

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Philip Lenski, Administrative Law Judge
Case No. 14-ALJ-15-0026

Appellate Case No. 2014-002592

Alfonso Ware, 168464,

Appellant,

v.

South Carolina Dept of Probation
Parole and Pardon Services,

Respondent.

RECORD ON APPEAL

MAR 13 2015

SC

Alfonso Ware

Alfonso Ware
BRCI/Monticello 242; 168464
4460 Broad River Road
Columbia, SC 29210
Appellant, pro se

Tommy Evans Jr., Esquire
S.C.D.P.P.P.S.
P.O. Box 50666
Columbia, SC 29250
Attorney for Respondent
(803) 734-9220

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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

April 9, 2014

Mr. Alphonso Ware, Jr #00168464
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Ware, Jr:

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.

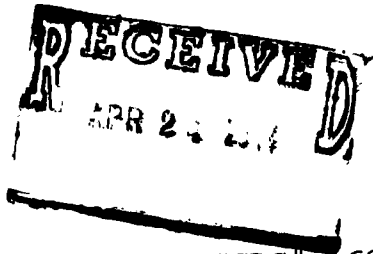
FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Prior Criminal Record Indicates Poor Community Adjustment

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.".

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



April 17th, 2014

Alphonso Ware, Jr. SCDC# 168464
Broad River Correctional Institution
Wateree #286
4460 Broad River Road
Columbia, SC 29210

State of South Carolina Department of
Probation, Parole, and Pardon Services
2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, SC 29250

May 4 8

Re: Rehearing

Dear Parole Board,

I am sending this letter to request a rehearing from my parole hearing on April 8th, 2014. I feel the question that the chairman asked about my victim was against my case, being that it is pending in court. I appreciate your assistance in this matter.

Sincerely,

Alphonso Ware, Jr.

Alphonso Ware, Jr.

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
Facsimile: (803) 734-9440
www.dppps.sc.gov/

May 29, 2014

Mr. Alphonso Ware(168464)
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Ware:

I am writing this letter on behalf of the SC Board of Probation, Parole and Pardon.

The Parole Board heard your request for a rehearing on May 28, 2014. After thorough consideration, and after having reexamined the parole file, the Parole Board decided that the reasons stated in your request did not affect the decision of the Parole Board, and would not affect the decision of the Parole Board if they were to rehear your case. Your request for a rehearing was denied by the Parole Board. The Board's decision is final.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support

LRP/eaw

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

SC Board of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, SC 29250

Inmate Name Alfonso Ware SCDC # 168464

Set 129

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;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. 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;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. 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;
10. 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;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These 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 as it 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 regulation 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 precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

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

1. 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 rejections. Applicable legal exceptions may allow for a one year hearing.
2. 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 rejections.

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

Inmate's Signature <u>Alfonso Ware</u>	Date <u>11-21-13</u>	Witness <u>[Signature]</u>	Date <u>11/21/13</u>
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STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
Docket Number: 14-ALJ-15-0026

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

ALFONSO WARE JR., #168464 APPELLANT

V.

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

INITIAL BRIEF OF APPELLANT

Alfonso Ware Jr.
BRCI/Wateree 286; #168464
4460 Broad River Road
Columbia, SC 29210

FILED

10/3/2014

CLERK OF COURT

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STATEMENT OF THE CASE

Appellant was indicted January Term Grand Jury Lexington County for murder.

Appellant went to trial June 25-27, 1990, he was found guilty as charged, and sentence to Life in prison by the Honorable Hubert E. Long.

A timely Notice of Appeal was filed and Appellant was represented by Robert M. Dudek of the S.C. Office of Appellate Defense. The S.C. Supreme Court Affirmed Appellant's conviction and sentence. See, State v. Ware, Op.No. 90-MO-17 (S.Ct App. filed Feb.24,1992).

Appellant filed P.C.R. Application August 21, 1992, State filed its Return on October 9, 1992. On May 2, 1995 an Evidentiary hearing was held before the Honorable Daniel E. Martin by Order dated June 16, 1995, Judge Martin denied and dismissed Appellant's application. A timely Notice of Appeal was filed and a Petition for Writ of Certiorari was submitted. On November 8, 1996 the S.C. Supreme Court denied the Petition. A petition for rehearing was denied on December 19, 1996.

