

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge

2014-ALJ-15-0037-AP

Appellate Case No. 2015-000683

George Lee Tomlin, Appellant

V.

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

Initial Brief

s/ George Lee Tomlin
George Lee Tomlin, 166361
RCI CA-22
P.O. Box 2039
Ridgeland, S.C. 29936

MAY 01 2015

SC Court of Appeals

ISSUE(S)

1. Was the 2014 reasons(order) of respondent arbitrary and capricious and the Administrative Law Court (ALC) erred denying relief?
2. Did ALC err when it held South Carolina rules of evidence (SCRE), Rule 609(b) should have no application to respondent's criteria?

STATEMENT OF THE CASE

Tomlin who was convicted in Sumter County Court of General Sessions at the February 1990 term had a 8-6-14 hearing on parole release application involving the offense: possession of weapon (knife) during violent crime, manslaughter and criminal sexual conduct 2nd. He had maxed out the five (5) year no parole weapon sentence but was paroleable on the manslaughter (30 years) and CSC 2nd (20 years). When he was denied parole release on a second occasion (R. p), he filed a timely appeal before the ALC.

The ALC issued a 3-3-15 Order which was appealed to this Court.

I. THE 2014 REASONS (ORDER) OF RESPONDENT IS ARBITRARY AND CAPRICIOUS

The 2014 reason(s) [order] of respondent is arbitrary and capricious for a number of reasons and the ALC erred denying relief. 8-6-14 order mentioned, "the use of a deadly weapon in this or a previous offense." (R. p.) Tomlin has set forth the weapon offense was a no parole offense, for it is out of place herein the 3-3-15 Order of the ALC set forth: it appears that the board did take the COMPAS assessment into consideration. (R. p.)

II. THE ALC ERRED WHERE IT HELD RULE 609(b) SCRE SHOULD HAVE NO APPLICATION TO RESPONDENT'S CRITERIA.

The ALC erred, denying Tomlin's due process right for arbitrary and capricious application, where it held Rule 609(b) of South Carolina Rules of Evidence (SCRE) should not have application to SCDPPPS'S criteria. The 3-3-15 'Order' stressed,

"the court notes that the South Carolina Rules of Evidence govern proceedings in the courts of South Carolina. Rule 101 SCRE. Rule 609, SCRE exists '[f]or the purpose of attacking the credibility of witness' at a trial. A parole hearing is not a trial. "(R. p.)

State v. Gulleddger, 487 S.E.2d 590, 594 (1997) (A restitution hearing is part of a sentencing proceeding).

A parole hearing is a sentencing and/or resentencing proceeding, although one which is not performed by The Judicial Branch of Government, one conducted by the Executive Branch of government which is set-up under the Legislative Branch! The General Assembly has already defined the various offenses for which Tomlin was punished.

Kiawah Development Partners, II v. SCDHEC
766 S.E.2d 707, 718 (2014) (The high court
dictated "We defer to an agency's interpretation unless it is
arbitrary, capricious, or manifestly contrary to the statute.")

But See Converse Power Corp. v. SCDHEC, 564 SE2d 341, 345 (S.C. App. 2002)
where the Court of Appeals mentioned, "A decision is arbitrary if it is
without a rational basis, is based alone on one's will and not upon any course
of reasoning and exercise of judgment, is made at pleasure, without adequate
determining principles, or is governed by no fixed rules or standards." The
1981 criteria is inadequate or insufficient for unchangable and/or fixed
"reasons: (1) the nature and seriousness of the current offense; (2) the
indication of violence in this or a previous offense; and (3) the use of a
deadly weapon in this or a previous offense." (R. p.) more, these reasons
represent the law of the case State v. Blakney, 763 S.E.2d (S.C. App. 2014)
which is similar to res judicata, see also McLendon v. SC Dept. of Hwy & Pub
Trans, 443, SE2d 539,540 n.2, (1994). Rule 609(b) of SCRE should be applied to
set a limit of ten (10) years based on the current procedure by resoondent.
Even if the rule was not part of SCRE prior to 1988; the common-law agency
record (in-house) rule is being utilized frequently, even by SC Court
Administration!

CONCLUSION

Appellant urges this Court to reverse the lower Court's decision.

s/ George Lee Tomlin
George Lee Tomlin 166361
P.O. Box 2039 / RCI CA 22
Ridgeland, S.C. 29936

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the 'Initial Brief and designation to be mailed, postage prepaid, to respondent's attorney Tommy Evans, Jr., POB 50666, Columbia, S.C. 29250 this 27 Day of April 2015.

s/ George Lee Tomlin
George Lee Tomlin 166361

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George Lee Tomlin 166361
P.O. Box 2039
Rt CA-22
Ridgeland, S.C. 29936

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