

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable John D. McLeod, Administrative Law Judge

Court of Appeals Case Tracking #: 2011-203266

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SC Court of Appeals

Phillip Brown, #118100

Appellant,

v.

South Carolina Department of Probation, Parole
and Pardon Services

Respondent.

RECORD ON APPEAL

Phillip A. Brown, #118100

SA-23, Lieber C. I.

P.O. Box 205

Ridgeville, S.C. 29472

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July 2, 2012
Ridgeville, S.C. 29472

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Phillip Brown, #118100,)	
)	Docket No. 11-ALJ-15-0030-AP
Appellant,)	
)	
vs.)	ORDER OF DISMISSAL
)	
South Carolina Department of Probation, Parole and Pardon Services,)	
)	
Respondent.)	
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This case is before the Administrative Law Court (ALC) pursuant to the appeal of Phillip Brown (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On September 9, 2010, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Board of Pardons and Paroles (Board) had rejected him for parole. Appellant challenges the Board's denial of parole as well as its procedures related to his parole eligibility hearing.

BACKGROUND

On April 14, 2010, the Board made a decision to grant parole to Appellant upon the satisfaction of eight specific criteria. However, upon notification to the victim's family and the Kershaw County Sheriff's Department, both informed the Board that they received no prior notification of Appellant's parole hearing. Pursuant to state law, victims and/or their family, the solicitor, and law enforcement are required to be notified prior to an inmate's parole hearing.¹ Both the victim's family and the sheriff's department requested to be heard by the Board prior to it issuing a final decision regarding Appellant's parole. A second hearing was held by the Board on September 8, 2010, and the victim's family, the Kershaw County Sheriff, and the Fifth Circuit Solicitor were allowed to present opinions to the Board concerning the release of the Appellant on parole. Upon the conclusion of this rehearing, the Board denied parole to Appellant based upon the reasons set forth in its September 9, 2010 denial letter.

Subsequently, Appellant filed a motion with the Board requesting reconsideration of its earlier decision. The Board denied Appellant's motion. Appellant later notified the Board that

¹ Cf. §24-21-610 S.C. Code Ann.

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SC ADMIN. LAW COURT

his parole was "unlawfully revoked" and Appellant further requested the information contained within his file. The Board denied his request for information and informed Appellant that no response would be made to any additional inquiries regarding his latest parole hearing.

Based upon the Board's final decision, Appellant filed a notice of appeal with the ALC on May 4, 2011.

DISCUSSION

Board's Order

An individual has a right to ALC review of a final decision of the Department 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. S.C. Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124, 127 (2003) (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.

Appellant challenges the Board's procedures regarding his parole hearing by essentially arguing that the Board's order did not comply with Cooper and South Carolina law because it did not use any specific criteria or procedure with regard to his parole hearing. However, the Board's decision clearly states that it considered all of the criteria listed with Section 24-21-640 and the factors published in Department Form 1212 in reaching its decision. Thus, its decision to deny Appellant's parole sufficiently complied with the Court's decision in Cooper v. South Carolina Department of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008) (stating that an inmate's state-created liberty interest is infringed upon if the Board does not render an inmate's parole determination after consideration of the appropriate criteria) and Compton v. South Carolina Department of Probation, Parole and Pardon Services, 385 S.C. 476, 685 S.E.2d 175 (2009) (stating that the result in Cooper "could be avoided in the future if the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212, and that if the Parole Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC will have limited authority to review the decision.").

Parole Hearing

Appellant argues that the denial of parole was done without the benefit of a hearing, and thus, violated his due process rights. This argument must fail. Appellant was allowed to appear before the Board at the first hearing, but, because the requirements of § 24-21-610 relative to notice to the Solicitor, law enforcement and victims family had not been met, the hearing was not complete. There is no requirement that Appellant must appear at the same hearing at which the victim's family, solicitor's office, and law enforcement appear. Appellant appeared before the Board prior to it making a decision regarding his parole, and it considered all the evidence and arguments by the individuals appearing before the Board, on both dates. Because Appellant has no right to cross-examine at the parole hearing, there was no due process violation in Appellant's absence from the September 8, 2010 Board hearing. See Fleming v. Murray, 888 F.Supp.734 (D.C. Vir. 1994). Even if there were a due process violation, Appellant has not shown how he was prejudiced by such violation. Leventis v. S.C. Dep't of Health and Env'tl. Control, 340 S.C. 118, 131-32, 530 S.E.2d 643, 650 (Ct. App. 2000) ("To prove the denial of due process in an administrative proceeding, a party must show that it was substantially prejudiced by the administrative process.").

