

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

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Appeal from the Administrative Law Court  
The Honorable Ralph King Anderson, III, Administrative Law Judge  
Docket No. 14-ALJ-15-0041-AP

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Appellate Case No. 2015-001251

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PHILLIP A. BROWN, #118100,.....APPELLANT

v.

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

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**FINAL BRIEF OF RESPONDENT**

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### **STATEMENT OF ISSUE ON APPEAL**

- 1. Did the Administrative Law Court err when it stated that the Barton decision does not apply to the Appellant?**
- 2. Did the Administrative Law Court violate ex post facto in applying the amended statute S.C. Code Ann. §24-21-610 in its May 18, 2015 order?**
- 3. Did the Parole Board violate ex post facto when it applied S.C. Code Ann. §24-21-221 to Appellant after the grant of parole?**

## STATEMENT OF THE CASE

On June 12, 1982, the Appellant along with co-defendants Dale Brown and Myra Jackson met at her residence in Elgin, South Carolina. They devise a plan to break into the home of the victim with the intent to steal money, and other various items. They entered the home through the front entrance using a key found under a floor mat. Once inside, they began to search for money and other valuable items. The victim arrived home early surprising the defendants, he was attacked, and shot three times causing his death. The Defendant's then immediately fled the scene. They were later found, and charged with the offenses of murder, burglary, and armed robbery. Upon arrest, the Appellant was subjected to a lawful interrogation in which he gave the authorities a full confession. On June 23, 1983, the Appellant appeared before the Honorable W. Cox for the offenses of murder, burglary, and armed robbery. The Appellant was sentenced to a period of incarceration for the remainder of his natural life for murder and burglary; and, twenty-five years for armed robbery.<sup>1</sup>

While serving his sentence the Appellant escaped and stole a motor vehicle. He then broke into a residence and stole property valued in excess of two hundred dollars. He was later found, and on February 9, 1984, appeared before the Honorable Frank Epps. Upon the conclusion of this appearance he received a sentence of ten years for unauthorized use of a motor vehicle; ten years for vehicle theft; and two years for escape. The Court ordered these sentences are to be served consecutively to his current incarcerated sentence.

At the time the Appellant committed these offenses, South Carolina law allowed a person serving a life sentence for murder parole eligibility upon the service of twenty years. The Appellant

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<sup>1</sup> Myra Jackson was sentenced to a one to six year sentence under the Youthful Offender Act for accessory before the fact of grand larceny. Dale Brown received a sentence of one to six years under the Youthful Offender Act for the offense of housebreaking and grand larceny.

initially appeared before the Parole Board on February 7, 2001. Upon the conclusion of this hearing, the Board decided to deny the Appellant an opportunity to be released on parole. Since this initial denial the Appellant appeared before the Board an additional twelve times each resulting in a denial of parole. His most recent appearance occurred on March 19, 2014, parole was denied due to: 1) nature and seriousness of the current offense; 2) an indication of violence in this of a previous offense; and, 3) the use of a deadly weapon in this of a previous offense.

This appeal stems from the conditional parole awarded by the Board upon the conclusion of his April 14, 2010 hearing. This parole was rescinded due to the victim's family, nor law enforcement receiving proper notification. Upon receiving the opinion of the victim's family, law enforcement and the prosecuting solicitor, the Board issued another order on September 8, 2010 denying parole. Once he received this decision, the Appellant decided to issue a notice of appeal before the Administrative Law Court. (ALC) The Appellant argued that he should be released on parole due to the fact he received the sufficient amount of affirmative votes to be granted parole; so he should be granted parole pursuant to the South Carolina Supreme Court decision of Barton v. S.C. Dept. of Probation, Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013). The Appellant also argued that he was denied due process, and equal protection. In response, the Respondent argued, that the present case was not identical to the Barton decision, and the rescission was valid due to a failure to notify the victim and law enforcement pursuant to South Carolina law. The Respondent further argued that due process nor equal protection was violated due to this denial of parole.

Upon receiving briefs from both parties supporting their positions, the Honorable Ralph King Anderson, III, chief Administrative Law Judge issued an order on May 18, 2015. (R.p.36-

p.42). Within this order Judge Anderson determined that the decision of the Parole Board does not fall under Barton; therefore, the decision of the Board denying parole was affirmed.

