

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT FEB 01 2016
The Honorable H.W. Funderburk, Jr.

SC Court of Appeals

15-ALJ-15-00047-AP

JAMES TINSLEY, #171943, RESPONDENT,

v.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES, APPELLANT.

MEMORANDUM ADDRESSING THE ISSUE OF APPEALABILITY

Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole, and Pardon Services**
P.O. Box 50666
Columbia, South Carolina 29250

ATTORNEY FOR THE APPELLANT

STATEMENT OF THE CASE

On October 11, 2006, the Spartanburg County Sheriff's Department began the investigation of a theft of a 2007 Discovery motor home valued at \$218,000.00. After the motor home was recovered in Cherokee, North Carolina, the Respondent's paperwork, and fingerprints were found. He was subsequently found, arrested and charged with the theft of the motor home.

In 2008, the Oconee County Sheriff's Department investigated the theft of several four wheelers reported stolen from North Carolina. While searching a storage building rented by the Respondent, officers of the Oconee County Sheriff's Department discovered four wheelers stolen from North Carolina. The Appellant was later arrested and charged with three counts of receiving stolen goods.

On July 31, 2008, the Respondent appeared before the Honorable J.C. Nicholson to plead to two counts of receiving stolen goods over \$5,000.00 and possession of a stolen motor vehicle. Judge Nicholson sentenced the Respondent to a ten year period of incarceration, suspended upon the service of seven years, with five years probation for possession of a stolen motor vehicle and receiving stolen goods; and five years suspended to five years probation, for a second count of receiving stolen goods. While serving this sentence the Respondent again appeared before the Honorable Roger Couch on November 10, 2010, for receiving stolen goods. He was sentenced to a ten year period of incarceration suspended upon the service of three years, and five years probation.

On April 9, 2014, the Respondent first appeared before the Parole Board. Upon the conclusion of this hearing, the Board denied parole due to a failure to successfully complete a previous community supervision program. After a request for a reconsideration was denied,

Respondent appealed to the Administrative Law Court, alleging he never violated a supervision program. The Department of Probation, Parole and Pardon Services responded by showing he had violated his supervision four times.

The Honorable S. Phillip Lenski, Administrative Law Judge, affirmed the decision of the Parole Board. The Respondent in this action has appealed that decision in Case 2015-000196 which is still pending before this Court.

The Respondent again appeared before the Parole Board on May 27, 2015. The Board did not award him parole, stating that "Prior Criminal Record Indicates Poor Community Adjustment." The Respondent again appealed this decision to the ALC. This time, the ALC remanded the case for a new hearing, finding that there was not a concise and explicit statement of the underlying facts to allow for a factual review of the Parole Board's decision.

As a result of this order the Appellant filed a notice of appeal on January 13, 2016 and an Amended Notice of Appeal on January 20, 2016. Upon filing of this notice of appeal, this Honorable Court has ordered the Appellant to submit a memorandum addressing the issue of appealability. The Appellant addresses the court as follows.

ARGUMENTS

The Court of Appeals has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit court, family court, a final decision of an agency, a final decision of an administrative law judge, or the final decision of the Workers' Compensation Commission. S.C. Code Ann. §14-8-200. The order delivered by the ALC was final because there exists no other remedy relating to this cause of action; therefore, this Court has jurisdiction. As a general rule, only final judgments are appealable. Culbertson v. Clemens, 322 S.C. 20, 23,

471 S.E.2d 163, 164 (1996).

Within its order of remand, the ALC effectively overturned the decision of the Parole Board and sent the case back to the Parole Board to hold another hearing. The ALC noted that this rehearing is to be conducted in addition to the regularly scheduled hearing on May 27, 2016; therefore, this order was final and there exist no further remedies.

The Administrative Court's decision is based upon language within the Supreme Court opinion in the case of Kamathene 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 ruled that because the Appellant "neither offered an explanation nor indicated that it had considered the statutory criteria of section 24-21-640 and the fifteen criteria listed on the parole form, the order was defective." Cooper, at 112. The Supreme Court also gave an instruction as to proceed with parole denial orders in the future, citing the Administrative Procedures Act. In Cooper the Supreme Court stated:

Pursuant to the terms of APA, a final decision in an agency adjudication of a contested case "shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

Id.