Appellant filed a Petition for Writ of Habeas Corpus in the U.S. District Court. The petition was denied on January 14, 1998. The Appellant appealed this decision to the U.S. Court of Appeals for the Fourth Circuit. The dismissal of the Appellant's petition was affirmed on June 2, 1998.

The Appellant filed another PCR Application on February 10, 2000, an Evidentiary hearing was convened on June 14, 2001, the Honorable J.C. Nicholson denied Respondent's Motion to Dismiss and allowed Appellant to submit another PCR Application.

An Evidentiary hearing was convened on August 27, 2001, the Honorable G. Thomas Cooper denied the Application. The Appellant filed another application for PCR. On December 6, 2001, an Evidentiary hearing into the matter was convened on January 6, 2003, the Honorable Marc Westbrook denied the Application. Appellant filed PCR Application on August 14, 2003, and April 7, 2004.

Parole History:

The Appellant has been before the parole board on November 29, 2009; January 4, 2011; and the most recent was April 8, 2014, and rejected for the following reasons which was stated on each of the Notice of Rejection:

- Nature and Seriousness of Current Offense
- Indication of Violence in this or Previous Offense
- Use of Deadly Weapon in this or Previous Offense
- Prior Criminal Record Indicates Poor Community Adjustment

The Appellant's parole hearing and rejection was held on April 8, 2014; after Appellant received his Notice of Rejection dated April 9, 2014, he filed a Petition for a Rehearing dated April 17, 2014. The Appellant received the Board's Final Decision dated May 29, 2014.

The Appellant then filed a Notice of Appeal with the Administrative Law Court dated June 11, 2014 and filed on the same date,

and assigned to the Honorable Philip Lenski on June 16, 2014. The
~~XXXXXX~~ Appellant brief supporting arguments follows.

ARGUMENT ONE

DID THE S.C.D.P.P.P.S. APPLY IMPROPER CRITERIA IN DECIDING APPELLANT'S PAROLE?

Appellant's point here is very simple. The General Assembly created parole, and gave the parole board the power to administer parole, and to create the criteria for the granting of parole. 24-21-640 "Circumstances Warranting Parole". "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. The Board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records." The criteria that was created by S.C. Code Ann. §24-21-640 is outlined in S.C.D.P.P.P.S. own Form 1212, which is in use. See, attached Exhibit #A. Criteria for Parole Consideration.

First this is not a criteria for granting of parole, but is a criteria for parole consideration. S.C. Code Ann. §24-21-640

gives the Board the power to create the criteria for granting of parole, not consideration of parole.

Numbers two, four, thirteen, fourteen, and fifteen are not factor that should be included in §24-21-640. The Appellant argues that the Board Consideration of Department Form 1212, a criteria of finding of facts, forecloses the legislatures intent of circumstances warranting the granting of parole. The function of the statutory criteria outlined in section 24-21-640 is foreclosed by the Board use of the immutables of Department Form 1212, such as the nature and seriousness of the Appellant's offense renders the Appellant ineligible for parole.

"we must employ the rule of statutory construction to ascertain and effectuate the intent of the General Assembly see Hawkin v. Bruno Yacht Sales Inc., 353 S.C. 174,178, 420 S.E.2d 843." "The Cardinal Rule of Statutory Construction is to ascertain and effectuate the intent of the Legislature" Media Gen, Commc'ns, Inc. v. S.C. Dept. Revenue, 388 S.C. 138, 694 SE2d 529 (2010). Where the statute language is plain, unambiguous and conveys a clear, definite meaning, the rules of statutory interpretation are ~~not~~ not needed and the Court has no right to impose another meaning Gay v. Ariail, 381 S.C. 341, 673 SE2d 418 (2009). The statutory language must be construed in light of the intended purpose of the statute. No where in the statute does it state that any consideration should be given to numbers 2, 4, 13, 14, as part of the criteria for granting parole. The parole board must follow

appropriate criteria, rationale consistent with the statute. The Board's decision must not be arbitrary and capricious nor based on impermissible considerations. See, Zanivino v. Arnold, 531 F2d 687.

When the parole board chooses to use immutable factors that were not what the General Assembly intended, the parole board is violating Appellant's due process rights and equal protection of the law, thus making Appellant ineligible for parole. "If the Parole Board deviates from or fails to render its decision without consideration of the appropriate criteria, it essentially abrogates an inmates right to be parole eligible and thus infringes on a state-created liberty interest." Cooper v. S.C.D.P.P.P.S., 377 S.C. 489, 661 SE2d 106 (2008).