Conditional Parole

Appellant next argues that he had a vested interest in the granting of his conditional parole, and the Board's decision violated his right to due process. I disagree. In Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972), the United States Supreme Court acknowledged that a person facing a revocation of parole has minimal due process rights. However, a distinction between a person currently on parole and a person seeking parole was made in the case of Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S.1, 99 S.Ct. 2100 (1979). In Greenholtz, the Court determined that there is no constitutional or inherent right of the convicted person to be conditionally released before the expiration of a valid sentence. Thus, in the present case, Appellant's argument that he had a vested liberty interest in the granting of his conditional parole is simply without merit.² No individual has a right to be

² Appellant cites Tippins v. Luther, 869 F.Supp. 331 (W.D. Pa. 1994) to support his argument that he is entitled to some due process protections in a parole rescission hearing. However, this case is distinguishable from the instant case. First, Tippins does not provide any specific analysis of what due process protections are required to be provided in a parole rescission hearing. Furthermore, Appellant is given due process protections within the

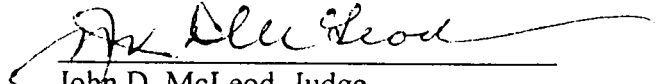
awarded parole; rather, the individual has right to a hearing. Because Appellant was never released on parole, the rights established under Morrissey do not apply in the instant case.

Assistance of Counsel

Appellant next argues that he was denied due process of law because he was not allowed to have counsel present at the September 8, 2010 Board hearing. I disagree. A parole hearing is not a formal trial. There is . . . [no] right to attend in person or to have counsel at a parole hearing.” Fleming, 888 F.Supp. at 738. As noted above, there was no right of Appellant to appear at the September 8, 2010 Board hearing.

ORDER

IT IS THEREFORE ORDERED that this appeal is dismissed with prejudice.
AND IT IS SO ORDERED.


John D. McLeod, Judge
S.C. Administrative Law Court

October 14, 2011
Columbia, South Carolina

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paroles to the State Parole Board. It is a request for
in the United States District Court and in the Agency
Mail Service addressed to the clerk(s) or their attorney(s).

This 14 day of October, 2011
By Anthony R. Johnson

administrative hearing and appeals process. Appellant provided no evidence that the due process protections discussed in Tippins drastically differ from those afforded to Appellant and how he was prejudiced by those differences, if any. Second, the inmate in Tippins had not been release from prison, but his date of parole had been approved. Here, Appellant was not given a date certain for his parole.

South Carolina Department of Probation, Parole and Pardon Services

Columbia, South Carolina

ORDER OF PAROLE

It having to be made appear to the satisfaction of the Board that

Phillip Ansel Brown is eligible for parole and has shown a disposition to reform; that there is a reasonable probability that said prisoner will remain at liberty without violating the law; that release is not incompatible with the welfare of society; and that the prisoner will not become a public charge upon release; and that the prisoner will keep the conditions on the reverse side of this order inviolate, and understands that the violation of any of the conditions will constitute a breach of faith and be sufficient grounds for the revocation of the parole issued, and the execution of the original sentence imposed.

It is therefore ordered that Phillip Ansel Brown be released on Parole the _____ day of _____, 20____ subject to said prisoner's agreement to abide by the conditions listed on the reverse side of this order, which parole is to expire _____. This parole is granted by [the full board or a panel of the full board].

Ordered this _____ day of _____, 20____

Karen A. Waldo
Chairman

Rescinded on
September 8, 2010
Vice Chairman

James H. Wilkerson

Louayne M. Tom

Orton Bellomy

J. Hodson

Re-hearing on
Sept 8, 2010.
Rowland

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CONDITIONS FOR PAROLE CASE # 9 REGION: Lieber DATE: 4/15/10

Name: Phillip Ansel Brown SCDC # 118100

1. Must attend a substance abuse program for as long as they deem necessary and submit to screening.
2. Intensive supervision for an indeterminate period not to exceed 6 months, as determined by the Department.
3. Must Attend Mental Health program for as long as they deem necessary.
4. Must have no contact with the Victim and/or Victim's family for duration of parole.
5. Must attend and successfully complete the Addictions Treatment Unit Program and attend aftercare.
6. Parole Employment Program (PEP).
7. Electronic Monitoring (Home Detention) for an indeterminate period not to exceed 90 days as determined by the Department.
8. Home Detention, not to exceed 6 months, as determined by the Department.
9. (A) Must make restitution at the rate of _____ per month for the duration of parole.
10. (B) Make restitution in the amount of _____, and at a rate of _____ per month as determined by the SCDPPPS.
11. Employment/Residence:
12. Acceptable Residence Plan.
13. Favorable Psychological Evaluation (Psychological Fee if released on Parole, see #17).
14. Parole to _____ detainer only.
15. SPICE Program (In-house Program for 19 weeks).
16. Must reimburse SCDPPPS for the cost of the Psychological.
17. Exempt supervision fee.
18. Reintegration Center-recommend 90 days, however, may be extended to 6 months.
19. Public Service Employment (100 hours maximum).
20. Title:
21. Report on or after Parole Eligibility date of _____
22. Title must be as determined by SCDPPPS.
23. Complete Sexual Predator Review.