The Appellant comes before this Court requesting a reversal of the ALC decision. Within this appeal the Appellant alleges that the ALC erred in deciding that Barton does not apply, and this denial of parole violated ex post facto. The Respondent argues that the ALC was correct in affirming the decision of the Parole Board. There exist no violation of ex post facto, nor did Barton apply to the present case. The brief supporting the Respondent's argument follows.

### **ARGUMENTS**

**1. The facts of the present case are not identical to Barton; therefore, the denial of parole was not unlawful.**

In April of 2010, the Appellant was granted a conditional parole; however, this parole was later rescinded due to the failure to notify the victim's family, and law enforcement. Another hearing was held, and at the conclusion of this second hearing, parole was denied. The Appellant argued that he received the sufficient number of affirmative votes according to the Barton decision, so he should have been granted parole. He was initially granted a provisional parole; however, an order of parole is not final until signed by a majority of the Parole Board, and issued by the Director. S.C. Code Ann. §24-21-645 (Supp. 1997).

The Appellant was granted parole conditionally, which means that he would only be released on parole if certain criteria was completed. Until this criteria is completed he is not on parole. After this decision the Board was later informed that neither the victim, nor law enforcement were notified about his parole hearing. They were never given an opportunity to present their opinion

to the Board regarding the release of the Appellant on parole. Per Department policy the Board decided to rescind their previous decision, and schedule another hearing.<sup>2</sup>

The Appellant was never granted parole due to the certificate never being released by the director. The Board had no choice but rescind the decision, due to the victims and law enforcement not being notified. Pursuant to South Carolina law these parties must be given notice prior to any parole hearing. The South Carolina Code of Laws specifically states:

The director must give a thirty-day written notice of any board hearing during which the board will consider parole for a prisoner to the following persons:

- (1) Any victim of the crime who suffered damage to his person as a result thereof or if such victim is deceased, to members of his immediate family to the extent practicable;
- (2) The solicitor who prosecuted the prisoner or his successor in the jurisdiction in which the crime was prosecuted; and,
- (3) The law enforcement agency that was responsible for the arrest of the prisoner concerned.

S.C. Code Ann. §24-21-221 (Supp. 1993)

The Appellant argued that he received six affirmative votes in that 2010 hearing so he should be released on parole pursuant to the Barton decision. Barton has nothing to do with the present case, so the Appellant is not entitled parole. His previous hearing was rescinded, so it was nullified due to the failure to notify the victims or law enforcement of this hearing. It was as though the previous hearing did not occur, when the proper parties were given notice and were allowed to voice their opinion he was properly denied parole.

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<sup>2</sup> In this situation, the Board or panel may have acquired some new material and information after it has made its final decision. The information about the prisoner's case appears, in the Board's or panel's judgment, to be so important as to require an immediate reconsideration of the case. In that event, the case will be presented to the Board or panel to review its decision in light of the new information. SOUTH CAROLINA BOARD OPERATIONS MANUAL p. 46.

The Respondent argues that Barton is not identical to the present case, due to the fact in Barton the Board issued an order of denial drawing that case to a conclusion. In Barton, the South Carolina Supreme Court came to two conclusions:

- (1) statutory amendment requiring that parole for persons convicted of a violent crime approved by at least two-thirds of the members of the Parole Board, in contrast to prior version of statute allowing the Parole Board to authorize parole by a majority of its members, violated federal and state ex post facto clauses as applied retroactively; and,
- (2) authorization of parole for persons convicted of a violent crime does not require a vote of at least two-thirds of the seven member board without regard to how many members actually attend a parole hearing, but instead requires only a two-thirds vote of the members participating in a hearing.

Barton, at 395.

The Barton decision pertained to the Board denying parole by using the current law regarding the amount of votes needed for approval. This decision only applied if an inmates parole decision was finalized. This is not the case with the Appellant; the first decision was not final, it was rescinded, a new hearing held, and he was lawfully denied.

The Appellant in Barton was convicted of committing a violent offense; received the votes to be granted parole, but it was denied due to the Respondent applying the current law not the law existing at the time of the commission of the offense. At Ms. Barton's hearing all of the necessary parties were notified, and were allowed to be present to voice their opinions regarding parole. That was not done in the present case. The present case was not complete, so the decision was not final. Pursuant to South Carolina law notification to the victim's family and law enforcement is mandatory. A failure not to notify the proper parties prior to the commencement of this hearing nullifies the decision, causing it to be rescinded.

