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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FOR THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT
Deborah B. Durden, Administrative Law Judge

Appellate Case Number 2015-000478

Bernard Bagley, #175851,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

MOTION FOR ENLARGING TIME
AFTER EXPIRATION OF ORIGINAL TIME

PLEASE TAKE NOTICE, that Bernard Bagley, the Appellant respectfully request this Court in the above-entitled appeal to extend the time in which Appellant is required to file his designation of matters filed with his final brief and final reply brief.

The Appellant will show excusable neglect and good cause based on he could not in due diligence submit that particular designation of matters timely because he just recently found out that the material is relevant in this appeal and for his cause. In addition, he received a letter from Tommy Evans, Jr., Assistance General Counsel for the Respondent, dated April 1, 2015 which provided additional light.

Appellant has been requesting the Respondent to remove inaccurate contents in his pre-parole investigation parole file that contained incomplete and incorrect information that recently came to his attention pertaining to parole officials has violated provisions of statute §17-1-40, of S.C. Code of Laws, prohibiting retention and considering evidence as an other factors of a charge dismissed and expunged. Appellant is suffering irreparable harm by the parole officials pre-parole investigations, and the Parole Board Members considering evidence 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, parole officials will continue to consider and use that as a prejudicial factor to abrogate and deny Appellant parole on that expunged charge and offense. In addition, the Commitment Offense Sentencing Sheet 90-GS-40-5849, contains that same prejudicial information that is causing him irreparable harm.

Also, a determination to have Appellant's length of incarceration must be resolved as outlined in S.C. Constitution Article 1, §3, and U.S. Constitution 14th Amendment, §1, because Bagley 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 thereto 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 Appellante 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. This issue can be raised at any time, 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. Additionnally 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 Bagley 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 in 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 for lack of standing 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 him irreparable harm, but it also violates the separation of powers from a judicial angle.

Appellant apologizes to the Court for unknowingly timely filing the document and ask this Court to allow the late filing because the matters are relevant to this appeal, whereas, the Parole Board lack jurisdiction due to a lack of standing to grant or deny parole based on the Due Process Clause. If the Board 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's Separation of Powers Doctrine. To allow this the Parole Board would be usurping power from the judicial branch when the error of law is manifested clearly in the record.

Wherefore, Appellant pray that the Court allow the late filing.

I declare, certify, verify, and state under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,


s/ Bernard Bagley
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May 27, 2015

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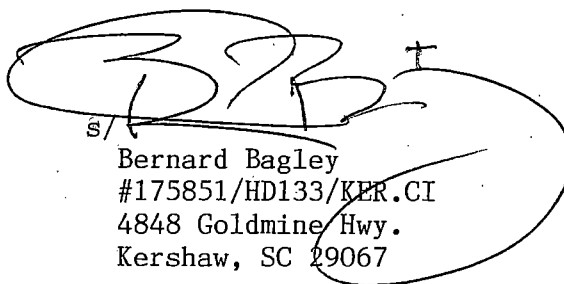
Respondent.

PROOF OF SERVICES

I, Bernard Bagley, the Appellant, certify that I have served the Motion for Enlarging Time After Expiration of Original Time, dated May 27, 2015, on the Respondent this 27th day of May, 2015, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to:

Tommy Evans, Jr.,
SCDPPPS Legal Counsel
P.O. Box 50666
Columbia, SC 29250

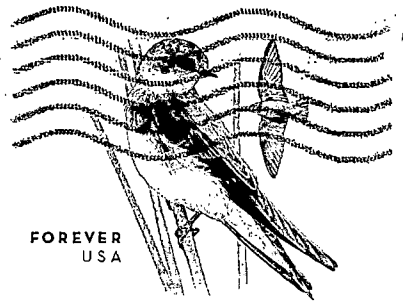
May 27, 2015


s/ Bernard Bagley
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