Phillip A. Brown

Date 04-14-10

In The Matter Of:
Phillip Brown v. State of S.C.
CD Transcription

Parole Hearing Board
April 14, 2010

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PAROLE HEARING BOARD

IN RE: PHILLIP A. BROWN,

COPY

AUDIO RECORDING

DATE: April 14, 2010

TRANSCRIBED BY: LORA L. McDANIEL,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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1 (Begins audio recording.)

2 UNIDENTIFIED VOICE: Phillip A. Brown.

3 (Inaudible)

4 THE CHAIRPERSON: Morning, Mr. Brown. We
5 are waiting for your family and your attorney.

6 MR. BROWN: Good morning. Thank you.

7 UNIDENTIFIED VOICE: You sit right there,
8 and I'll sit on the other side.

9 THE CHAIRPERSON: Good morning, everyone.
10 Good morning, Attorney Brockington. Brockington; is
11 that correct?

12 MS. BROCKINGTON: Yes, that's correct.

13 THE CHAIRPERSON: Mr. Brown, before we
14 begin the hearing, we need you to state your full
15 name for the record.

16 MR. BROWN: Yes, ma'am. Phillip Ansell
17 Brown.

18 THE CHAIRPERSON: Can you introduce your
19 family to the board.

20 MR. BROWN: Yes, ma'am, I sure can. This
21 is my mother, Betty June. This is my attorney and
22 sister, Shirrese Brockington and (inaudible) and
23 Margaret Upton.

24 THE CHAIRPERSON: Thank you all for
25 attending. Mr. Brown, we are primarily interested in

1 what you have been doing to prepare yourself for
2 possible parole. You may begin a statement, or you
3 may have your attorney begin.

4 MR. BROWN: Yes, ma'am, I'd like to say a
5 little something. I have been preparing myself as
6 much as I know how. I did complete a paralegal
7 course; got pretty god high marks in it. I have
8 completed a typing course.

9 I've been active in the community here --
10 I guess you call it community here in prison, trying
11 to help the guys that have nothing.

12 I've been writing letters out to different
13 church groups and stuff, trying to stay active, stay
14 current, stay in touch with people on the street
15 instead of being (inaudible) or something.

16 THE CHAIRPERSON: Thank you. Would your
17 attorney and sister.

18 MS. BROCKINGTON: Yes, thank you very much
19 this morning for the opportunity. As Phillip said,
20 he obtained his paralegal degree in August of 2007.
21 Since that time he's continued to work on that line
22 of employment.

23 As an attorney, I am prepared to offer him
24 a position with my law firm. I have a probate and
25 estate planning practice. It's very much an

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1 in-office practice with a bit of litigation thrown
2 in. I look forward to having him there. He can
3 certainly assist with case research, case management,
4 greeting of clients. I feel like he would be an
5 asset to my law firm.

6 We also have our mother here today, and
7 she's able to provide a home for him. She lives in
8 Mount Pleasant, and she's been living there for about
9 14 years. And I've been in Charleston for 25 years.
10 We have a very wonderful family network and support
11 for Phil.

12 We feel like he's turned his life around
13 while he's been here in prison and helped his fellow
14 inmates in many, many respects. He will be a
15 productive member of society, and he is willing to
16 work very hard to make that happen.

17 THE CHAIRPERSON: Thank you. Is there any
18 further statement from family at this time?

19 MRS. DILLARD: I'm his mother. I would
20 like to say that I'm here again in front of you
21 people to let you know that we support him and have a
22 home and employment. And I represent family and lots
23 of friends out there. We appreciate your
24 consideration.

25 THE CHAIRPERSON: Thank you.

1 UNIDENTIFIED VOICE: (Inaudible.)

2 THE CHAIRPERSON: Mr. Dowdy.

3 MR. DOWDY: Mr. Brown, what was going on
4 with your life at the time you committed -- in 1983
5 when you committed these crimes, what was going on in
6 your life? Were you involved in drugs or alcohol?

7 MR. BROWN: Yes, sir, I was. Yes, sir, I
8 was involved in drugs very much.

9 MR. DOWDY: Have you seen -- since that
10 time, have you -- while you've been incarcerated,
11 have you exposed yourself to any type of drug
12 treatment?

13 MR. BROWN: Yes, sir, I have. I don't
14 know if the records are still there. I volunteered
15 to get into the ATU program, if I would've been --
16 you know, if approved for parole. I know that's done
17 90 or -- 60 or 90 days before you get out.

18 I have taken anger management. What is
19 it? I can't remember the name of the classes. I
20 have taken the substance abuse class.