Upon receiving the Cooper decision the Appellant changed parole rejection forms to include the language that informs the inmate of the determining factors for the denial of parole. The statement that the Respondent's prior criminal history indicated a poor community adjustment was not sufficiently detailed according to the decision made by the ALC in the case at bar.

Once the decision was made by the ALC to remand this case, it raised a cause of action relating to whether the current rejection notices given by the Appellant are sufficiently explicit. Furthermore, a question exists regarding the authority of the ALC to review the facts supporting the Parole Board's decisions – as the inmate has no right to be paroled, nor a right to appeal a routine denial of parole. Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2004). See also, S.C. Code 1-23-600(D), “An administrative law judge shall not hear ... an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.”

There exists a justiciable controversy regarding the ALC interpretation of the law as it pertains to the Appellant's notices of rejection of parole; therefore, this legal decision is ripe for adjudication by the Court of Appeals. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination as distinguished from a contingent, hypothetical or abstract dispute.” Spivey v. Carolina Crawler, 367 S.C. 154, 624 S.E.2d 435 (2005). The ALC was incorrect in its interpretation of the South Carolina Supreme Court decision in Cooper, which will have great effect on future parole hearings. “The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation.” Sloan v. Greenville County, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003). This case has come to a conclusion and the Appellant wishes the South Carolina Court of Appeals to rule as to the interpretation of a lower court regarding a question of law. It is the opinion of the Appellant that the ALC was mistaken in its final opinion regarding the order given to the Respondent in denial of his parole. There was no further act that was needed by the ALC, once the decision to

remand was made so, this decision cannot be considered interlocutory.

It is the opinion of the Appellant that the decision made by the ALC was final, there was no further act needed to bring this case to a conclusion. The order of appeal is no more interlocutory than any other ruling made by the ALC in an appeal from an agency's final decision. This case is comparable to the Circuit Court's decision in Cooper, which remanded a parole denial to the Board for further action, and in Cooper the Supreme Court accepted the Departments appeal. Furthermore, the same issue is presently before the Court of Appeals through the Respondent's own appeal of an earlier denial of parole. Besides appealing the ALC's incorrect legal decision, the only options would be capitulation or refusal to comply; neither is viable. Since the decision of the ALC was final, the Court of Appeals has jurisdiction; therefore, this Honorable Court should accept this case for a determination of the legality of the final decision of the ALC.

CONCLUSION

The Court of Appeals does have jurisdiction over the Appellant's notice of appeal; therefore, the Appellant respectfully request this honorable court to address legality of the ALC's final decision.

Respectfully submitted,

Matthew C. Buchanan
General Counsel

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

BY: 

Matthew C. Buchanan
General Counsel

Columbia, South Carolina
January 29, 2016

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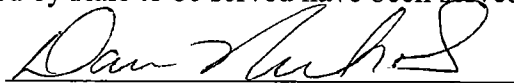
SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES, APPELLANT.

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within *Memorandum Addressing the Issue of Appealability* dated January 29, 2016, on Respondent this 29th day of January, 2016 by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

James Tinsley, #171943
Allendale Correctional Institution-F2B6
PO Box 1151
Fairfax, S.C. 29827

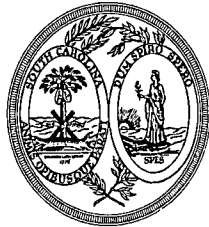
I further certify that all parties required by Rule to be served have been served.



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

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



JERRY BEADGER
Director

FEB 01 2016

SC Court of Appeals

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January 29, 2016

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street- 5th Floor
Columbia, South Carolina 29201

RE: James Tinsley v. SCDPPPS

Dear Ms. Kitchings:

Enclosed please find the original Memorandum Addressing the Issue of Appealability, along with proof of service in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan".

Matthew C. Buchanan
General Counsel


MCB:dn
Enclosures

cc: James Tinsley, #171943

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