When the State relies on "the Nature and Seriousness" of Appellant's "Previous Offense", "Use of Deadly Weapon" in this or previous offense, or places into issue Appellant's future dangerousness as a justification for denial of parole release. This practice results in imposing additional multiple punishment for an unnamed previous offense. Multiple punishment is unconstitutional, under the Fourteenth Amendment of the U.S. Constitution Due Process Clause, and under the Fifth Amendment of the U.S. Constitution Double ~~xxx~~ Jeopardy Clause.

In administrative proceedings the general rule is that the Appellant for relief, benefits, or a privilege has the burden of proof. Appellant has cited the statute as intended by the Legislature as proof that the criteria being used by the Parole Board

is not the intent of the General assembly, see, Leventis v. S.C. Dept. of Health and Environmental Control, 391 S.C. 116, 630 S.E2d 943 (2000). The Parole Board decision was made on unlawful procedure.

ARGUMENT TWO

DID THE S.C. PAROLE BOARD GO OUTSIDE OF THE CRITERIA FOR THE GRANTING PAROLE WHEN THE PAROLE BOARD MEMBER ASKED APPELLANT ABOUT THE VICTIM ROBERT CHANON WHEN THEY KNEW THE VICTIM WAS DECEASED

As stated above the General Assembly gave the S.C.D.P.P.P.S. through the statute §24-21-640 the authority to create the criteria for the granting of parole. Nowhere in the criteria is it permitted to question the Appellant about the facts of his conviction.

The South Carolina Supreme Court in hinton v. s.c.d.p.p.p.s., 357 S.C. 327, 592 SE2d 335, "We find it unacceptable that the Parole Board should look to so called 'facts' of the case to make this determination, for the facts are almost always disputed, and neither this Court nor the Parole Board has any way of extricating which particular 'facts' the Jury decided were true and which were not. The Parole Board should not undertake such a determination in what would amount to a Defacto Second Trial and an egregious due process violation."

The Respondent may attempt to assert that it was a mere recitation of the circumstances of the commitment offense. However this argument fails, because the question went beyond the record and into facts of the condition of the victim. The circumstance to be ~~exam~~ considered here is the offense alone and not the facts surrounding the offense.

The method used by the parole board is the issue here, Appellant asserts that whatever method and by whatever authority such actions were implemented are arbitrary, capricious, and unfound at law and in equity.

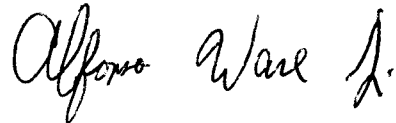
Nowhere in the statute §24-21-640 or any of the Amendments thereto, is it permitted to use the consideration of the facts in making the parole decision.

If a Parole Board deviates from or fails to render its decision with consideration of the appropriate criteria it essentially abrogates an inmates right to parole eligibility, and thus infringes on a state-created liberty interest, Cooper v. S.C.D.P.P.P.S., 377 S.C. 489, 661 SE2d 106 (2008). The Parole Board must follow appropriate criteria and rational consistent with the statute §24-21-640. By not following and adhering to the Legislative intent prior to, during, and after Appellant's parole hearing, the Parole Board essentially and effectively abrogated Appellant's right to parole eligibility.

CONCLUSION

Appellant's should be REMANDED back to the S.C. Parole Board for consideration for parole using the criteria that is consistent with the intent of General Assembly.

Respectfully Submitted,



Alfonso Ware Jr.
BRCI/Wateree 286; #168464
4460 Broad River Road
Columbia, SC 29210

DATED: August 18, 2014
COLUMBIA, SOUTH CAROLINA

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
Docket Number: 14-ALJ-15-0026

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

ALFONSO WARE JR., #168464 APPELLANT

V.

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

CERTIFICATE OF SERVICE

Appellant, Alfonso Ware Jr., declares under the penalty of perjury that I have mailed a copy of the Initial Brief of Appellant to the parties listed below depositing the same in the U.S. Mail, postage prepaid and clearly addressed to the following:

The Honorable Philip Lenski
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

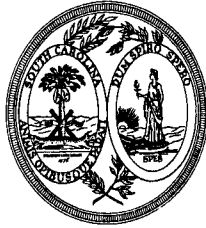
Mr. Tommy Evans Jr.
S.C. Dept of Probation, Parole &
Pardon Services
Post Office Box 50666
Columbia, South Carolina 29250

s/ Alfonso Ware Jr.
Alfonso Ware Jr.
BRCI/Wateree 286; #168464
4460 Broad River Road
Columbia, SC 29210