21 I tried to take the victim impact class.
22 It was so much, (inaudible) and I wasn't able to get
23 into that class. Yes, sir, I've done what I had
24 available to take.

25 MR. DOWDY: Thank you very much, sir.

1 THE CHAIRPERSON: Was there someone else
2 that wanted to say something at this time?

3 MS. UPTON: Yes, I would. My name is
4 Margaret Upton, and I'm a long time friend of the
5 family for (inaudible) years. I've been to see Phil
6 on several occasions. I've seen a great deal of
7 change in him that spiritually he has accepted the
8 Lord. He doesn't have any anger or remorse. He's
9 just really at peace with the situation, and he's
10 accepted everything.

11 THE CHAIRPERSON: Thank you for that.

12 MS. UPTON: And I will be there for him.

13 THE CHAIRPERSON: Thank you. This
14 concludes the hearing. If you will step outside and
15 let you know as soon.

16 MS. BROCKINGTON: Thank you very much for
17 your consideration.

18 (Guests exited the room.)

19 (Inaudible.)

20 THE CHAIRPERSON: Is there any discussion?

21 MR. DOWDY: (Inaudible) Served 27 years.
22 Early on his period did have disciplinary problems.
23 In the last three, four years has no discipline
24 infractions. (Inaudible) Remorse, has a great deal
25 of that. Support from his family and specific

1 transition (inaudible.)

2 UNIDENTIFIED VOICE: I have similar. I'm
3 in Charleston. I know that family is a very strong
4 family.

5 UNIDENTIFIED VOICE: My only concern was
6 the fact that he also had as well (inaudible) as
7 well. And psychiatric.

8 UNIDENTIFIED VOICE: And psychological
9 tests.

10 MR. DOWDY: Right, we refer to
11 psychological evaluation. He has family support,
12 employment, residence and community support. Sister
13 is only one out there.

14 (Inaudible.)

15 THE CHAIRPERSON: (Inaudible.) Phillip
16 Ansell Brown must have a psychological, favorable
17 psychological ATU and patient after-care.

18 MR. DOWDY: Yes.

19 THE CHAIRPERSON: Outside intensive
20 supervision to last six months as determined by the
21 department (inaudible) and home detention not to
22 exceed three months as determined by the department.

23 MR. DOWDY: Fine. Fine.

24 THE CHAIRPERSON: We can shorten it.
25 Thank you.

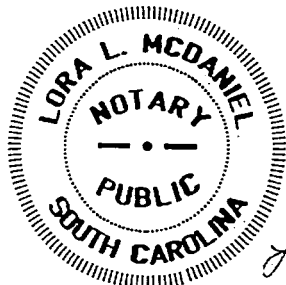
(End of audio recording.)

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 1st day of February, 2012 at Charleston, Charleston County, South Carolina.



Lora McDaniel

Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
September 18, 2016

In The Matter Of:
Phillip Brown v. State of S.C.
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Parole Hearing Board
September 8, 2010

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PAROLE BOARD REVIEW

IN RE: PHILLIP A. BROWN

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AUDIO RECORDING

DATE: September 8, 2010

TRANSCRIBED BY: LORA L. McDANIEL,
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Parole Hearing Board - January 31, 2012

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1 (Audio recording begins.)

2 THE CHAIRPERSON: Our first case is number
3 13, Phillip Ansell Brown. (Inaudible).

4 Good morning, Mr. Brown.

5 MR. BROWN: Good morning, ma'am.

6 THE CHAIRPERSON: State your full name for
7 the record.

8 MR. BROWN: Phillip Brown. Phillip Ansell
9 Brown.

10 THE CHAIRPERSON: Introduce your guests to
11 the board.

12 MR. BROWN: Yes, ma'am. This is my
13 mother, Betty Dillard (inaudible). This is my
14 attorney and sister Shirrese Brockington.

15 THE CHAIRPERSON: Thank you very much for
16 attending. Mr. Brown, we're reviewing your parole
17 summary. Is there anything that you want to say to
18 the board this morning?

19 MR. BROWN: Yes, ma'am. I would like to
20 thank you for sending me to the ATU program. I know
21 that may seem kind of strange. I have found some
22 tools there that I will carry with me to the rest of
23 my life. It has been a good thing, and it still is a
24 good thing. I will be completing it in December.

25 THE CHAIRPERSON: Thank you. Is there

1 anything that your guests would like to add at this
2 time?

3 MS. DILLARD: I'm his mother, of course,
4 and I represent the family. The father, who is an
5 invalid almost, and family members and friends. And
6 we want to thank you for giving him parole on the
7 14th of April. He will be living with me in Mount
8 Pleasant. He has a job and home. The home is, will
9 accommodate a wheelchair and so forth that he's in at
10 this time. And we would appreciate anything you
11 could do. Thank you very much.