The Respondent had the ability to rescind their previous decision due to the fact the decision was not final. A parole decision is final when the Board issues an order authorizing parole which must be signed by at least a majority of its members with terms and conditions. The director or one lawfully acting for him, must issue a parole order which, if accepted by the prisoner, provides for his release from custody. S.C. Code Ann. §24-21-650 (Supp. 2014). No certificate of parole was ever issued in the present case, so the decision was not final. It should be subject to rescission due to a failure to notify the proper parties. This case does not equate to the facts of the Barton decision. That decision did not influence the final decision of the ALC. The ALC was correct in determining that Barton did not apply and affirmed the decision of the Parole Board.

The Respondent further argues that the initial decision of the Board was rescinded; therefore, it was as though the Appellant was never granted parole. Since he was not granted parole this Court has no authority to reinstate. The General Assembly gave the ability to grant or deny parole solely to the Parole Board. The Board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner maybe paroled until it **appears to the satisfaction of the board**. S.C. Code Ann. §24-21-640 (Supp. 2014)(emphasis added). Parole eligibility is not a matter within the jurisdiction of the trial court, but falls within the province of the Board of Probation, Parole and Pardon. Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991). During the second hearing the victims and law enforcement were notified of this hearing so they could voice their opinions to the Board. Upon the conclusion of that hearing parole was lawfully denied. That decision cannot be appealed to the ALC. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole, and Pardon Services. S.C. Code Ann. §1-23-600 (Supp. 2014).

Within his brief the Appellant compares this case to Ellard v. Alabama Board of Pardons and Paroles, 824 F.2d 937 (1987). This present case is not identical to Ellard. In Ellard, the Appellant was granted parole released from incarceration and transported to another State. The Board then decided to rescind parole due to the backlash received from the public. The Appellant argues that his situation is identical due to the fact his parole was rescinded as was the Appellant in Ellard. However, the biggest difference is the fact in Ellard, the inmate was granted parole, and released from incarceration. Once released, his liberty interest attached, so he has the right to due process. In the present case the Appellant was never released from incarceration so there exists no liberty interest, and no right to due process. Once an individual has been released into society under the constraints of either parole or probation, however, the resulting freedom “although indeterminate includes many of the core values of unqualified liberty” and thus inherently “falls within the protection of the Fourteenth Amendment.” Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972). In the present case the Appellant was granted a conditional parole. In order to be granted parole he had to successfully complete certain conditions. Prior to him completing these conditions it was brought to the attention of the Board that the victims nor law enforcement was notified. This parole was rightfully rescinded so these parties can voice their opinions pursuant to South Carolina law.

The Appellant also compares this case to Young v. Harper, 520 U.S. 143, 117 S.Ct. 1148 (1997). In Young, the Appellant was released from incarceration on a pre-parole program, and then after being on supervision for five months his parole was revoked, and he was returned to prison. The United States Supreme Court ruled that once an inmate is released from incarceration, a liberty interest has attached and he is allowed due process. The present case is not identical to the Young case. In Young, the inmate was released from incarceration, in the present case the

Appellant remained incarcerated. Being released from incarceration gives a liberty interest, thereby, allowing due process.<sup>3</sup> The present case compares more to the United States Supreme Court decision of Meachum v. Fano, 427 U.S. 215, 96 S.Ct. 2532 (1976). In Meachum, the Supreme Court determined that given a valid conviction, a criminal defendant has been constitutionally deprived of his liberty to extent that state may confine him and subject him to rules of its prison system so long as conditions of confinement do not otherwise violate the Constitution. Meachum, at 215. The Appellant was transferred to another prison so he can go through the addictions treatment unit, but he never made any accusations that he was treated poorly in prison. All of his claims stem from his parole, which was not granted; therefore, he did not have a liberty interest so there exist no right to due process. The Board was within its bounds to rescind its decision without the benefit of a hearing.

