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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from the: Administrative Law Court

Honorable: Ralph K. Anderson, III: ALJD

Case # 2014-ALJ-15-0035-AP

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Ronald H. Nixon #163482 - - - - Appellant

Vs

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

Appellant Case # 2015-000898

Appellants Initial Brief

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Statement of Issues on Appeal

I> Did the [ALC] err as a matter of law, and/or fact in not making a ruling on the issues raised in appellants brief, within its order dated 3/3/15, remanding the case to respondents for finding pursuant to §24-21-10(F)(1) Supp 2014): And then denying appellants motion, under Rule 65 ALC, dated 3/16/15, seeking order on issues raised, and reinstatement of appeal on respondents Amended Order dated 3/5/15: And whether jurisdiction of the ALC is by statute, and ALC nor respondents addressed constitutional question.?

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II> Is the appellant entitled to a judicial review of the facts and law applied by respondents in there Order and Amended Order, on fixed immutable criteria used as incorrect fact to deny elements of §24-21-640: And whether constitutional due process, procedural and substantive, and property/liberty intrest, under SC Const Art 1 §3, and US Const 14'th Amend applies to Actuarial Assessments and Risk Needs findings, pursuant to §§24-21-10(D)(1-5), 280(c), §24-22-30(F)(1-3), 2010 Act No 273 §46 eff 1/11/11 & 2012 Act No 223 §1 eff 6/7/12: And whether information presented to board and used to deny relief, should or can be released to appellant under FOIA §30-4-10 et seq, to ensure correctness of fact, and not just third party opinions based on political correctness, or popularity contest applications.?

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Statement Of The Case

Appellant, "I", am serving a life sentence for kidnapping, from a 1989 conviction, and became eligible for parole in 1997, and made 1'st appearance on 10/29/97, and has been denied on same criteria since. In the instant case, I went before the respondents on 8/6/14, and was denied by order dated 8/7/14. I filed a petition for rehearing, which was denied by written order dated 9/22/14.

I filed a timely notice of appeal in the ALC and served parties, filed 9/3/14, which was assigned to judge Anderson on 9/9/14. I filed a timely initial brief dated 11/2/14, and served parties. When the respondents failed to file the record on appeal [ROA], the ALC filed an order to comply with new schedule, dated 11/7/14. The ROA was filed 11/12/14.

I filed an Appellants Corrected Initial Brief, dated 11/25/14, and respondents moved for extension to file, granted by order dated, 1/7/15. The respondents filed there brief fated 2/5/15, claiming lack of ALC jurisdiction primarily as nature of defence on finding of fact, and compliance with law. No hearing was had in the ALC, and thus no transcripts was ordered. The ALC by order dated 3/3/15, remanded the case to respondents for finding under §24-21-10(F)(1) (Supp. 2014). The respondents rewrote and amended the order on same facts, and filed same with ALC dated March/5/2015. I filed a petition for Reconsideration dated 3/14/15, which was denied by counsel dated 3/24/15.

I then filed a motion in the ALC for order on issues, to preserve same for appeal, and to reinstate appeal on respondents Amended Order, dated 3/16/15 and served parties. The Motion was returned a week later With ALC Stamp on face, denying same under Rule 65. I sent a letter to ALC requesting Notice of Appeal forms, dated 3/24/15, which was returned by Clerk dated 4/7/15 with notice that ALC no longer had jurisdiction.

I filed a timely notice of appeal in this court, dated 4/12/15, with Motion for Informa Paupris, and Orders, and Proof of Service dated April/14/2015. I received notice from this court, dated 4/28/15, of case number 2015-000898, and caption information. As of this day, no answer or judgment on motion for informa paupris has been received.

Due to nature of case, the following statement of case is reiterated; I was originally charged with (ABHN) by warrant, from offence date 10/8/1988. I was released on personal recognizance bail, and appointed public defender, Mr Robert Gamble. I was asked to plead guilty for 10 years, by Prosecutor Ms Druanne White. I was unawhere of any crime, so I rejected same. I went to Jury trial on Nov/15-17/1989, before judge W.H. Ballenger.

At trial my attorney was served with two indictments, 1989-GS-04-838 (CSC), and 1989-GS-04-2132 (Kidnapping). I had no previous knowledge of these crimes or charges. I was again asked to plead guilty for 10 years, and was advised not to by my attorney, as the state lacked evidence and he was unprepared for trial on the charges. I was not allowed to present evidence and witnesses under states shield laws, and was denied a fair and impartial trial. The jury found me guilty, and sentenced to life, with other charges concurrent.

Prior to 10/8-9/1988, the Victum, Ms kim Newton, was in a relationship with my brother, and frequently at my house, and my mother had to call the sheriff to have her removed.

