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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 S. Phillip Lenski, Administrative Law Judge
Docket No. 13-ALJ-15-0027-AP

Appellate Case No.:2014-001047

RONALD TATE, #114188.....APPELLANT

v.

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

RECORD ON APPEAL

**Ronald Tate, #114188
Appellant**

**Perry Correctional
Institution Q2 B220
430 Oaklawn Road
Pelzer, S.C. 29669**

APPELLATE PRO SE

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South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration

SC Board of Probation, Parole and Pardon Services
P. O. Box 50655
Columbia, SC 29250

Inmate Name <i>Ronald Tate</i>	SCDC # <i>114188</i>
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Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
 - The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
 - The inmate's attitude toward his/her family, the victim, and authority in general;
 - The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
 - The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
 - The inmate's physical, mental and emotional health;
 - The inmate's understanding of the cause of his/her past criminal conduct.
3. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
4. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours, the inmate's plans for gainful employment;
5. The willingness of the community into which the inmate will be released to receive the inmate;
6. The willingness of the inmate's family to allow him/her to return to the family circle.
7. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole.
8. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate.
9. Other factors considered relevant in a particular case by the Board

Reservation of Discretionary Power of the Parole Board

The criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or condition of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no preclusive effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

In the event of rejection for parole, the procedure of scheduling of rehearing is as follows:

An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejection. Applicable legal exceptions may allow for a one year hearing.

An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejection.

I certify that the above material has been explained to me, and I have received a copy.

Signature <i>Ronald Tate</i>	Date <i>3-27-13</i>	Witness <i>[Signature]</i>	Date <i>3-27-13</i>
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State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

June 20, 2013

Mr. Ronald Tate #00114188
Perry Correctional Institution
430 Oaklawn Rd.
Pelzer, SC 29669

RE: NOTICE OF REJECTION

Dear Mr. Tate:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Ray Patton, Jr.", written in dark ink.

Larry Ray Patton, Jr.
Director of Parole Board Support Services

5

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Ronald Tate, 114188,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 13-ALJ-15-0027-AP

ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "court") pursuant to the appeal of Ronald Tate (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. The Appellant is serving a life sentence for the offense of murder, twenty (20) years for the offense of attempted armed robbery and assault and battery with intent to kill, ten (10) years for grand larceny, and five (5) years for housebreaking, all of which he committed in 1982. On June 20, 2013, the South Carolina Department of Probation, Parole and Pardon Services ("Department") notified the Appellant that the South Carolina Parole Board ("Board") rejected his petition for parole. On July 3, 2013 the Appellant filed a Notice of Appeal with the ALC seeking review of the Board's denial of parole. As grounds for the appeal, the Appellant contends that the Board committed ex post facto violation by applying the current versions of S.C. Code Ann. §§ 16-1-60 and 24-21-645 therefore classifying him as a violent offender and subjecting him to more stringent criteria for consideration for parole. The Appellant also asserts that the Board is denying him eligibility for parole by failing to allow him to have a parole hearing every year.

DISCUSSION

An individual has a right to ALC review of a final decision of the Board only when that decision affects a liberty interest for which due process is required. See Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146, 149, 150 (2003); see also Sullivan v. South Carolina Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124, 127 (2003)

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(explaining the nature of the right to ALC review). In Furtick, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, the statute creates no such liberty interest in the granting of parole itself. Furtick, 352 S.C. at 598, 576 S.E.2d at 149 n.4. Therefore, claims arising from the Board's decision denying parole are not appealable to the ALC, only claims that the Board failed to consider the appropriate criteria so as to be tantamount to an abrogation of parole eligibility. Cooper v. S.C. Dep't. of Probation, 377 S.C. 489, 661 S.E.2d 106 (2008).

The Appellant challenges the sufficiency of the Board's decision based on the argument that it committed ex post facto violations by applying the current versions of S.C. Code Ann. §§ 16-1-60 and 24-21-645 rather than the versions that were in affect at the time of his conviction in 1982. An ex post facto violation occurs when a legislative amendment produces a sufficient risk of increasing the measure of punishment attached to the cover crimes. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000).