According to Parole Board policy if an inmate has been granted parole but not released, the Board or panel may consider the case based upon information presented without notice to the inmate. This is because the inmate does not yet have a constitutionally protected liberty interest in parole. SOUTH CAROLINA BOARD OPERATIONS MANUAL p. 47. In the present case the Appellant had not even been granted parole. He was granted a conditional parole, meaning, he would only be granted parole upon the completion of certain conditions. He was not able to complete these conditions due to the fact it was raised to the Board's attention that notification was not given to the victim's family nor law enforcement, which is mandatory pursuant to South Carolina law. Once the Board was informed of this error, they had to rescind the conditional parole

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<sup>3</sup> There is a crucial distinction between being deprived of a liberty one has, as in parole, and being denied a conditional liberty that one desires. The parolees in Morrissey (and probationers in Gagnon) were at liberty and as such could "be gainfully employed and [were] free to be with family and friends and to form the other enduring attachments of normal life." 408 U.S. at 482, 92 S.Ct. at 2600. The inmates here on the other hand, are confined and thus subject to all of the necessary restraints that inhere in a prison. Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex et. al., 442 U.S. 1, 8, 99 S.Ct. 2100 at 2105 (1979).

and allow the victim's family and law enforcement an opportunity to voice their opinion. There exists no wrongdoing in this matter. The Parole Board followed South Carolina law and Board policy; therefore, the ALC was correct in affirming the decision of the Parole Board.

**2. There exists no violation of ex post facto in the notification of the victim's family or law enforcement as to the Appellant parole hearing.**

The Appellant argues that giving the victim's and law enforcement notification of his hearing is in violation of ex post facto. It is his position that the statute was established after his conviction; therefore, any notification to the victim's and law enforcement violates ex post facto. The Respondent argues that since this notification is not penal in nature, ex post facto does not apply.

Victim notification became a priority of the General Assembly in the 1990's with the establishment of Section 24-21-221 which made it mandatory for the Board to notify victim's or their family if deceased, law enforcement, and the prosecuting solicitor of any parole hearing. In 1998 the General Assembly created the victims bill of rights. The victims bill of rights made it mandatory for all victims to, "be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release action." S.C. Const. art. I §24. It is obvious that the creation of these statutes were for the purpose of allowing victims notification of the possible release of individuals who have committed harm to them. This was done so there could be some input from these individuals that can be considered prior to release. This was not put in place by the General Assembly to place any further punishment on the Appellant, or any other inmate appearing before the Parole Board. It was created to preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status. S.C. Const. art I §24.

The prohibition against ex post facto laws is set forth in Art. I §4 of the South Carolina Constitution and Art. I §9 of the United States Constitution.<sup>4</sup> When addressing the issue, the South Carolina Supreme Court has looked to federal authority in order to determine whether a law is indeed violative of the ex post facto clauses of both state and federal constitutions. See State v. Huiett, 302 S.C. 169, 394 S.E.2d 486 (1990); State v. Wilson, 315 S.C. 289, 433 S.E.2d 864 (1993). In order for a law to be prohibited by the ex post facto clause, two elements must be present: (1) the law must be retrospective so as to apply to events occurring before its enactment; and, (2) the law must disadvantage the offender affected by it. Miller v. Florida, 482 U.S. 423, 107 S.Ct. 2446 (1987); Huiett, supra. However, before this two part analysis can even begin, the statute in question must be found to be punitive in nature such that it inflicts punishment merely by requiring the conduct called for in the law. State v. Walls, 348 S.C. 26, 558 S.E.2d 524 (2002). Without such a finding, the ex post facto clause is inapplicable. Smith v. Doe, 538 S.C. 84, 123 S.Ct. 1140 (2003); Kansas v. Hendricks, 521 U.S. 346, 370-71, 117 S.Ct. 2072, 2086 (1997); Flemming v. Nestor, 363 U.S. 603, 80 S.Ct. 1367 (1960); Jones v. Murray, 962 F.2d 302, 309 (4<sup>th</sup> Cir. 1992). Huiett, supra.

Courts have sometimes looked at the factors enumerated in Kennedy v. Mendoza-Martinez<sup>5</sup> to help make the determination of whether the statute in question was so punitive in effect as to overcome the legislative intent. See e.g., Russell v. Gregorie, 124 F.3d 1079 (9<sup>th</sup> Cir. 1997).

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<sup>4</sup> No bill attainder, ex post facto law, law impairing the obligation of contracts, nor law granting any title of mobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate. S.C. Const. Art. I §4. No bill of attainder or ex post facto law shall be passed. U.S. Const. Art. I §9.