12 THE COURT: Ma'am.

13 MS. BROCKINGTON: Yes, I'm Attorney
14 Shirrese Brockington. I am Phil's sister as well.
15 We'd like to thank the board for this opportunity.
16 We're not quite clear why we're here for a review.

17 We would like to say that, while he's been
18 in a program -- it's been almost 90 days that he's
19 been in a treatment program here at Lee. He's done
20 fantastically well in the program. His essay was
21 used as an example by the program director just last
22 week. His attitude is very cheerful and positive.

23 I have a job in my law firm for my brother
24 whenever he's released. He's completed a paralegal
25 legal assistant certificate. He does have gainful

Parole Hearing Board - January 31, 2012

4

1 employment upon his release. He has a home. He has
2 tons of family support and love. He has for all
3 these many years.

4 We appreciate the opportunity for the
5 treatment program to be completed and for his release
6 to be upheld here today.

7 THE CHAIRPERSON: Thank you very much.
8 This concludes the hearing. Have you step outside,
9 please.

10 MS. BROCKINGTON: Thank you very much.

11 (Guests exited the room.)

12 UNIDENTIFIED VOICE: Your room is clear.

13 THE CHAIRPERSON: We have discussed this.
14 This is the case where we have given letters from the
15 (inaudible), from the sheriff of the county as well.
16 And this case was heard before, and we did grant
17 parole.

18 We also have a letter from county and
19 state in that they had not been notified, and we were
20 told that they had been notified, and that there was
21 an attempt to get ahold of the victims, but they
22 didn't have addresses to get ahold of the victims.

23 We had a second vote. The second vote, we
24 stood with our vote to parole this gentleman. He was
25 sent to ATU as part of parole recommendations.

1 In the meantime, the (inaudible) Gardener,
2 who is a family member of the victim who was
3 murdered, came forth and has never been notified.
4 And information in the record that they have given
5 their address. And they have been living at this
6 address. That there were members of the family
7 addresses as well. And they have been living there
8 as well.

9 We had a vote for reconsideration to
10 rehear this trial. We did hear this case. Due to
11 the fact that we did not have the correct
12 information, the victims were not given the
13 opportunity to speak at the hearing.

14 MR. STEPHENSON: When he was paroled?

15 THE CHAIRPERSON: April 14th.

16 MR. STEPHENSON: April 14th. That's
17 before he got on board. He was paroled, like you
18 said votes. That's over.

19 THE CHAIRPERSON: Mr. Stephenson, you
20 weren't here. You probably were not aware of what we
21 were speaking about.

22 MR. STEPHENSON: You were here when we
23 voted?

24 THE CHAIRPERSON: No.

25 At this time, I did not address it to

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1 Mr. Brown or his family because they understood, they
2 were told by the system why they were coming back.

3 MR. STEPHENSON: I don't think they do
4 based on what she said. (Inaudible)

5 THE CHAIRPERSON: I know for a fact they
6 were told why they're back up here.

7 MR. STEPHENSON: I'm not arguing with you.
8 She said she wasn't sure why she was here.

9 THE CHAIRPERSON: I did not want to open
10 the fact that we are waiting for victims to come in.
11 I made that professional decision.

12 MR. STEPHENSON: Okay.

13 UNIDENTIFIED VOICE: Madam Chair, proceed
14 (inaudible).

15 THE CHAIRPERSON: At this point, we will
16 hear from opposition.

17 (Inaudible).

18 THE CHAIRPERSON: Good morning, everyone.
19 We are rehearing the parole case summary of Phillip
20 Ansell Brown, who was paroled on April 14, 2010. And
21 we're here this morning because of the fact that you,
22 as victims, have not been informed of the
23 information. And you have been granted a rehearing
24 so that you can have your voice.

25 At this time before I hear statements, I

Parole Hearing Board - January 31, 2012

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1 need everyone's name for the record. Start with you,
2 sir.

3 MR. CLAY CAMPBELL: I am Clay Campbell,
4 Sr.

5 MR. CLAUDE CAMPBELL: My name is Claude
6 Campbell, I'm the oldest son.

7 MS. GARDENER: (Inaudible) Gardener, I'm
8 the daughter of Mr. Campbell.

9 (Inaudible)

10 OFFICER TOMLIN: I'm Jim David Tomlin,
11 Kershaw County Sheriff's Office, friend of the
12 family.

13 SOLICITOR GIESE: I'm Barney Giese,
14 Solicitor, Fifth District.

15 MRS. CAMPBELL: Lisa Campbell, wife.

16 UNIDENTIFIED VOICE: I'm Steve, pastor
17 (inaudible) Kershaw.

18 UNIDENTIFIED VOICE: My name is Robert
19 (inaudible). I was assisting the family in trying to
20 have (inaudible).

21 THE CHAIRPERSON: Thank you.

22 MR. ADAMS: Charles Adams, friend of the
23 family.

24 UNIDENTIFIED VOICE: Gary (inaudible).

25 THE CHAIRPERSON: I realize that this is

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1 difficult for everyone to come, especially the family
2 members. And we want you to know that we do have the
3 facts of the offense and that we are mainly
4 interested in this morning on whether or not you are
5 for or against parole. Is there a spokesperson for
6 the family that would like to speak at this time?