Date: August 18, 2014

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
Facsimile: (803) 734-9440
www.state.sc.us/ppp

September 9, 2014

The Honorable Philip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

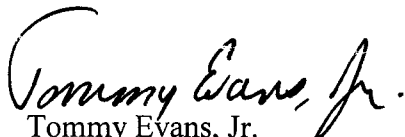
RE: Alphonso Ware, #168464 v. S.C. Department of Probation, Parole and Pardon Services

Dear Judge Lenski:

Please find enclosed for filing the *Brief of Respondent* dated September 9, 2014, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures

cc: Alphonso Ware, #168464

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 14-ALJ-15-0026

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

ALPHONSO WARE, #168464 APPELLANT

v.

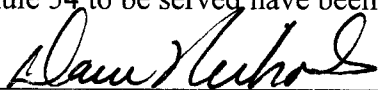
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Respondent, certify that I have served the within *Brief of Respondent*, dated September 9, 2014, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 9th day of September, 2014, addressed to:

Alphonso Ware, #168464
Broad River Correctional Institution
4460 Broad River Road
Columbia, South Carolina 29210

I further certify that all parties required by Rule 54 to be served have been served.



Dawn Nichols
Executive Administrative Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 14-ALJ-15-0026

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

ALPHONSO WARE, #168464.....APPELLANT

v.

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

BRIEF OF RESPONDENT

Tommy Evans, Jr.
Assistant General Counsel

**South Carolina Department of Probation,
Parole, and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220**

ATTORNEY FOR THE RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Did the Respondent fail to reveal the mandatory criteria found in South Carolina statutory law and Department policy was followed by the Board prior to the denial of parole?
2. Did the Board apply improper criteria prior to the decision denying the Appellant an opportunity to be released on parole?
3. Did the Board go outside the mandatory criteria prior to the denial of parole?

STATEMENT OF THE CASE

On November 25, 1989, the Appellant shot the victim Mr. Robert Chanon in the chest with a .22 caliber pistol, Mr. Chanon later died as a result of his gunshot wounds. The Appellant was later arrested by the Lexington County Sheriff Department, and charged with the offense of murder.

On June 27, 1990, the Appellant appeared before the Honorable Hubert Long for this offense. Upon the conclusion of this appearance Judge Long sentenced the Appellant to a period of incarceration for the remainder of his natural life. At the time the Appellant committed this offense, South Carolina law allowed an inmate serving a life sentence for murder parole eligibility upon the service of twenty (20) years.

The Appellant made his initial appearance before the Board on September 11, 2009. At the conclusion of this appearance, the Board decided to deny the Appellant an opportunity to be released on parole. Since this initial appearance the Appellant has appeared before the Board an additional two times, each resulting in a denial of parole. His most recent appearance occurred on April 8, 2014, parole was denied due to: 1) the nature and seriousness of the current offense; 2) an indication of violence in his or a previous offense; 3) the use of a deadly weapon in this or a previous offense; and, 4) a prior criminal record that indicates poor community adjustment. Upon receiving his notice of denial the Appellant issued a request for reconsideration. At the receipt of this request, the Board decided to reexamine the Appellant's file. At the conclusion of this reexamination, the Board determined that the reasons for the request did not affect the final decision of the Board, the request for reconsideration was denied. Once the Appellant received the denial of reconsideration he filed a notice of appeal before the Administrative Law Court (ALC).

In this notice of appeal the Appellant argues that the Board failed to follow criteria; thereby, denying him a realistic opportunity to participate in the parole program. The Respondent will argue that the Board followed the mandatory criteria. The Respondent would further argue that in order for the Board to make a determination, the facts of the case must be taken into consideration. The brief of the Respondent defending the above reference arguments follows.

ARGUMENTS

1. The Respondent followed the mandates proscribed by the South Carolina Supreme Court in the *Cooper* opinion.

A final decision shall include a findings of fact and conclusions of law separately stated. *S.C. Code ann. §1-23-350 (Supp. 2013)*. It is the Respondent's position that the order of denial followed the standards found in the above referenced statute; and, by the South Carolina Supreme Court in the case of *Cooper v. S.C. Dept. of Probation, Parole, and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008). In *Cooper*, the Supreme Court decided that a finding of fact was included; however, the Court determined that the Parole Board neither, "offered an explanation nor indicated that it considered the statutory criteria of section 24-21-640 and the fifteen criteria listed on the parole form." *Id.*, at 500. The Supreme Court decided that if the Parole Board fails to consider and apply the statutory-related criteria, it has the effect of rendering an inmate parole ineligible, which warrants review by the ALC. *Id.*, at 502.