<sup>5</sup> 372 U.S. 144, 83 S.Ct. 554 (1963). The factors are (1) whether the sanction involves an affirmative disability or restraint; (2) whether it has been historically regarded as punishment; (3) whether it comes to play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment-retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and, (7) whether it appears excessive in relation to the alternative purpose assigned. This analysis requires weighing of all of the above factors. Only a clear finding of congressional intent to punish under the factors will evidence a punitive effect. Id.

The Respondent submits that even under an analysis of the Kennedy factors, the Appellant has not shown the clearest proof that the statutory scheme is punitive that will be considered a violation of ex post facto.

First, this statute does not involve an affirmative disability or restraint. This is a statute for the single purpose as to notifying individuals who have been affected personally by the crime committed by the Appellant. The General Assembly realizes that it is fair for them to be able to voice their opinion regarding the release of the individual on parole. The opinion of the victims and law enforcement are one of many factors considered. It does not solely cause a denial of parole.

Second, this notification has not historically been regarded as a punishment. It does not apply to sentencing, nor does it inflict extra time to his sentence. The Appellant was given a life sentence for murder. He is only allowed the possibility of parole, this release on parole is never guaranteed. The Appellant could possibly spend the rest of life in prison since that is the sentence given by the Court. This statute has never been considered as a punishment but a notification to victims and law enforcement. The Appellant is of the opinion that his parole was denied after the Board received input, a law that existed after his conviction, which led to his disadvantage. He has raised no proof that he was disadvantaged in any way due to this notification. This notification does not equate to any punishment. His sentence remained the same, the board remained the same, and the amount of votes needed for parole remained the same. The ALC made the correct decision determining that this notification does not equate to an ex post facto violation.

Third, this notification does not only comes into play upon a finding of scienter. If it is being imposed due to a conviction for a crime, then scienter is required. However, for a denial of parole normally the opinion of the victim's or law enforcement are not the only factors the Board will

determine in the denial of parole. The statements mentioned by these individuals will carry the identical weight as all other factors and statements made to the Parole Board.

Fourth, this statute does not primarily promote the traditional aims of punishment-retribution and deterrence. This is a notification statute, it has nothing to do with punishment. This statute was created so victims and law enforcement can be present at any parole hearing. The fact they are notified does not change the sentence. This notification has never been determined by the General Assembly or the Courts as any type of punishment, just the ability to notify victims out of fairness for all parties involved in the crime.

Fifth, this notification statute does not necessarily depend on behavior which is already a crime. There are numerous factors considered prior to the Board making a decision regarding the denial or acceptance of parole. The denial of parole many times depend on the previous crime committed; however, it is not always the reason for denial, and this statute has nothing to do with the commission of a prior crime. This statute relates to the notification of the parties involved, in order to give them an opportunity to voice their opinion regarding the release on parole. The Appellant argues that this is to his detriment so is in violation of ex post facto. The Board has no idea what is going to be said by these individuals. The victims, law enforcement, or the solicitor might have a favorable or no opinion at all. The notification statute does not rely on what is said, notification must be made regardless of the opinion of those being notified. This statute does not depend on the prior crime committed; therefore, not a violation of ex post facto.

Sixth, the notification and victim's bill of rights have a rational relationship to an alternative stated purpose. Within the victims bill of rights it states that this is created to protect and serve victims' rights to due process. These statues were created so victims and law

enforcement can be notified regarding the possible release of individuals on parole. The purpose of this statute is totally removed from the punishment of the crime committed by the Appellant.

Seventh, this statute does not appear excessive in relation to the alternative purpose assigned. The only alternative is not to notify them which would not be fair to those who have lost or was involved with the investigation or prosecution of this crime. The General Assembly rightfully realize that victims, law enforcement, and the prosecuting solicitor should have their opinion voiced to the Parole Board. This statute is not excessive, it is necessary for the possibility of fairness to all parties involved. These statements are not given any more weight as any other criteria that must be considered by the Parole Board, but it is necessary to conduct a fair hearing.