The night in question, my mom was out of town, and myself, kim, and several friends were out partying, and returned to my hous, after Kim became drunk and Reckless, as we were also on pills. We called her mom to come get her, and she refused. Later her grandfather came to get her, and she ran out the house naked, and he ruff handled her, and i confronted him about it, and he left. We had consensual sex earlier, and she was at all times under her on choice. The

victim and states witnesses have since died, and Kim had been charged with shooting into a house, and numerous other charges, and spent 30 days in rehab after trial. I am truly sorry for my part in any crimes, and am rehabilitated.

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Argument

I> DID THE ALC ERR AS A MATTER OF LAW, AND/OR FACT IN NOT MAKING A RULING ON THE ISSUES RAISED IN APPELLANTS BRIEF, WITHIN ITS ORDER DATED 3/15/15, REMANDING THE CASE TO RESPONDENTS FOR FINDING PURSUANT TO §24-21-10(F)(1) (SUPP.2014); AND THEN DENYING APPELLANTS MOTION, UNDER RULE 65 ALC, DATED 3/16/15, SEEKING ORDER ON ISSUES RAISED, AND REINSTATEMENT OF APPEAL ON RESPONDENTS AMENDED ORDER, DATED 3/5/15; AND WHETHER JURISDICTION OF ALC IS BY STATUTE.‡ AND CONSTITUTIONAL QUESTION NOT ADDRESSED!

I submit and argue, that the ALC did err as a matter of law, in not making a finding or judgment on the issues raised in appellants brief, because this has the effect of denying judicial review, and did not aver same to respondents on remanded order, when a valid justicable controversy is presented, and issues become repetitive while evading review, ie Byrd V Irmo High School 321 SC 426,431 468 SE.2d 861,864 (1996), and Midland Guardian V Thacker 280 SC 563 314 SE.2d 26, cited by this court in Bagley V SCPPPS 2014 WL 4217379 (Un-pub). Futher the constitutional question raised, was one for interpretation and application, and not challenge, and the ALC should have addressed this issue, to include the FOIA question under SC Ann. §30-4-10 et seq, or at least required respondents to include Rule 58 ALJD materials in ROA.

Futher the ALC erred in denying Motion for adjudication of issues, and appeal on respondents Amended Order, which was part of original case, when order was no more than a rewrite of original order, which still kept fixed immutable criteria, as incorrect facts, that are arbitrary and caprisious, and this court upheld Risker V SCDHEC 393 SC 198,208 712 SE.2d 428,433 (2011), in Bagley Supra, that required motion for order, to preserve issues, and since a

standard rehearing application was not made, then Rule 65 ALC did not apply; and the ALC has jurisdiction by statute, when I sought notice of appeal forms, to have the amended order reviewed, even though this would be redundant, and should be part of original case, when remanded.

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II> IS THE APPELLANT ENTITLED TO A JUDICIAL REVIEW OF THE FACTS AND LAW APPLIED BY RESPONDENTS IN THERE ORDER, AND AMENDED ORDER, ON FIXED IMMUTABLE CRITERIA USED AS INCORRECT FACT TO DENY ELLEMENTS OF §24-21-640; AND WHETHER CONSTITUTIONAL DUE PROCESS PROCEDURAL AND SUBSTANTIVE, AND PROPERTY/LIBERTY INTREST, UNDER SC. CONST. ART 1 §3 & US. CONST 14'TH AMEND, APPLIES TO ACTUARIAL ASSESSMENTS AND RISK NEEDS FINDINGS, PURSUANT TO §§24-21-10(D)(1-5), 280(C) AND §24-22-30(f)(1-3), 2010 ACT.NO.273 §46 EFF 1/11/11, & 2012 ACT.NO. 223 §1 EFF 6/7/12: AND WHETHER INFORMATION PRESENTED TO BOARD AND USED TO DENY RELIEF, SHOULD OR CAN BE RELEASED TO APPELLANT UNDER FOIA §30-4-10 ET SEQ TO ENSURE CORRECTNESS OF FACT, AND NOT JUST THIRD PARTY OPINIONS BASED ON POLITICAL CORRECTNESS OR POPULARITY CONTEST APPLICATIONS.!

I submit and argue that this court should conduct a judicial review of the merits, as this was not done in the ALC, and the issues would result in a repetitive filing after next hearing, while still evading review, idem, Byrd supra, Midland Guardian supra and Risker supra, and implied in Federalist Papers #79 80 81 82 (Signet Classic, Kesler, edited by C. Rossiter pp.471-494, Ft.N p.629 on Maximilian 1495-97), and many rulings on these principles, especially where constitutional interpretations of statutes are presented.

