In the interim, on April 14, 2010, Applicant, alongside counsel, appeared for a parole hearing. At the conclusion of the hearing, the parole board decided to conditionally award parole to Applicant upon the satisfaction of several conditions. Once notification of conditional parole was delivered to the victim's family, the Kershaw County Sheriff's Office, and the Fifth Circuit Solicitor's Office, the victim's family and the sheriff's office informed the parole board that they were never notified of the parole hearing in violation of as required under S.C. Code Ann. § 24-21-610. A subsequent parole hearing was held on September 8, 2010, at which time the parole board rescinded its conditional grant of parole and denied Applicant parole. Applicant appealed this decision to the South Carolina Administrative Law Court.

While the Administrative Law Court action was pending, Applicant filed this current application for post-conviction relief on October 26, 2011, alleging that his parole was unlawfully revoked without minimal due process. Respondent made its Return and Motion to Dismiss on November 1, 2011. On March 20, 2012, Judge Lee, acting in her capacity as chief administrative judge for the Fifth Judicial

Circuit, signed a Conditional Order of Dismissal, provisionally denying the application but granting Applicant a hearing as to whether his parole had been unlawfully revoked. This hearing was held on March 4, 2013, before Judge Lee. Applicant was present and represented by counsel, Adam S. Tesh. Respondent was represented by Assistant Attorney General Robert D. Corney. After listening to argument from both parties, Judge Lee stayed the present action for the pendency of the Administrative Law Court action, of which this issue is also the sole issue to be determined.

On October 14, 2011, the Administrative Law Court dismissed Applicant’s appeal, determining that his parole had been denied, not revoked. This Order was upheld by the South Carolina Court of Appeals in an unpublished opinion filed June 5, 2013. Subsequent petitions for rehearing and reinstatements were denied and a Remittitur was issued on January 13, 2014.³

A subsequent hearing on was held on July 17, 2014 before this Court. Applicant was present alongside counsel and Respondent was represented by Assistant Attorney General Megan E. Harrigan. At the start of the hearing, Respondent’s renewed its Motion to Dismiss. After hearing argument from Respondent, Applicant conceded and stated that he understands that he is procedurally estopped from proceeding forward on this application in light of the rulings in his Administrative Law Court action finding that he was denied parole. This Court signed an Order of Dismissal on September 19, 2014, which was filed with the Richland County Clerk of Court on September 24, 2014. On October 9, 2014, Applicant filed a “Rule 59(E) Motion to Alter or Amend.”

II.

This Court’s find that its Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v.

³ A complete copy of all documents pertaining to the Administrative Law Court action was introduced as Respondent’s Ex. No. 1 (without objection from Applicant) so as to provide this Court with a complete record of Applicant’s numerous cases and filings.

State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds that there is no basis for altering or amending its prior ruling.⁴ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 20 day of October, 2014


L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

⁴ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable L. Casey Manning, Circuit Court Judge

Case No.: 2011-CP-40-7160

RECEIVED

NOV 07 2014

Phillip A. Brown, SCDC
#118100,.....Petitioner,

S.C. SUPREME COURT

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Petitioner Phillip A. Brown, SCDC, #118100, hereby appeals the Order of the Honorable L. Casey Manning, signed on October 20, 2014, which denies post-conviction relief to Petitioner. The undersigned counsel for Petitioner received notice of entry of the order on or about November 6, 2014. A copy of the Order on appeal is attached hereto.

Respectfully submitted,



Adam S. Tesh
RICHARDSON PLOWDEN & ROBINSON, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
(803) 779-0016 facsimile

ATTORNEY FOR APPLICANT/PETITIONER

November 6, 2014

Other Counsel of Record:
Megan E. Harrigan
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2011-CP-40-07160

Phillip A. Brown, # 118100 Appellant,

v.

State of South Carolina Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the parties required by the South Carolina Appellate Court Rules by depositing a copy of it in the United States Mail, postage prepaid, on October 10, 2014, addressed as follows:

The Honorable Jeanette McBride
Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202-1785

Megan E. Harrigan
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

October 10, 2014

Phillip A. Brown
Phillip A. Brown, #118100
Lieber Correctional Institution SA-23
Post Office Box 205
Ridgeville, South Carolina 294762-0205

APPELLANT

Witnesses

The State of South Carolina

County of _____

COURT OF GENERAL SESSIONS

Term, 19 _____

THE STATE

VS.

Verdict

INDICTMENT FOR
Burglary and Larceny

Foreman

Wm. Bell

Henry C. Shuman
Foreman of Grand Jury

MOORE PRINTERS, 3610 DENTON ST., COLUMBIA, S. C. 29204.

Set to Burglary
The sentence of the Court is that the
prisoner, *Phillip Arnold Brown*
shall be confined in the custody of the Board of
Corrections of the State of South Carolina for a
period of *twelve months*
and the Board of Corrections shall designate a
place of confinement where this sentence shall
be served.
Sentence to run
concurrent to the
Sentence of for Murder.

Columbia, S. C.
June 23, 1953

Henry C. Shuman
Presiding Judge

I FIND THAT THE IMPOSITION OF THE
ASSESSMENT FOR THE COMMUNITY COR-
RECTIONS PROGRAM WILL PLACE SEVERE
FINANCIAL HARDSHIP ON DEFENDANT OR
HIS FAMILY.

Henry C. Shuman
PRESIDING JUDGE

RECEIVED
A TRUE COPY
John R. Taylor
C. C. P. & S.

Witnesses

The State of South Carolina

County of _____

COURT OF GENERAL SESSIONS

Term, 19 _____

THE STATE

VS.

Verdict

INDICTMENT FOR

Armed Robbery,
Robbery and Grand Larceny

Foreman

James Hall

Henry C. Thomas

Foreman of Grand Jury

McCAW PRINTERS, 2602 DEWEY ST., COLUMBIA, S. C. 29204

As to Armed Robbery
The sentence of the Court is that the
Prisoner, Willie Earl Brown
shall be confined in the custody of the Board of
Corrections of the State of South Carolina for a
period of 25 years
and the Board of Corrections shall designate a
place of confinement where this sentence shall
be served.

Advise to run
confinement

Columbia, S. C.

James 23, 19 33

[Signature]
Residing Judge

I FIND THAT THE IMPOSITION OF THE
ASSESSMENT FOR THE COMMUNITY COR-
RECTION PROGRAM WILL PLACE SEVERE
FINANCIAL HARDSHIP ON DEFENDANT OR
HIS FAMILY.

[Signature]
PRESIDING JUDGE

THE STATE OF SOUTH CAROLINA
CLERK OF COURT
[Signature]
S. C. S. B. & C. 20

Witnesses

Blank lines for witness names and testimony.

Verdict

Foreman

The State of South Carolina

County of _____

COURT OF GENERAL SESSIONS

Term, 19__

THE STATE

VS.

INDICTMENT FOR

MURDER

James Hill

Henry C. Plummer
Foreman of Grand Jury

MCDRAW PRINTERS, 2010 DEVIN ST., COLUMBIA, S. C. 29206.

TRUE COPY
John R. T. Meyer
C. O. C. P. & C. J. S.