In *Cooper*, the Court established what future Parole Board orders should consist of, in *Cooper* specifically states:

We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority

to review the decision to determine whether the Board followed proper procedure.

Id.

In the case at bar, the order of denial did conform with the *Cooper* decision. The findings of fact were the reasons provided as to why parole was denied; and the conclusions of law were the statutes and factors used to determine the denial of parole. The order is clear, the criteria within the statute and the mandatory policy were considered prior to the denial of parole. The reason given for denial were reasonable and followed the mandatory criteria.

In *Cooper*, the court determined that the order of denial was unlawful due to it not presenting any conclusions of law. It was the opinion of the Court that in order for the Board to prove that proper procedures were followed it must not only state a findings of fact, but the statute and policy considered in reaching this conclusion. The order of denial was clear, the criteria within the statute and mandatory policy were considered prior to the denial of parole. According to the Supreme Court, if this is shown no further review by the ALC is necessary.¹

2. The Parole Board did apply the proper criteria prior to deciding that the Appellant should not be granted parole.

The Appellant argues that the criteria for granting parole is not criteria for parole consideration. Pursuant to South Carolina law, the General Assembly has established criteria that must be considered by the Board prior to an inmate's parole consideration. The South Carolina Code of Laws specifically state:

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

¹ The Parole Board clearly stated in its notice of rejection that it considered the statutory criteria and the criteria set forth in form 1212 which is sufficient under *Cooper. Compton v. S.C. Dept. of Probation, Parole and Pardon Services*, 385 S.C. 476, 685 S.E.2d 175 (2009).

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.

S.C. Code Ann. §24-21-640 (Supp. 2013).

Within South Carolina law the Board is also responsible for the creation of their own criteria. The Department has created fifteen criteria that it must consider prior to making their decision. This criteria must be revealed to the inmate prior to his hearing, and must encompass all of the above referenced criteria.²

The Appellant argues that certain criteria established by the Board, and used to determine the denial of his parole, are not factors included within the criteria found in South Carolina law. It is the Appellant's opinion that: the nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it; the inmate's attitude toward his/her family, the victim, and authority in general; the attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole; and the feelings of the victim's family, and any witnesses to the crime about the release of the inmate, are not factors that should be considered by the Parole Board. Each of these criteria, as well as the other eleven created by the Department, encompasses all of the mandatory criteria found in South Carolina law.

The nature and seriousness of the inmates offense, calls for the Board to look into the record of the prisoner before they are incarcerated. The Board also must be assured that the interest of society would not be impaired. It has to be reasonable that an offense committed by the Appellant be taken into consideration. This must be considered to determine any future dangerousness of the

² The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of the prisoner's disciplinary and other records. *S.C. Code Ann. §24-21-640(Supp. 2013).*

Appellant. The Board does not want to release anyone on parole that might cause harm to another member of the community.

The inmates current attitude toward his family and the victim allows the Board to consider the record during incarceration; and, if the prisoner has shown a disposition to reform. It is not only the responsibility of the State to provide measures to assist in rehabilitation; but, it is up to the inmate to take advantage of the opportunities provided. If the Appellant fails to take advantage of programs offered by the Department of Corrections, this would reveal a lack of a disposition to reform.

The attitude and opinion of the victim, law enforcement, the Solicitor, and the sentencing Judge must also be considered. The South Carolina Code of Laws specifically state:

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. 2013).

It is also listed in the victims bill of rights, that a victim must, “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 decision.” S.C. Const. art. I, §24. The Board did not commit any unlawful action by obtaining the opinion of the other parties. This notification is required pursuant to South Carolina law.

