

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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JUN 29 2015

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph K. Anderson III

SC Court of Appeals

Opinion No. 2015-up-204

Filed May 27, 2015

Robert F. Spigner,.....Appellant,

v.

South Carolina Dept. of
Probation, Parole and Pardon Services,.....Respondent.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 27, 2015.

QUESTION PRESENTED

Did the South Carolina Court of Appeals err when the court entertained a Petition for Rehearing from the S.C. Dept. of Probation, Parole and Pardon Services that was not in accordance with South Carolina Appellate Court Rules: Rule 221(a)

STATEMENT OF THE CASE

On September 8, 1971, Appellant plead guilty to Murder, before the Honorable Wade Weatherford and was sentenced to Life in Prison. On July 7, 1981, Appellant was paroled.

The Appellant appeared before the parole board on October 10, 2012. Parole was denied. Upon receiving this denial, Appellant filed a notice of appeal with the ALC. In the appeal before the administrative Law Court, Appellant alleged (1) that the board failed to consider the Risk Assessment Tool pursuant to South Carolina Law. (2) The board decided Appellant's parole prior to Appellant being interviewed. (3) The board makes the Appellant ineligible for parole consideration by not using the criteria that was in effect at the time of Appellant's offense. On May 24, 2013, the Honorable Ralph K. Anderson III affirmed the decision of the parole board.

This decision was appealed to the South Carolina Court of Appeals. The Court of Appeals ruled that the board failed to consider the risk/needs assessment as required by S.C. Code Ann. 24-21-10(f)(1) (2012). This opinion was issued on April 15, 2015, Reversing in Part and Remanding the case to the parole board for another hearing.

On April 23, 2015, Respondent filed Petition for Rehearing.

On May 3, 2015, Appellant filed return to Respondent's Petition for Rehearing.

On May 27, 2015, the S.C. Court of Appeals' opinion was withdrawn, substituted and refiled. Footnote 3 of this opinion: "In a Petition for Rehearing, the Dept. informed this Court Spigner reappeared before the parole board on January 15, 2015. The department stated Spigner was

evaluated using COMPAS prior to the hearing and the parole board considered the evaluation in rehearing its decision to deny his parole. As a result, we find it unnecessary to order a new parole hearing."

This Petition for Writ of Certiorari follows.

ARGUMENT

Did the South Carolina Court of Appeals err when the court entertained a petition for rehearing from the South Carolina Dept. of Probation, Parole and Pardon Services that was not in accordance with S.C.A.C.R. Rule 221(a)?

On April 15, 2015, the South Carolina Court of Appeals entered a decision in Spigner v. S.C. D.P.P.P.S., appellate case no. 2013-001380, Affirmed in Part, Reversed in Part and Remanded, on April 23, 2015. The Respondent, the South Carolina Dept. of Probation, Parole and Pardon Services filed with the S.C. Court of Appeals a Petition for Rehearing. The Respondent argues this case should be considered moot because its ruling will not change the appellant's current situation. The department does not expect the board to release the appellant on parole with the identical facts they considered only four months ago."

The issue that the Court of Appeals reversed was that the Respondent did not follow the correct criteria deciding Appellant's parole request in October of 2012, ordering a new parole hearing in accordance with the correct criteria. On August , 2014, the S.C. Court of Appeals in Bagley v. S.C.D.P.P.P.S., cite 2014WL4217379, op. no. 2014-up-326, addressed the same issue of the requirement by the parole board to use the risk needs assessment tool COMPAS. In Bagley, the Court of Appeals ordered Bagley a new parole hearing because the board failed to use the correct criteria (COMPAS). However, because Bagley had an upcoming parole hearing (within 90 days of the court's order) the court decided that the board did not have to give Bagley a new parole hearing for his 2012 hearing but ordered that he be given the correct criteria and order-

ed the parole board not to use the denial of the 2012 parole hearing against him.

First: Rule 221(a) of the S.C.A.C.R. states in part, "A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court." The Respondent does not state any points that were overlooked or misapprehended by the Court of Appeals.

Second: The Respondent knew since August of 2014 that the Court of Appeals ruled that COMPAS was mandatory, and as a result, a new parole hearing was in order. The Court of Appeals did not rule on Appellant's case until April 15, 2015. While Appellant's appeal was pending, Respondent should have taken the steps necessary to ensure that the court knew of Appellant's pending hearing in light of Bagley and the same issue.

Third: Unlike Bagley, the court never ordered the board not to use the 2012 Parole hearing against Appellant, nor did the board state they did not.

Fourth: The Respondent claims that this issue is moot because the board is "highly unlikely that the board would award parole to a prisoner they just denied only months ago unless new factors are presented." "There will be no new factors presented in a second hearing." This court has to be concerned that the Respondent can say with certainty that the board will deny any new hearing, and that there will be no new factors presented to the board.

Fifth: On May 27, 2015, the Court of Appeals withdrew, substituted and refiled their order of April 15, 2015. Footnote 3 of that order states: "In a petition for rehearing, the department informed this Court Spigner reappeared before the parole board on January 15, 2015. The

department stated Spigner was evaluated using COMPAS prior to the hearing and the parole board considered the evaluation in reaching its decision to deny his parole. As a result, we find it unnecessary to order a new parole hearing."

Sixth: The doctrine of mootness was not something that was overlooked by the Court or misapprehended by the Court. Therefore, it was not something that the Respondent could petition the Court of Appeals for rehearing according to S.C.A.C.R. Rule 221(a).

CONCLUSION

The controversy still exist the Appellant was never given his statutorily correct parole hearing on October 10, 2012. The order of the Court of Appeals should be reversed and Certiorari should be granted.

Respectfully submitted,



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Date: JUNE 26, 2015

Columbia, South Carolina

cc: File

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CERTIFICATE OF SERVICE

Appellant declares that he mailed a copy of his PETITION FOR A WRIT OF CERTIORARI to the parties listed below at the address by U.S. Mail.

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Handwritten signature of Robert F. Spigner

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