7 MS. GARDENER: I will.

8 THE CHAIRPERSON: Yes, ma'am.

9 MS. GARDENER: Gardener, I am
10 Mr. Campbell's daughter. I am definitely -- the
11 whole family is definitely opposed to his release.

12 THE CHAIRPERSON: Would you like to add
13 another statement?

14 MS. GARDENER: Yes, I would.

15 THE CHAIRPERSON: Yes, ma'am.

16 MS. GARDENER: The impact that this has
17 had on my family, this is something we were told that
18 would never happen. He would never be paroled when
19 he was sentenced. We never had any idea that this
20 would ever come up.

21 Little bit of healing that we've had in
22 the years our father has been dead, this has brought
23 everything back to us. It's terrible. More than
24 devastation. And I wouldn't want any of you to ever
25 have to go through it.

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1 THE CHAIRPERSON: Thank you. And the rest
2 of the family is in agreement.

3 Yes, sir.

4 MR. CLAUDE CAMPBELL: Thank you. My name
5 is Claude; Claude Campbell, oldest son. Of course,
6 we were in business together. In 1953, I took over
7 the business from my father, mill business. We
8 worked the mill for 29 years. Of course, you know
9 how it impact me, working with my father for 29
10 years. And then to be killed like a dog.

11 You know, I had to think about the man
12 (inaudible). I'm definitely opposed him being
13 released because he still has family members in the
14 area. And he will be there. Knowing him, he had no
15 respect for the law. Thank you very much.

16 THE CHAIRPERSON: Thank you, sir.

17 MR. CLAY CAMPBELL: Clay Campbell, second
18 son. I don't live in the area now. I've been away
19 for 55, 56 years. I grew up there and go back and
20 visit with my father occasionally. Of course, you
21 know, when I go back up there now, I can't find him.
22 He's not there.

23 And (inaudible) part of it was a
24 premeditated situation. The man planned it A to Z.
25 And he carried it out just like he planned to do. A

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1 fellow like that is dangerous anywhere. Anywhere you
2 put him.

3 Are we opposed to him being released?
4 Absolutely. And I can tell you this. The family at
5 one time had somewhat peace because the judge and
6 Solicitor Andrews at that time assured us that he
7 would be sentenced and a condition where he would
8 never be able to get on the streets again. He would
9 never.

10 Because we were seeking capital punishment
11 for him. It was all evidence that would warrant
12 that, but we could not get a jury or enough
13 prospective jurors to serve. That's why the judge
14 told us, he said: You will never get enough people.
15 He says he will accept his guilty plea, I will see he
16 is put away for the rest of his life.

17 We never expected that basis. Appreciate
18 you listening to us.

19 THE CHAIRPERSON: Thank you, sir. At this
20 time, law enforcement.

21 SOLICITOR GIESE: Barney Giese, Solicitor,
22 Fifth Circuit, clearly from Kershaw County. I was
23 the assistant solicitor on this case 28 years ago, if
24 you can believe that. But I remember the case
25 vividly. We tried to pick a jury;

1 couldn't get one.

2 And I know y'all know the facts of the
3 case, I'm not going to go into that. It really was,
4 in my opinion, I don't know if this is because of my
5 youth at the type, the case really stuck with me. It
6 was a brutal case. The facts were not in dispute.
7 It was a very difficult situation for the family.

8 And I do remember the judge, Judge Walter
9 Cox, who went on to serve military board, (inaudible)
10 specifically gave him consecutive life sentences;
11 life on the murder and life on the burglary. And,
12 you know, whether or not that was supposed to keep
13 him in for life or not, I don't know. But I do know
14 that his intent was, at that time, is the judge's
15 intent was to try to keep him in, because it was such
16 a brutal case, for the rest of his life.

17 Because of that, because of the situation
18 that we see ourselves in today, as the Solicitor of
19 the Fifth Circuit, I would strongly oppose.

20 THE CHAIRPERSON: Thank you.

21 UNIDENTIFIED VOICE: (Inaudible) Kershaw
22 County. I was deputy at the time. Terrible tragedy
23 took place in our community. We were violently
24 (inaudible). We were greatly opposed to Phillip
25 Brown getting out because we had worked, working on

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1 the Phillip Brown cases where he broke into houses
2 before all this occurred. This was probably as
3 heinous a murder as I've ever seen.