The Respondent submits that this law cannot be considered a violation of ex post facto. The notification statute is not punishment but procedural. The law as written only allows that victims, law enforcement, and the prosecuting solicitor are notified prior to the parole hearing. It does not allow more weight be given to their opinions, so their statements are not in the Appellant's detriment. The prohibition against ex post facto laws is intended to prevent an additional punishment added to a sentence after conviction, due to the lack of notice. The ex post facto clauses safeguard common interests, in particular the interests in fundamental fairness (through notice and fair warning), and the prevention of the arbitrary and vindictive use of the laws. Rodgers v. Tennessee, 532 U.S. 451, 121 S.Ct. 1693 (2001). In this case the statute just makes notification to parties that are involved in this case mandatory. It does not increase punishment, nor changes the requirements of parole. Therefore, this statute cannot be considered a violation of ex post facto.

**3. The Court does not have the authority to grant the remedies requested by the Appellant.**

The Appellant request this Court perform tasks the Court does not have the ability to perform pursuant to South Carolina law. Within his brief the Appellant request this Court to: 1) reverse the decision of the Parole Board of October 8, 2010; 2) remand the case back to the Parole Board with instructions that the Appellant be released on Parole; and, 3) the Court issue it's own findings of fact and conclusions of law regarding the Appellant's September 8, 2010 parole hearing, and order that he be released on Parole. None of these requests can be granted by this Court, because they go beyond the Court's ability to rule on parole matters pursuant to South Carolina law.

Courts do not have the ability to hear an appeal of a denial of parole. The Supreme Court has only given the lower courts the ability to determine if procedures and policies were followed prior to a final decision. According to South Carolina law the only entity that can make a parole determination is the Parole Board, "no such prisoner may be paroled until it appears to the **satisfaction of the board.**" S.C. Code Ann. §24-21-640(Supp. 2014)(emphasis added). The Parole Board has the sole authority to determine parole eligibility separate and apart from the court's authority to sentence a defendant. State v. McKay, 300 S.C. 113, 386 S.E.2d 623 (1989). It is clear that the General Assembly wished only the Board make a determination as to who will be granted parole. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ a rule of statutory interpretation and the court has no right to look for, or impose another meaning. Pachel v. State Election, Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995). The Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956).

The Appellant also requests the Court to find its own findings of fact and conclusion of law, which goes beyond the Court's jurisdiction. The Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann. §1-23-380(6)(1993). The things the Board reviewed prior to the denial of parole are questions of fact, which cannot be reviewed by the ALC. The Appellant is requesting the Court to make a decision regarding a fact relayed by the Board. A request the Court does not have the ability to accomplish.

The Appellant has not revealed any proof of prejudice or influence placed on the Board by the victims or law enforcement. The Respondent has revealed that all the mandatory criteria was applied. This Court does not have the ability to award any of the Appellant's requests.

**CONCLUSION**

Based on the foregoing reasons the ALC correctly dismissed the appeal; therefore the Respondent respectfully requests the final decision of the Administrative Law Court be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tommy Evans, Jr.", is written over a horizontal line.

**Tommy Evans, Jr.  
Assistant General Counsel**

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Columbia, South Carolina  
October 22, 2015

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SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court  
The Honorable Ralph King Anderson, III, Administrative Law Judge  
Docket No. 14-ALJ-15-0041-AP

Appellate Case No. 2015-001251

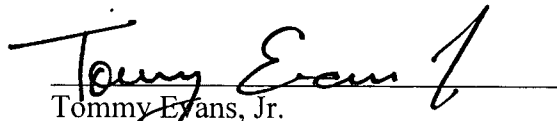
PHILLIP A. BROWN, #118100,.....APPELLANT

v.

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

***CERTIFICATE OF COUNSEL***

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and  
with the South Carolina Supreme Court's order dated August 13, 2007.

  
Tommy Evans, Jr.  
Assistant General Counsel

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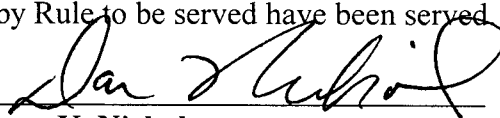
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**CERTIFICATE OF SERVICE**

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent* dated October 22, 2015, on Appellant this 26<sup>th</sup> day of October, 2015, by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Phillip A. Brown, #118100  
Evans Correctional Institution  
610 Highway 9 West  
Bennettsville, South Carolina 29512

I further certify that all parties required by Rule to be served have been served

  
Dawn K. Nichols  
Executive Administrative Assistant

South Carolina Department of Probation,  
Parole, and Pardon Services  
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Columbia, South Carolina 29250