Futher here, the facts and argument presented in appellants briefs to the ALC, warrants the courts attention as a justicable controversy, and the facts used by respondents in primary order, and again in amended order, are "Fixed Immutable Criteria" that cannot change, and is ambiguous in relation to the actual facts of the case as a whole, and especially when contrary to the facts of this case, should not be used to deny the specific ellements of §24-21-640, that I meet, and the board must show, that the facts warrant the statutes exception,

that "parole must be denied". Incorrect facts violate due process, when arbitrarily and capriciously applied to support the exception to the law, and this further violates equal protection of the law. Here where I have an Escrow Account pursuant to 24-3-40(B)(2) that I have no access to unless paroled or max out, does create a property interest, §24-21-50 and Jago V Vancuren 454 US 14 (1981), and to suppose or presume, that I do not have any liberty interest in having my liberty at least partially restored, is Draconian, and absurd, and statutes that outlaw such implications are contrarwise to liberty itself, where the states have authority to revoke same, and the people established parole as a means of preventing absolution in the name of the law. And legislative Branch should not grant absolute discretion to agency. SC Const art 1 §8.

Also I argued in the petition for rehearing to respondents, and motion to ALC on Amended Order, that the new Actuarial Assessments and Risk Needs, [see Blacks Law Dictionary 9'th Ed for definitions on These and Criteria], was not properly applied on the remanded order of the ALC, as the amended order only shows a Cooper V SCPPPS 661 SE.2d 106 (2008) application of advisory statement from the SC.S.Ct, and as pointed out in Corrected Brief to ALC, Cooper was a limited ruling, noting the fixed immutable criteria, but not ruling on same; and the Law has since changed in the 2010 act 273 and 2012 act 223, and the statutes §§24-21-10(D)(1-5), (F)(1), 280(c), §24-22-30(F)(1-3), and in 280(c) it is the county parole agent who is the Actuary, and Honorable Carroll Campbell 1987 WL 245482 held that Actuary is Ministerial in nature and not Discretionary. Such Assessments have been used in other laws, as pointed out in appellants petition, and motion to ALC, and commonly used in insurance and health care applications. How is it being used in Parole Proceedings, SC ADC 130-30 et seq.?

And Risk Needs have multiple definitions, and ambiguous applications, and here I have suitable living arrangements, and am financial stable, and am

r

rehabilitated, and no threat to myself or others, or society, and the state has no further interest in my actual confinement, yet the orders denying parole, and ALC orders do not make any justifications, are that the orders are not arbitrary and capricious, even if not contrary to constitution and statute. I further filed and argued for release of information relied upon in my Reply Brief 2/18/15, under FOIA, and on correct facts and jurisdiction.

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Conclusion

Wherefor having made my appeal to this court, I pray that Judicial Review of the Facts and Law on the merits of my case will be granted, and had, Or in the alternative, that the case will be remanded to the ALC for review and remand to respondents, for meaningful application of law and correct fact.

May/10'th/2015

Respectfully
/s/ Ronald H. Nixon
Ronald H. Nixon, 163482
Appellant Pro Se

Mr. Michael C Buchanan
Counsel for respondents

* Appellant verifies that this appeal is not frivolous, and is made in good faith.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAY 14 2015

SC Court of Appeals

TO: Honorable; Jenny Kitchings
Clerk of Court
PO. Box 11629
Columbia SC. 29211

May/10/2015
Filing letter

RE: Ronald Nixon, #163482 vs The SCPPPS Appellant Case #2015-000898
On Appeal from the Administrative Law Court.
Honorable Ralph K Anderson, III CJ/ALC
Docket # 2014-ALJ-0035-AP

Court,
Please find enclosed for filing in the above case, my Original of the;

1. Appellants Initial Brief on appeal.
 2. Designation of Matter.
 3. Proof of Service.
- Filing Letter.

Thank you for your time and cooperation, as a layman, please let me know if I need to do anything befor the court rules on the motion pending.?

/s/ Ronald H. Nixon

PROOF OF SERVICE

I, the undersigned appellant pro se, certifies that, I have on this 12th Day Of May/ 2015, served one true copy of my Initial Brief, with Designation of Matter, Proof of Service, and Filing letter, to Mr. Michael C Buchanan, counsel for respondents, and original to court, by depositing same in the US Mail at Evans addressed as below, postage prepaid, normal operations exist.

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2221 Devine St. Suite 600
Columbia SC. 29250
Ph # 803-734-9220

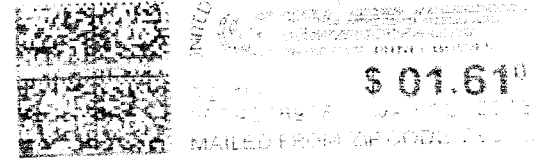
Sincerely
/s/ Ronald H. Nixon
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610 Hwy 9 West
Bennettsville SC. 29512
Ph # 843-479-4181

NOTARY PUBLIC:

Subscribed before me
the 12th day of May 2015
S. Outlaw
(Notary Public of South Carolina)
Commission Expires 5/24



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*The Honorable, Jenny Kitchens
Clerk of Court
P.O. Box 11629
Columbia, S.C.*

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