4 Not only did he wait for Mr. Campbell to
5 come into his house and shoot him twice, ladies and
6 gentlemen, he left and came back when he remembered
7 his glasses and the ski mask which Mr. Campbell
8 stripped off his face when he attacked him
9 (inaudible). He shot that man down again. I hate to
10 say this in front of his family. This is what took
11 place in that house and then robbed him. He had no
12 remorse whatsoever.

13 Since he's been put in prison, we feel
14 like that he is always going to be a danger and a
15 threat to any community wherever he is located. This
16 is the reason that we oppose ever any parole. I
17 appreciate you listening to me.

18 UNIDENTIFIED VOICE: If I could just say
19 one thing, I was 19 years old when this occurred and
20 a neighbor to Mr. Campbell. To say he was a pillar
21 of the community is a gross understatement.

22 This murder not only changed and affected
23 the Campbell family, it affected all of us in the
24 community. We changed the way we lived at the time
25 because of what happened. This sort of thing just

1 didn't happen in our community.

2 I've been with the Sheriff's Office for 20
3 years now, investigating some 40 homicides. And we
4 still -- this is one of the homicides that's still
5 talked about in our small community. It was so
6 heinous and so violent. So we absolutely oppose
7 release.

8 THE CHAIRPERSON: Thank you very much.
9 This concludes the hearing. We're going to ask all
10 of you to step outside. We will let you know our
11 decision shortly.

12 UNIDENTIFIED VOICE: Thank you. Can I say
13 something personal note to the board. I am retiring
14 at the end of January and never going to be able to
15 look at the parole board again. I have to come up
16 one more time; it's going to be smaller section. I
17 just want to thank y'all for everything that y'all
18 do. I know it's a thankless job.

19 I want to thank you for treating my
20 victims well over the years with respect and treating
21 me with respect also. Just want to thank y'all.

22 (Guests exited the room).

23 UNIDENTIFIED VOICE: (Inaudible)

24 THE CHAIRPERSON: I believe that what the
25 first thing we have to do on the parole board, we

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1 have to vote whether or not we're going to rescind
2 the parole and then move on to whether grant parole
3 or to deny.

4 We've already done it. This is what we
5 voted. We didn't hear from the victims. We paroled
6 him. We have to vote whether or not we want to
7 rescind that and start a new vote. That is what we
8 have to do.

9 UNIDENTIFIED VOICE: (Inaudible).

10 THE CHAIRPERSON: First vote that I'm
11 calling for, I'm calling for whether or not we will
12 rescind the vote that we voted on to parole him.

13 UNIDENTIFIED VOICE: Rescind would be a
14 green vote?

15 THE CHAIRPERSON: Green vote would be,
16 yes, that we are going to rescind.

17 UNIDENTIFIED VOICE: I think since you
18 were here the first time --

19 THE CHAIRPERSON: You can abstain.

20 UNIDENTIFIED VOICE: Just abstain.

21 UNIDENTIFIED VOICE: We come to the main
22 case, you have to vote (inaudible).

23 UNIDENTIFIED VOICE: Very unusual
24 situation. You don't find this very often.

25 THE CHAIRPERSON: First vote.

1 UNIDENTIFIED VOICE: I know I'm not
2 supposed to reject.

3 UNIDENTIFIED VOICE: Rescind.

4 UNIDENTIFIED VOICE: Rescind.

5 UNIDENTIFIED VOICE: Rescind.

6 THE CHAIRPERSON: Walter rescinds. The
7 parole of Phillip Ansell Brown has been rescinded.

8 I now call for the vote for --

9 UNIDENTIFIED VOICE: Parole (inaudible.)

10 UNIDENTIFIED VOICE: Reject.

11 UNIDENTIFIED VOICE: Reject.

12 UNIDENTIFIED VOICE: Reject

13 THE CHAIRPERSON: Also reject.

14 Phillip Ansell Brown is rejected, one,
15 two, three, four.

16 Next case is --

17 (End of audio recording.)

18

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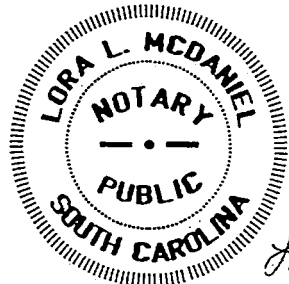
25

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 1st day of February, 2012 at Charleston, Charleston County, South Carolina.



Lora McDaniel

Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
September 18, 2016

RE-HEARINGS OF PAROLE CASES

This section considers re-hearings of parole cases: the various reasons why the Board may want to conduct a re-hearing in any given case and the possible decisions that may come out of any such re-hearing. In general, there are three possible outcomes of any re-hearing: rescission of parole, grant of parole, and no change in the original decision.

