

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah B. Durden, Administrative Law Judge
Case No. 15-ALC-15-0038-AP

Appellate Case No. 2015-002013

Bobby P. Ruff, #185024

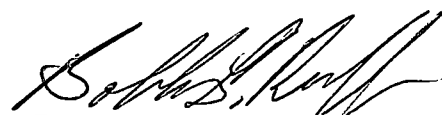
Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

INITIAL BRIEF OF APPELLANT



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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE PAROLE BOARD ABUSE ITS DISCRETION WHEN IT RELIED UPON THE IMMUTABLE FACTORS OF THE COMMITMENT OFFENSE TO DENY APPELLANT PAROLE UNDER ITS CRITERIA 1212 REVISION A, AND §24-21-640.
2. WHETHER THE ALC FAILED TO RULE ON THE FOREGOING ISSUE FOR APPELLATE REVIEW.
3. WHETHER THE ALC HAS JURISDICTION TO RULE ON THE FOREGOING ISSUES.

STATEMENT OF THE CASE

On June 24, 2015, Unpublished Opinion No. 2015-UP-309, S.C. Court of Appeals, Appellate Case no. 2014-000811, affirmed in part, reversed and remanded the ALC Docket Order No. 13-ALJ-15-0047-AP, Whereas, the Court of Appeals found issues three and four were not preserved for review and are not preserved for appellate review. The Appellant did raised both issues in his initial notice of appeal dated 10/4/13, in which the ALC failed to ruled on issue (3) the parole board abuse its discretion when it relied upon the immutable factors of the commitment offense to deny Appellant parole under its criteria 1212 revision A, and §24-21-640. Issue four the Appellant waives that issue and pray for relief on issue three.

ARGUMENTS

1. THE PAROLE DID ABUSE ITS DISCRETION WHEN IT RELIED UPON THE IMMUTABLE FACTORS OF THE COMMITMENT OFFENSE TO DENY APPELLANT PAROLE UNDER ITS CRITERIA 1212 REVISION A, AND §24-21-640.

South Carolina Department of Probation, Parole and Pardon Services decisions to deny parole must be supported by factual findings and conclusions of law. This includes a substantial reason requirement as outlined in §1-23-380(A)(6), or supported by substantial evidence or nexus requirement to articulate a rational connection or nexus between the facts found and legal conclusions of the commitment offense and any purported dangerousness at this present and future time.

The Board is required to explain its decisions beyond the boilerplate language used in its notice of rejection letter. Other factors considered relevant in a particular case by the Board (#15 factor) is aimed at the deprivation of Appellant's request for parole consideration equality of rights secured by the Equal Protection of the Laws, and of Equal Protection and Immunities under the law as it pertains to the Board relying upon the immutable factors of the commitment offense to deny him parole, because it interfere with his liberty interest to be free from invidious discrimination under §24-21-640, and the Board's arbitrary abuse of administrative regulations to prejudice him based on his status of an incarcerated Vietnam Combat Veteran serving a life sentence where there will always be evidence to support the denial of his request for favorable parole consideration under factor 15.

Appellant asserts that this is a violation of equality to eternally hold him in the custody of the department of corrections to be an unreasonable risk of danger to society if released based solely on the immutable fact of the offense itself. Whereby, there is no evidence of current nor future dangerousness. Appellant asserts his spotless record during and after incarceration as a designation of matter as required under §24-21-640, S.C. Code of Laws, along with his above average programming history, an evidentiary record that will go undisputed. The Appellant designate his prison record, and parole summary, COMPAS assessment evaluation, and recommendations as matetrs in the record on appeal before this Court.

In addition, the Appellant contends that the Board's reasoning is arbitrary or capricious in violation of the Equality Process Clause as to whether he is or not was considered under the identical factor i5 applied, because former incarcerated dJames "Jimmy" Woods, Ricardo Sherard, Leroy Ferrel, Charlie Stringfellow, and Arthur Williams, similarly situated persons received conditional parole consideration upon serving a life sentence for the nature and seriousness of current offense, and indication of violence in this or previous offense were all granted parole under same findings and conclusions. Also, all with the exception of one were released on parole with poor prison disciplinary records.

2. THE ALC DID FAILED TO RULE ON THE FOREGOING ISSUE FOR APPELLATE REVIEW.

Special Appeals Rules ALC Rule 65 require the ALJ to address any grounds appearing in the record, whereas, the ALJ failed to do so in Appellant's initial appeal dated 10/14/13. In essence, the ALC failed to follow its own rules and administrative procedures regarding Appellant's initial appeal and the issue here in question.

ALC Rule 51 applicability states that the Rules in this section shall apply exclusively in matters heard on appeal from final decisions pursuant to *Al-Shabazz v. State*, 527 S.E.2d 742 (2000). Additionally, the Special Rules are exclusive rules of procedure used in appeals from final decisions of the department of corrections and the department of probation, parole and pardon services. The Court's jurisdiction to hear such matters is derived entirely from the decisions of the S.C. Supreme Court in *Al-Shabazz v. State*, 527 S.E.2d 742 (2000), and *Furtick v. SCDPPPS*, 576 S.E.2d 146 (2003). These Rules based upon the Court's existing procedural and appellate rules, with adaptations for this specific type of appeal.

The ALC Order of Dismissal is adamant that the Court of Appeals has exclusive jurisdiction over the matter. If this is true, Appellant invokes Rule 60(b), SCRC, for this Court to set aside the affirmed part in appellate case 2014-000811, and make declaratory relief due to the circumstances in this matter, as required by Rule 57, SCRC, to terminate the controversy stated in ALC Order of Dismissal dated 9/1/15, docket no. 15-ALC-15-0038-AP.

3. THE ALC HAS JURISDICTION TO RULE ON THE FOREGOING ISSUES.

Appellant incorporate argument 2 supporting facts verbatim in support for argument 3. Additionally, pray that this Court declare the law for each issues herein.

CONCLUSION

The Appellant pray that this Court grant declaratory relief, and also he pray that the Court declare the law, set aside affirmed in part judgment in *Ruff v. SCDPPPS*, Unpublished Opinion No. 2015-UP-309, and require jurisdiction over issue 1.

s/ 

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October 22, 2015

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South Carolina Department of Probation,
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Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief complies with Rule 211, SCACR.

s/ 

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October 22, 2015

pro se

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CERTIFICATE OF SERVICE

I, Bobby P. Ruff, 185024, the Appellant, hereby certify that I have served the within Initial Brief of Appellant dated October 22, 2015, on Respondent this 26th day of October, 2015, by depositing a copy of the same in the U.S.

Mail, postage prepaid, addressed to: Tommy Evans, Jr.
SCDPPPS Assistant General Counsel
P.O. Box 50666
Columbia, SC 29250

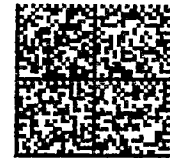
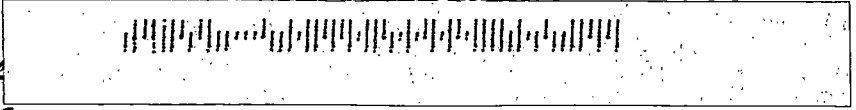


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