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JUL 31 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph K. Anderson, III
Unpublished Opinion No. 2015-UP-204(S.C. Ct. App. Filed 4/15/15, Withdrawn 5/27/15)
Appellant Case No. 2013-001380
Docket Number 13-ALJ-15-0004

ROBERT SPIGNER, #65500,..... Petitioner

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

RETURN TO PETITION FOR WRIT OF CERTIORARI

Tommy Evans, Jr.
Assistant General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
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Columbia, South Carolina 29250
(803) 734-9220**

ATTORNEY FOR THE RESPONDENT

STATEMENT OF THE CASE

On September 8, 1971, the Appellant was given a life sentence for the offense of murder. At the time the Appellant committed this offense South Carolina law allowed an individual parole eligibility upon the service of ten years. The Appellant was granted parole on July 7, 1981, parole was later revoked due to a New York conviction for robbery, and South Carolina convictions for fraudulent check, receiving stolen goods, open container, and driving under suspension.

After this revocation, the Appellant appeared before the Parole Board and additional seven times, including an appearance on October 10, 2012. Upon that denial of parole, the Appellant filed a notice of appeal before the Administrative Law Court. (ALC) He argued that he was unlawfully denied parole due to the Board not revealing that a Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) assessment was completed prior to denial. The ALC determined they are not allowed under law to make a ruling regarding the use of COMPAS. The Appellant later filed a notice of appeal before the Court of Appeals.

Upon each party submission of their final briefs, the Court of Appeals determined that the Respondent did err in not applying a COMPAS assessment prior to the denial of parole. They reversed in part and remanded it back to the Parole Board for a new parole hearing. However, while this case was pending, on January 14, 2015, the Appellant appeared before the Board, where a COMPAS assessment was considered. Upon considering all of the mandatory criteria, the Board decided to deny the Appellant an opportunity to be released on parole.

After receiving the decision of the Court of Appeals, the Respondent filed a motion for reconsideration. Within this motion the Respondent informed the Court that a hearing was just held two months prior where an assessment was used. The argument of the Respondent was that a hearing was held where an assessment was considered, so the Board has followed the decision

of the Court of Appeals. The Respondent further argued this decision should be rendered moot since he has been given the remedy he seeks.

The Court of Appeals agreed, and issued an order substituting their previous order, and withdrawing the previous decision. The Appellant has filed this petition for writ of certiorari. He requests the Supreme Court order the decision of the Court of Appeals be reversed due to him not being given a statutory correct hearing. The Respondent will argue that the reasons for certiorari does not fall into the criteria that the Court may consider.

ARGUMENT

The Court of Appeals did not err in granting the Respondent's petition for rehearing and deciding to substitute and withdraw their previous opinion.

Within his initial appeal the Appellant argued that the Board failed to consider a risk assessment prior to the denial of parole. The South Carolina Code of Laws specifically state:

The Department must develop a plan that establishes a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions, including additional objective criteria that may be used in parole decisions.

S.C. Code Ann. §24-21-10(F)(1)(Supp. 2014)

The Respondent failed to reveal to the Court of Appeals that an actual risk assessment was considered prior to the denial of parole. Between the time the appeal was filed, and the decision made, the Appellant again appeared before the Parole Board. During the subsequent hearing the Board did consider the COMPAS risk assessment. This was the issue raised by the Appellant. Once this hearing was completed, and decided with the COMPAS assessment considered, the Board abided to South Carolina law, and solved any alleged prejudice raised by the Appellant.

Two months later the Court of Appeals released their decision, however, another hearing was unnecessary.

Within his petition for writ of certiorari, the Appellant argues that the Respondent never raised any issue that was overlooked or misapprehended by the Court. The fact that the Appellant had a hearing that concluded the identical result ordered by the Court was a matter not known, and misapprehended by the Court prior to the issuance of their decision. This was a matter that had to be raised to the attention of the Court. Allowing another hearing only two months after his previous hearing would be moot, he received the remedy he was seeking. The Appellant is not entitled two hearings within a span of two months, with would include the identical facts and considerations. The Court of Appeals ordered another hearing be held, and required a COMPAS assessment be applied. These occurred at his hearing that was held prior to this decision. The Court did not err in withdrawing and substituting their previous opinion. This hearing gave the Appellant the remedy he was seeking; therefore, his appeal was final. The Appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding the party's appeal. Rule 221(c) SCACR.

The Appellant now seeks a writ of certiorari from the Supreme Court. He argues that he should have been allowed to appear before the Board twice within a two month span, without any new evidence being raised after the previous decision. The Appellant has not raised any issue that should allow the Supreme Court to grant this petition.

According to the rules the reasons the Supreme Court can consider when deciding to accept a petition for writ of certiorari includes: 1) where there are novel questions of law; 2) where there is a dissent in the decision of the Court of Appeals; 3) where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; 4) where substantial constitutional issues

are directly involved; and, 5) where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. Rule 242 (b)(1-5)SCACR. In reviewing the reasons for this petition, the Court should notice that none of the above referenced criteria applies. The Appellant wish this Court to reverse the decision of the Court of Appeals in order to receive a remedy he has already been given. Since the Board applied the order of the Court of Appeals, prior to it being released, there no longer exist a remedy.

The Appellant has also not expressed any prejudice suffered due to the Court of Appeals withdrawing their previous decision. This is because the Appellant suffered no prejudice. The Respondent had allowed the Appellant to appear before the Board where a COMPAS assessment was considered. This was the remedy he was seeking; therefore, he suffered no prejudice, so the Court of Appeals was correct in withdrawing their previous decision. To warrant reversal the Appellant must show both error of the ruling and resulting prejudice. *Burroughs v. Worsham*, 352 S.C. 382, 574 S.E.2d 215 (S.C. App. 2002).


CONCLUSION

For all the reasons set forth above, the Respondent submits this Court should deny the Petition for Writ of Certiorari and allow the case to remain as properly decided by the Court of Appeals. If the Court grants this petition the Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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BY: 

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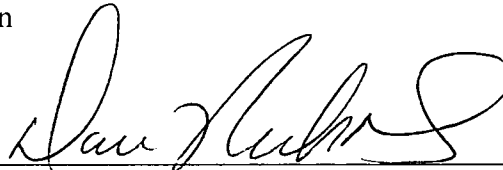
CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that this 27th day of July, 2015, I served the following documents:

1. Respondent's Return to Petition for Writ of Certiorari; and
2. Certificate of Service;

by first class mail, postage prepaid as follows:

Robert Spigner, #65500
Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210



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