Section 16-1-60 provides those offenses which are considered violent. Before 1994 the South Carolina Code of Laws did not list which crimes were considered violent as opposed to non-violent. If an individual has been convicted of a crime that has been classified as violent pursuant to § 16-1-60, his eligibility for parole can be affected in two ways. First, pursuant to S.C. Code Ann. § 24-21-640 (Supp. 2011), an individual serving a sentence for a second or subsequent conviction for a violent crime is not eligible for parole. Section 24-21-640 does not apply to the Appellant as he is eligible for parole and has been afforded a parole thirteen parole hearings since 1998.

Second, pursuant to S.C. Code Ann. § 24-21-650 (Supp. 2011), a person convicted of a violent offense must receive a positive vote from two-thirds of the Board in order to receive parole. At the time of the Appellant's conviction, an individual was only required to receive a positive vote from a majority of the Board members. In this case, it is unclear whether the Board applied the majority rule or the two-thirds rule. The Appellant is entitled to application of the majority rule that was in affect at the time of his conviction. Barton v. S.C. Dept. of Probation, Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013). However, even if the Board applied the two-thirds rule to the Appellant, he did not suffer prejudice from any ex post facto violation that may have occurred. According to the affidavit of Roosevelt Hicks, a supervisor in

the Office of Board Support Services, the Appellant did not receive any votes to grant parole during his June 19, 2013 parole hearing. The Appellant would not have been granted parole under either the current version of § 24-21-650 or the version of § 24-21-650 that was in affect in 1982. Whether the Appellant was classified as a violent offender under § 16-1-60 did not affect the outcome of his parole hearing.

The Appellant also claims an ex post facto violation for the application of the current version of § 24-21-640 which provides the criteria the Board must consider when granting parole. The current version of § 24-21-640 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 his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

At the time the Appellant was convicted in 1982, S.C. Code Ann. § 55-612 provided the criteria the Board must consider when determining whether to grant or deny parole. Section 55-612 stated:

The Probation, Parole and Pardon Board shall carefully consider the record of the prisoner, before, during and after imprisonment, and no such prisoner shall 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 his imprisonment; that the interests of society will not be impaired thereby; and that suitable employment has been secured for him.

S.C. Code Ann. § 55-612 (Supp. 1962). Here, the current version of § 24-21-640 is substantially the same as § 55-612 which was in affect at the time of the Appellant's conviction. Therefore, the criteria applied by the Board when determining whether to grant or deny parole was no more stringent than if it applied § 55-612 and the Appellant suffered no prejudice.

The Appellant also claims that the Board is denying him eligibility for parole by denying him the opportunity for a hearing on an annual basis. The affidavit of Roosevelt Hicks indicates

that the Appellant has been afforded a parole hearing every year since 1998 except for 1999 and 2010. In 1999 and 2010 the Appellant did not have a parole hearing due to unforeseen circumstances. The present appeal is from the Board's 2013 decision to deny the Appellant parole. The record indicates that the Appellant was afforded an opportunity to be heard by the Board in 2013 and has been afforded an opportunity on an annual basis since 1998. It is unclear why the Appellant did not have a parole hearing in 1999 or 2010. However, that issue is not before the court at this time.

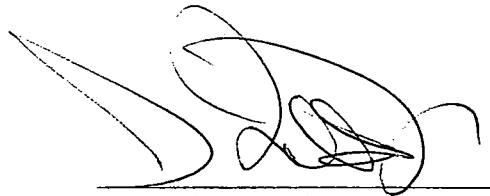
The record reflects that the Board considered all the appropriate factors before making its decision to deny the Appellant parole. The Board did not commit any ex post facto violations by applying the current versions of S.C. Code Ann. §§ 16-1-60 and 24-21-640. If any ex post facto violations were committed, the Appellant was not prejudiced. Finally, the Appellant is granted the opportunity for a parole hearing on an annual basis and has not been prejudiced by any delays that may have occurred over the time of his incarceration. Therefore, the court cannot grant relief to the Appellate.