The Appellant also argues that the Board committed double jeopardy in the denial of his parole. The United States Constitution specifically states, “no person should be twice put in

jeopardy of life or limb for the same offense.” U.S. Const. Amend. V. The denial of parole is not a separate punishment for the commission of the identical crime, nor is it prosecuting a person twice for the identical crime; thus, it cannot be considered double jeopardy. Double jeopardy, rather than being a single doctrine is comprised of three separate through related rules, prohibiting, 1) re-prosecution for the same offense following acquittal; 2) re-prosecution for the same offense following conviction; and, 3) multiple punishment for the same offense. *Riley v. South Carolina*, 82 F.Supp. 2d 474 (2000). A parole hearing does not fall under any of these criteria, so it cannot be considered double jeopardy. Parole is just an avenue that could possibly relieve an inmate from serving their entire sentence incarcerated, it is not a re-prosecution or a multiple punishment. A parole hearing is not a criminal prosecution, it is a result of a prosecution already resolved. The Supreme Court has determined that while an underlying probation violation may themselves be criminal offenses, the probation revocation proceeding is not a criminal trial of those charges, but a more informal proceeding with respect to notice and proof of alleged violation. *State v. Franks*, 276 S.C. 636, 281 S.E.2d 227 (1981). A probation violation is not considered a criminal trial, so neither can a parole hearing. There does not exist any violation of double jeopardy.

3. The Board never deviated from the criteria established by the General Assembly, or found in Department criteria.

The Appellant argues that the criteria does not allow the Board to raise issues regarding the underlying facts of a crime which he is currently incarcerated. To support his argument, the Appellant cites the South Carolina Court of Appeals case of *Hinton v. S.C. Dept. of Probation, Parole and Pardon Services*, 357 S.C. 327, 592 S.E.2d 335 (2004). In *Hinton*, the Court of Appeals ruled that the Board cannot consider the facts of an out of state conviction to deny of parole eligibility. That decision is not in any way similar to the present case. It must be considered reasonable that the Board consider the facts of a case prior to deciding whether or not an inmate

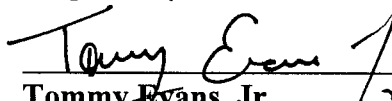
should be released on parole. The Board must believe society will not be impaired by the release of an inmate on parole. The Board must also be convinced that in the future the inmate obey the law and lead a correct life. One of the ways the Board can determine the character or future dangerousness of an inmate is by the crime committed. It should be less challenging for an inmate serving a sentence for shoplifting to be granted parole than one serving a sentencing for murder.

The statute does refer to the record of the inmate before, during and after incarceration. The facts of the offense is a part of the Appellant's record prior to incarceration. When the General Assembly makes it mandatory that the Board carefully consider the record of the inmate before imprisonment, the violent nature of the actions of the Appellant must be considered. Sufficient substantial evidence was provided revealing the reasons for denial was reasonable; therefore, the decision of the Board should be affirmed. The findings of the Appellate panel are presumed correct and will only be set aside if unsupported by substantial evidence. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981).

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests that this appeal be dismissed with prejudice; or, the final decision of the South Carolina Department of Probation, Parole and Pardon Services be affirmed.

Respectfully submitted,



Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina
September 9, 2014

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
Docket Number: 14-ALJ-15-0026

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

ALFONSO WARE JR., #168464 APPELLANT

v.

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

REPLY BRIEF OF APPELLANT

FILED

SEP 18 2014

SC ADMIN. LAW COURT

Alfonso Ware Jr.
BRCI/Monticello 286; #168464
4460 Broad River Road
Columbia, SC 29210

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APPELLANT'S REPLY BRIEF ISSUES ON APPEAL

Issue No.1

Did the S.C.D.P.P.P.S. apply improper criteria in deciding Appellant's parole, thereby making Appellant ineligible for parole?

Issue No.2

Did the S.C. Parole Board go outside of the criteria for the granting parole when the parole board member asked Appellant about the victim Robert Chanon, when they knew the victim was deceased?

REPLY BRIEF - RESPONSE TO RESPONDENT'S INITIAL BRIEF

APPELLANT'S ARGUMENT NO.1

DID THE S.C.D.P.P.P.S. APPLY IMPROPER CRITERIA IN DECIDING APPELLANT'S PAROLE, THEREBY MAKING APPELLANT INELIGIBLE FOR PAROLE?

Respondents are attempting to change the focus of this issue by use of a ruse. Appellant's point here is very simple. The parole board was vested with the power to create the criteria for the granting of parole. The Parole Board created §24-21-640 "Circumstances Warranting Parole". Respondents have failed to address this in their response!

Is it appropriate and/or legally permissible to deliberately ignore a valid critical appeal issue that is raised by the Appellant?