1. REASONS FOR CONDUCTING A RE-HEARING

After the Board or the panel has decided any given parole case, the Board or panel may in certain cases want to re-consider its decision and re-hear the case. There are, generally speaking, five reasons why the Board or panel might want to do this. These reasons are given below:

- a. **Subsequent Misconduct by the Prisoner.** In those cases where the Board has granted parole conditioned on the satisfaction of some pre-release requirement, and the prisoner has committed some violation of prison rules before the actual release from prison, the case will be presented to the Board or panel in order to deal with the subsequent misconduct.
- b. **New Criminal Charges Against the Prisoner.** This is similar to the situation just described above - subsequent misconduct by the prisoner; only the misconduct here is more serious than the violation of a prison disciplinary rule. Here, the misconduct rises to the level of being a violation of the criminal law.
- c. **After-Acquired Information About the Prisoner.** 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.
- d. **Failure of the Prisoner to Meet Conditions of Release.** Finally, in the case where the Board has granted parole or provisional parole conditioned on the satisfaction of some requirement, and the prisoner has failed to satisfy that requirement, the Board or panel might want to review the matter in order to look into the facts and circumstances surrounding the prisoner's failure to do what was required.
- e. **Requested by the inmate or the inmate's attorney.** In these cases, the inmate or the inmate's attorney must submit in writing, within 30 days of the notice of rejection letter, a letter stating why he/she feels that the Parole Board should re-hear this case. The Parole Board will review this information and decide whether or not to grant a re-hearing. A letter will be sent to the inmate or the inmate's attorney notifying them of the Board's decision.

2. POSSIBLE RESULTS AFTER A RE-HEARING

For any of the foregoing reasons, the Board or panel might want to re-hear a case in order to reconsider its original parole decision. Any such re-hearing may result in one of four decisions. These decisions are rescission of parole, grant of parole, no change in the original decision and an amendment.

- a. **Rescission of Parole.** A rescission of parole rescinds the original decision to grant parole. Unlike a revocation of parole, which occurs after parole has been granted and the offender has been placed on supervision in the community, a rescission of parole occurs before the grant of parole has become effective and before the offender has been released from prison onto supervision in the community. Thus, in the case of a revocation of parole, the parolee stands to lose conditional freedom, a freedom in which by constitutional mandate he/she has a protected liberty interest. In the case of a rescission of parole, by contrast, the prisoner has not yet gained his conditional freedom; therefore, he/she can have no protected liberty interest in it. And because a rescission of parole differs in this way from a revocation of parole, the procedural requirements for rescinding the decision to grant parole are far less involved than the requirements for revoking parole.
- b. **Grant of Parole.** In some cases, the Board or panel may decide, on re-hearing, to grant parole where it had previously decided not to grant it. In such cases, the Board or panel may issue its order and proceed according to the usual form when it grants a parole or a provisional parole.
- c. **No Change in the Original Decision.** In still other cases, the Board or panel may decide, on re-hearing, that its original decision--whether granting parole or not--was correct. In such cases, the Board or panel need only note for the record that its original decision is affirmed. That decision is thereby left in place and shall become effective on the date when it would have become effective in the first place.
- d. **Amendment.** The Board may decide that some amendment should be made to the conditions of supervision or to some other aspect of the order.

3. INITIATING THE PROCESS OF REHEARING CASES

If the offender has been released on parole, the process will be pursuant to the applicable sections of Part III, above. If the offender has not been released on parole, the process is most often initiated by a report that the Board or panel receives from the parole examiner at the prison where the offender is incarcerated. However, a report could come from any source. The report itself would set forth the reasons why the Board or panel should conduct a re-hearing in order to reconsider its original parole decision. A request for a rehearing may also be made by a petition or letter received from the requesting party within 30 days of the parole rejection. This letter or petition must specify the exact reasons why the Board should reconsider its decision. The decision to grant or deny a rehearing shall be made in the sole discretion of the Board based upon the letter or petition filed by the requesting party and other documents which are made available to the Board from the parole file. Notice of the decision will be forwarded to the requesting party.

- a. **The Procedure.** If the inmate has been granted parole but not released from prison, the Board or panel may consider the case based upon the information presented without notice to the inmate. This is because the inmate does not yet have a constitutionally protected liberty interest in the parole.
- b. **The Purpose.** The purpose of the hearing is to determine the facts and to gather any other material that may bear on the parole decision one way or the other, and based on all those facts, to determine whether or not the grant of parole should be rescinded, amended or stay the same.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-15-0030 AP
Court of Appeals Case Tracking No. 2011203266

Phillip 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.

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July 2, 2012
Ridgeville, S.C. 29472

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CERTIFICATE OF SERVICE

I, Phillip Brown, do hereby certify that I have served a copy of the "Record on Appeal" and a copy of Appellant's "Final Brief" upon Respondents by depositing the same in the United States mail, postage prepaid, addressed to:

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P.O. Box 50666
Columbia, S.C. 29250

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

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July 2, 2012

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