ORDER

For the foregoing reasons, the Department's decision denying the Appellant parole is **AFFIRMED.**

AND IT IS SO ORDERED.

April 9, 2014
Columbia, South Carolina



S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Leah E. Garland, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Leah E. Garland
Judicial Law Clerk

April 10, 2014
Columbia, South Carolina

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SC ADMINISTRATIVE COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

PERSONALLY appeared before me, Roosevelt Hicks, who, after being duly sworn, deposes as follows:

1. I am an employee of the South Carolina Department of Probation, Parole & Pardon Services where I hold the position of Supervisor in the Office of Board Support Services.
2. I have personal knowledge of the procedures and laws that apply to the scheduling and consideration of parole.
3. I have reviewed the records of Mr. Ronald Tate's hearings held on July 17, 2002; July 16, 2003; July 28, 2004; July 13, 2005; July 26, 2006; August 29, 2007; October 8, 2008; November 17, 2009; February 9, 2011; May 9, 2012 and June 19, 2013. At each of these hearings all members present voted to reject parole. No favorable votes were cast.

FURTHER AFFIANT SAYETH NOT.

Roosevelt Hicks

Roosevelt Hicks
Supervisor, Office of Board Support Services
South Carolina Department of Probation,
Parole & Pardon Services

SWORN to before me this 7th
day of October, 2013

Magnum K Brown

Notary Public for South Carolina

My Commission Expires: 7/26/2021

**STATE OF SOUTH CAROLINA
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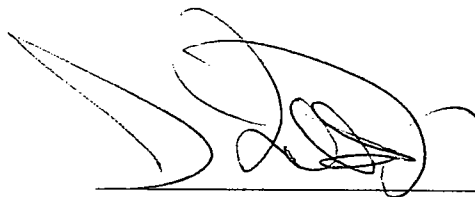
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ORDER

For the foregoing reasons, the Department's decision denying the Appellant parole is **AFFIRMED.**

AND IT IS SO ORDERED.

April 9, 2014
Columbia, South Carolina



S. Phillip Lenski
Administrative Law Judge

3
STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
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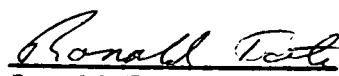
DESIGNATION OF MATTER

Appellant proposes the following information in the Record on Appeal:

1. Criteria For Parole Consideration Dated September 27, 2013.
2. Notice Of Rejection Dated June 20, 2013.
3. Administrative Law Court's Order Dated April 9, 2014.

Documents Designated by Respondent:

1. Administrative Law Court's Order April 9, 2014.
2. Affidavit of Roosevelt Hicks Dated October 7, 2013.


Ronald Tate, #114188
Appellant

March 10, 2015

STATE OF SOUTH CAROLINA
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RONALD TATE, #114188.....APPELLANT

v.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal complies
with Rule 210 SCACR and contains all material proposed to be included
in the Record on Appeal by all of the parties and not any other material.


Ronald Tate, #114188
Appellant

Perry Correctional
Institution Q2 B220
430 Oaklawn Road
Pelzer, S.C. 29669

APPELLATE PRO SE

March 10, 2015

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RONALD TATE, #114188.....APPELLANT

v.

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

CERTIFICATE OF SERVICE

I, Ronald Tate, (Appellant), hereby certify that I have served the within Record on Appeal, dated March 10, 2015, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, the 10 day of March 2015, addressed to:

Tommy Evans, Jr., Esquire
2221 Devine St., Suite 600
SCDPPP'S P.O. Box 50666
Columbia, S.C. 29250

Hon. S. Phillip Lenski
Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, S.C. 29201

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

Ronald Tate
Ronald Tate, #114188
Appellant

Perry Correctional
Institution Q2 B220
430 Oaklawn Road
Pelzer, S.C. 29669

This 10, Day of March 2015
at Pelzer, South Carolina.

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