

STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAY 04 2015

SC Court of Appeals

Appeal from the Administrative Law Court
Deborah Durden, Administrative Law Judge
15-ALC-15-0003
Appellate Case No. 2015-000478

Bernard Bagley, #175851,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

RETURN OPPOSING RESPONDENT'S MOTION OBJECTING
TO APPELLANT'S RECORD ON APPEAL (APPENDIX)

The Appellant, Bernard Bagley, pro-se, respectfully opposes the Respondent's Motion Objecting to Appellant's Record on Appeal (Appendix) as untimely. Respondent's Motion does not have a date; however, Appellant received the same on April 28, 2015. Upon receiving the Initial Brief of Respondent, Appellant filed his Reply Brief, and Supplemented the record with his Record on Appeal (Appendix), pursuant to Rule 15, South Carolina Rules of Civil Procedures, and South Carolina Appellate Court Rules. Appellant's Supplement Record on Appeal (Appendix) is timely because the material is relevant to the appeal, and the material and information just recently came to Appellant's attention during the course of this appeal that parole officials (SCDPPPS) has abrogated and violated provisions of statute §17-1-40, of S.C. Code of Laws, prohibiting retention and considering evidence as an other factors pertaining to a charge once it has been dismissed and expunged, whereas, Bagley is suffering irreparable harm by SCDPPPS pre-parole investigations, parole examiner, and Parole Board Members considering this matter as other factors that is prejudicial to deny him parole. The pre-parole investigation file on Appellant contains a criminal charge that was not destroyed even though that proceeding against him have been dismissed and expunged. Nevertheless, SCDPPPS and the Parole Board will continue to consider and use that as a prejudicial factor to abrogate and

deny Appellant parole based on that expunged charge and offense. In addition, the Commitment Offense Sentencing Sheet 90-GS-40-5849, contains that same prejudicial information, that require a resolution from that document and record promptly, or an amended Commitment Offense Sentencing Sheet in the alternative may suffice. The Supplement Record on Appeal (Appendix) contains the material SCDPPPS pre-investigation file on Appellant ^{that} causing him irreparable harm.

Furthermore, a determination to have Bagley's length of incarceration must be resolved as outlined in S.C. Constitution Article 1, §3, and U.S. Constitution 14th Amendment, §1, because he was indicted under the wrong statute §16-3-20, of S.C. Code of Laws, rather than the correct statute §16-3-10. The trial court pronounced a "natural life sentence" which is inferred "life without parole" regardless of applicable parole eligibility statute, in which the trial court must charge the applicable parole eligibility statute as outlined in §16-3-20, when a prisoner is eligible for parole. Section 16-3-10, is the correct statute that Appellant should have been indicted under. Indictment §16-3-20, (90-GS-40-5849) is defective, and there is no doubt the length of an inmate's incarceration implicates a constitutional liberty interest, in which this issue can be raised at such a time like this, specifically, when §16-3-10 is the actual definition or corpus delicti of the South Carolina murder statute (§16-3-10) for which a defendant must lawfully be indicted under. In addition, the parole officials would lack jurisdiction to grant parole under an unlawfully indicted wrong statute and defective indictment statute §16-3-20, whereby the error of law impede any lawful request for favorable parole consideration, and the same is causing Appellant irreparable harm.

Section 16-3-20 does not contain an offense that is a lesser included offense like the correct statute §16-3-10 does; there is no waiver of presentment by the Appellant; and statute §16-3-20 indictment (90-GS-40-5849) is defective. Section 16-3-20 is not a clerical error, because Appellant was indicted under the same and the trial court allowed the State the burden not to prove every element of the crime charged or defined as outlined in §16-3-10, and that error of law being indicted under §16-3-20, the State did not have the burden to prove malice aforethought. The Respondent agreed in his letter dated April 1, 2015, that any allegation to resolve an inmate's length of improper incarceration as outlined in the Due Process Clause must be brought up through the Courts.

This matter regarding improperly indicted under wrong statute is relevant to this appeal, because to be considerate for any lawful request for favorable

parole consideration is not for the Board to decide due to lack of jurisdiction to grant parole under an unlawfully indicted wrong statute §16-3-20. In public interest, the Respondent's position is that the Parole Board who are also members of the executive branch by virtue of their role as parole officials have jurisdiction to consider to grant or deny parole on the constitutionally prejudicial factor of a defective indictment regardless of Appellant being indicted under the wrong statute, which is a violation of the separation of powers. Not only requesting the Parole Board to grant or deny parole under the wrong statute Bagley was indicted, invade the judicial branch's sole authority to correct an error of law that is prejudicial and causing Appellant irreparable harm, but it also violates the separation of powers from a judicial angle.

Appellant asserts that the Supplement Record on Appeal (Appendix) is relevant to this appeal, because the Parole Board lack jurisdiction to grant or deny parole based on the Due Process Clause, if they have jurisdiction to do so in this case, then they would then be assuming a judicial function because in effect what they does is determining the length of Appellant's incarceration, and that function should lie with the Court Separation of Powers Doctrine. To allow this the Parole Board would be usurping power from the judicial branch when the error law is manifested clearly in the record.

Wherefore, Appellant's Record on Appeal (Appendix) is timely and should be granted, and the Respondent's Motions should both be dismissed.

Respectfully submitted,

s/

Bernard Bagley
#175851/KER.CI/HD133
4848 Goldmine Hwy.
Kershaw, SC 29067

April 28, 2015

STATE OF SOUTH CAROLINA
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Deborah Durden, Administrative Law Judge
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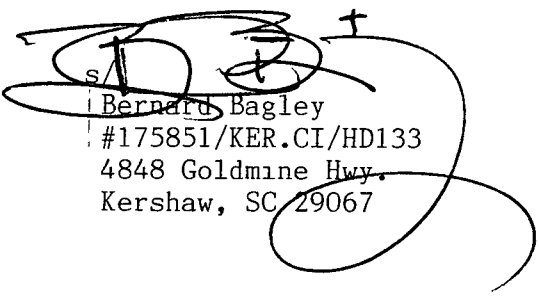
Respondent.

CERTIFICATE OF SERVICE

I, Bernard Bagley, the Appellant, pro-se, certify that I have served the within Return Opposing Motion Objecting to Appellant's Record on Appeal (Appendix) dated April 28, 2015, on Respondent this 28th day of April, 2015, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to: Tommy Evans, Jr.

Assistant General Counsel
SCDPPPS
P.O. Box 50666
Columbia, SC 29250

April 28, 2015


Bernard Bagley
#175851/KER.CI/HD133
4848 Goldmine Hwy.
Kershaw, SC 29067

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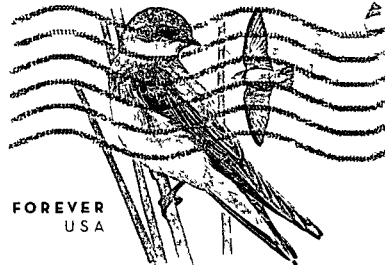
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SC Court of Appeals

Bernard Bagley, Sr. #175851-HD-133B
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, S.C. 29067

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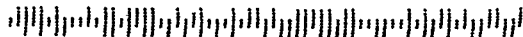
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S.C. Court of Appeals
Madam Jenny A. Kitchings, Clerk of Court
P.O. Box 11629
Columbia, S.C. 29211-1629

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