When the Respondent failed to assert affirmatively any objection to this claim by the Appellant, the Respondent in effect, in law and equity waived the right to further judicial review. See, U.S. v. Schrone, 727 F2d 91 (4th Cir).... Citing Rule 208 (B) (1)(D) S.L.A.C.R. Divine v. Robbins, 385 S.C. 23, 683 SE2d 286 (Ct.App.2009)(Noting that when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal)... Abandonment of a claim is not a principle that works only to detriment of the Appellant. It is a sword that cuts both ways.

When the Respondent concedes to the facts given in the presentation in Appellant's Brief, those facts carry the weight of the preponderance of the evidence which fulfills the fundamental element of the law, and further creates proof in the favor of the Appellant.

By failing to follow the intent of the General Assembly in creating a criteria for the granting of parole, the parole board is deviating the appropriate criteria, it essentially abrogates Appellant's right to be parole eligible, and thus, infringes on a state-created liberty interest, Cooper v. S.C.D.P.P.P.S., 661 SE2d 106 (2008). The Parole Board is using criteria outside of the legal and proper standards and requirements of S.C. State Legislature.

REPLY BRIEF - RESPONSE TO RESPONDENT'S INITIAL BRIEF
APPELLANT'S ARGUMENT NO.2

DID THE S.C. PAROLE BOARD GO OUTSIDE OF THE CRITERIA FOR THE GRANTING PAROLE WHEN THE PAROLE BOARD MEMBER ASKED APPELLANT ABOUT THE VICTIM, ROBERT CHANON, WHEN THEY KNEW THE VICTIM WAS DECEASED?

The Respondents don't deny that they are using the facts of the Appellant's conviction in making the decision concerning Appellant's parole.

The Appellant does not argue that the circumstances are to be considered. Again, however, the question asked by the parole board member went beyond the circumstances and into facts that are still disputed. And it is this way similar to Hinton v. S.C.D.P.P.P.S., 357 S.C. 327, 592 SE2d 335.

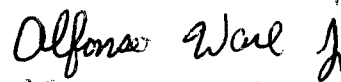
The Board has went beyond the consideration of the offense alone, and question Appellant concerning particular "facts", to do "this amount to a defacto second trial and an egregious due process violation."

By not following the criteria in this respect, the parole board has made Appellant ineligible for parole consideration.

CONCLUSION

Appellant should be remanded back to the S.C. Parole Board for consideration for the Granting of Parole in accordance with the statute and the Intent of the General Assembly.

Respectfully submitted,



Alfonso Ware Jr.
BRCI/Monticello 286; #168464
4460 Broad River Road
Columbia, SC 29210

DATED: September 18, 2014

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
Docket Number: 14-ALJ-15-0026

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

ALFONSO WARE JR., #168464 APPELLANT

v.

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

CERTIFICATE OF SERVICE

Appellant, Alfonso Ware Jr., declares under the penalty of perjury that I have mailed a copy of the Reply Brief of Appellant to the parties listed below depositing the same in the U.S. Mail, postage prepaid and clearly addressed to the following:

The Honorable Philip Lenski
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Mr. Tommy Evans Jr.
S.C. Dept of Probation, Parole &
Pardon Services
Post Office Box 50666
Columbia, South Carolina 29250

s/ Alfonso Ware Jr.
Alfonso Ware Jr.
BRCI/Monticello 286; #168464
4460 Broad River Road
Columbia, SC 29210

Date: September 18, 2014

FILED

SEP 18 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Alphonso Ware, 168464,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 14-ALJ-15-0026-AP

ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of Alphonso Ware (“The Appellant”), an inmate incarcerated with the South Carolina Department of Corrections. The Appellant is serving a life sentence for the offense of murder, which he committed in 1989. At the time the Appellant committed this offense, South Carolina law allowed an inmate serving a life sentence for murder parole eligibility upon the service of twenty (20) years. On April 9, 2014, 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 April 17, 2014 the Appellant filed a request for a rehearing which was denied by the Parole Board pursuant to a letter dated May 29, 2014. On June 11, 2014 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 failed to apply the appropriate criteria for granting or denial of parole and that the Board considered factors outside of the appropriate criteria for granting or denial of parole.

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).

