

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Administrative Law Judge Shirley C. Robinson

Case # 14-ALJ-15-0052-AP

App. No # 2015-001028

Jimmy Long # 197708

Appellant

vs

South Carolina Department of Probation
Parole & Pardon Services

Respondent

FINAL BRIEF OF APPELLANT

Other counsel of record
A/Gen. Counsel
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STATEMENT OF THE ISSUES ON APPEAL

(1) WHETHER THE A.L.C. ERRORED IN RULING THAT BRADFORD v WEINSTEIN DOES NOT APPLY TO APPELLANT'S CASE

(2) WHETHER THE A.L.C. ERRORED IN ADDRESSING THE EX-POST FACTO, INSTEAD OF THE NUMBERS OF THE AFFIRMATIVE AND NONE AFFIRMATIVE MEMBERS VOTES IN HIS CASE

(1)

STATEMENT OF THE CASE

Appellant is presently confined in S.C.D.C./McCormick Corr Inst. pursuant to order of commitment of the County Clerk of Court. The Appellant was indicted for Murder and assault with intent to commit first degree criminal sexual conduct by the Grand Jury for the court of General sessions of Florence County. Judge Ralph King Anderson, Jr. sentenced Appellant to life imprisonment for murder and a concurrent 10 years for first (assault w/ intent) degree criminal sexual conduct.

On Nov 6, 2014 the South Carolina Department of Probation, Parole and Pardon Services (S.C.DPPPS) notified Appellant that the Board denied him parole. Appellant appealed this denial to the Administrative Law Court. On April 30, 2015 the A.L.C. denied Appellant's appeal. On May 6, 2015 the Appellant filed his appeal. Appellant now seeks review of the ALC's decision.

ARGUMENT (1)

The Appellant argues that the A.L.C. erred in ruling that Bradford v Weinstein 519 F2d 728 (4th Cir.) does not apply to his case. Here, the Appellant argues that the Cooper case SEE: Cooper v S.C.D.P.P.S 661 SEd2d 106 and S.C. Code Ann § 21-24-640 the fifteen (15) Dept. criteria does not satisfy the Bradford criteria.

When the S.C.D.P.P.S and the Fifteen (15) Dept. criteria does not nor do they inform Appellant of what changes in attitude, habits and the requirements to be successful in obtaining parole SEE: Bradford at 732

ARGUMENTS (1)

the Respondent did not follow the mandates by the South Carolina Supreme Court in the Cooper opinion, where the Bradford criteria is not given to him
SEE: Bradford v Weinstein 519 F2d 228
When the S.C. D.P.P. 5 does not nor did inform him of what changes in attitude, habits, and the requirements to be successful in obtaining parole Bradford at 732.

It is clear that "what changes in attitude, habits and the requirements to be successful in obtaining parole is not revealed within the fifteen (15) Department criteria. Which is proof that Appellant parole was denied unlawfully where the above Bradford criteria does apply to Appellants case. Thus, the Respondent's

ARGUMENT (1)

Reliance on Cooper v. S.C.D.P.P.P.S
is misplaced.

Here, the Board is not carefully considering Appellant - when the Respondent's admitted that they denied his parole due to factors that occurred **PRIOR** to his conviction only. Where the South Carolina Code of Law specifically states:

The board must carefully consider the record of the prisoner **BEFORE**, **DURING**, and **AFTER** imprisonment and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that, in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of imprisonment; that the interest of society will not be impaired thereby; and, that suitable employment has been secured for him.

Here, the Appellant contends that he met

ARGUMENT (1)

all the above. But the Board did not apply the Bradford criteria. Nor did it apply section 24-21-640 and Cooper at 112. And, if this court does find that the Board did apply the Cooper criteria, then the Cooper and the Fifteen (15) Pepl. criteria does not satisfy the Bradford criteria.

ARGUMENT (2)

The Appellant argue that the Respondent has erroneously argued that because he wishes to receive the vote count, that any release of a vote count is irrelevant. Where at the time the Appellant committed his offense, the law allowed a two-thirds affirmative vote in order to be released on parole for all violent offenses.... It should be obvious that he failed to receive the proper amounts of votes to the fact he was denied parole. And that the fact the Board followed the criteria and voiced this within the denial letter was sufficient. There was

ARGUMENT (2)

No need for the A.L.C. to make another ruling in an irrelevant matter.

The Appellant argue that the Respondent did not make this argument before the A.L.C. nor was this issue itself was ruled on by the A.L.C. Thus, the Respondent waived any argument they may have had.

Thereby, the court of Appeals can in fact address this issue.

The Appellant argues that his case is unlike Barton v S.C.D.P.P.S. 745 SE2d110. But in Barton she ever had to appeal to this court to find out the number of affirmative votes. The

ARGUMENT (2)

Appellant argues that he has a liberty interest in knowing the affirmative and none affirmative votes, for which due process is required for all persons is entitled to know, whether they make parole or not, plus for any appeal rights one may have.

The Appellant further argue that just because he was denied parole does not mean, he is not entitled to know the affirmative and none affirmative votes.

CONCLUSION

Based on all the foregoing arguments this Hon. Court must remand Appellants case back before the parole board

ARGUMENT (2)

for a full and fair hearing according to Bradford, to inform him of what changes in attitude, habits and the requirements to be successful in obtaining parole.

Further Appellant is entitled to know the affirmative and non affirmative votes where Appellant has a liberty interest to know.

Date 6-15-15

Respectfully submitted
Jimmie Long

AFFIDAVIT OF SERVICE

I Jimmy Long hereby certify that,
I have served my final brief upon the
below persons. By placing the above said into
the Mc² Corr. Inst. mail room on this 15th
day of June, 15 to be placed in the U.S.
mail with postage prepaid

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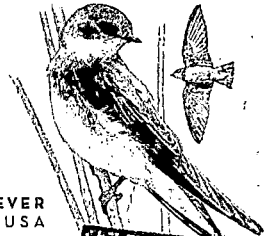
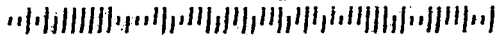
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