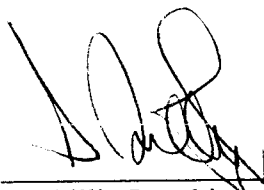
The Appellant challenges the sufficiency of the Board's decision by alleging that the Board did not apply the correct criteria for granting or denial of parole as required by Cooper. The court in Furtick established that, although parole is a privilege and not a right, inmates still have a liberty interest in parole eligibility. 352 S.C. at 598, 576 S.E.2d at 149. If the Board fails to consider the criteria set forth in S.C. Code Ann. § 24-21-640, the inmate is denied his liberty interest in parole eligibility. Cooper, 377 S.C. 489, 661 S.E.2d 106 (2008). However, as long as the Board considers all of the factors required by statute, it has protected the inmate's liberty interest in parole eligibility and it has the discretion to deny parole based on any of the factors found in § 24-21-640 or its own criteria. Id. The Board's decision reflects that it considered all the appropriate factors before making its decision to deny the Appellate parole. 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.

October 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

October 9, 2014
Columbia, South Carolina

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SC ADMIN. LAW COURT

by his conduct while incarcerated which in turn will always make him ineligible for the granting of parole and infringe on that state-created liberty interest, the appellant will always be prejudiced because of this finding.

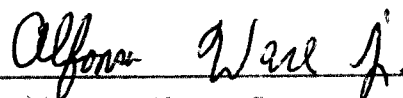
The Board is required to administer and consider all factors using §24-21-10(F)(1) and 24-21-640 and they failed to do so when they used those 'fixed' factors that will never change.

And the Board's decision was arbitrary and capricious when they considered and inquired about the victim; knowing that the victim, Mr. Chanon was deceased.

CONCLUSION

Therefore, the Appellant ask this Court 'ALC' to reconsider and alter its judgment and remand its Order granting the Appellant appeal, so that, the Board can re-schedule a rehearing, and base their decision upon the "specific" criteria for the granting of parole.

Respectfully submitted,



Alfonso Ware Jr.
BRCI/Monticello 242; #168464
4460 Broad River Road
Columbia, SC 29210

October 17, 2014
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Alphonso Ware, 168464,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 14-ALJ-15-0026-AP

ORDER

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DISCUSSION

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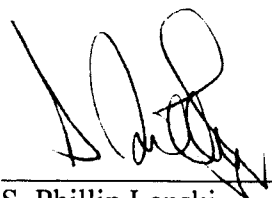
The Appellant challenges the sufficiency of the Board's decision by alleging that the Board did not apply the correct criteria for granting or denial of parole as required by Cooper. The court in Furtick established that, although parole is a privilege and not a right, inmates still have a liberty interest in parole eligibility. 352 S.C. at 598, 576 S.E.2d at 149. If the Board fails to consider the criteria set forth in S.C. Code Ann. § 24-21-640, the inmate is denied his liberty interest in parole eligibility. Cooper, 377 S.C. 489, 661 S.E.2d 106 (2008). However, as long as the Board considers all of the factors required by statute, it has protected the inmate's liberty interest in parole eligibility and it has the discretion to deny parole based on any of the factors found in § 24-21-640 or its own criteria. Id. The Board's decision reflects that it considered all the appropriate factors before making its decision to deny the Appellate parole. 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.

October 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

October 9, 2014
Columbia, South Carolina

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OCT 09 2014

SO ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Philip Lenski, Administrative Law Judge
Case No. 14-ALJ-15-0026

Appellate Case No. 2014-002592

Alfonso Ware, 168464,

Appellant,

v.

South Carolina Dept of Probation
Parole and Pardon Services,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal
contains all material proposed to be included by any of the parties
and not any other material.

Alfonso Ware

Alfonso Ware
BRCI/Monticello 242; 168464
4460 Broad River Road
Columbia, SC 29210

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Philip Lenski, Administrative Law Judge
Case No. 14-ALJ-15-0026

Appellate Case No. 2014-002592

Alfonso Ware, 168464,

Appellant,

v.

South Carolina Dept of Probation
Parole and Pardon Services,

Respondent.

CERTIFICATE OF SERVICE

Alfonso Ware, 168464, declare under the penalty of perjury, that he mailed copies of the Record on Appeal, to the parties listed below, by placing them in the U.S. Mail, clearly addressed.

S.C. Court of Appeals
Jenny A. Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina 29211

S.C. Dept of Probation, Parole
and Pardon Services
Tommy Evans Jr., Esquire
Post Office Box 50666
Columbia, South Carolina 29250

Alfonso Ware

Alfonso Ware
BRCI/Monticello 242; 168464
4460 Broad River Road
Columbia, SC 29210

COLUMBIA, SOUTH CAROLINA