

The State of South Carolina
In The Court of Appeals

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SC Court of Appeals

Appeal From The Administrative Law Court
Judge Deborah Duerden

Case NO: 15-ALJ-0034-AP

Billy Lee Lisenby, JR, #200273 Appellant

vs.

South Carolina Department of Probation Parole and Pardon
Services Respondent

Appellant's Initial Brief

Dated: Feb. 15th 2016

Billy Lee Lisenby, JR.

Billy Lee Lisenby JR, #200273

Ridgeland Corr. Inst.

P.O. Box 2039

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Assistant General Counsel
Tommy Evans, JR;

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Statement of The Case

Appellant was denied Parole on May 13th 2014. There after on May 29th 2015 Appellant filed a Request For Reconsideration Hearing and/or Appeal, and the Parole Board denied it on June 11, 2015. On the 24th day of June he prepared a Notice of Appeal and it was filed on June 26, 2015 by the Admin. Law Court. He was given a case number and assigned Judge Duoden on June 30th 2015. After briefs were prepared and on Dec. 8, 2015 Judge Duoden Ruled in Appellant's favor and Reversed and Remanded for additional proceedings consistent with this order. On Dec. 21st 2015 Appellant filed a Notice of Motion and Motion For Contempt and Ancillary Relief. It was denied on Jan. 11th 2016.

Statement of The Issues ON Appeal

1. Did the AKC err in not directing Respondent's to abide and enforce the Judges Dec. 8th 2015 Reverse and Remand order, and provide Appellant a new parole hearing?
2. Did the Respondent's violate Appellant by not having his medical history and psychological Reports, even though he is a mental health inmate?
3. Was Appellant given a "fair written notice of the date, time, and place of the parole hearing?"
4. Was Appellant denied his right to have a family member, friend, or lawyer present?
5. Did the Parole Board abide by Code of Law (24-21-640) the 15 Criteria list?
6. Did the Parole Board violate Appellant by not using the Compas system, and fail to make a finding that such an assessment tool was used, in it's order?
7. Did the Parole Board retaliate against Appellant for filing a lawsuit against them?
8. Did the Parole Board make their decision based on an incomplete file?
9. Did the Parole Board violate Appellant by not considering his unrectured disciplinary convictions, that resulted in his denial of parole?
10. Did the Parole Board violate §16-1-70 by not taking him up for parole once per year?
11. Is Parole Now A Constitutional Right? And has Respondent's violated Appellant's Right to equal protection of law, and Due process of Law along with discrimination and retaliation?

Arguments) 1

Did the ALC err in not directing Respondent's to abide and enforce the Judges Dec. 8th 2015 Reverse and remand order, and provide Appellant a new parole hearing?

On May 13, 2015, the South Carolina Department of Probation, Parole and Pardon Services Department notified Appellant that the South Carolina Parole Board had denied him parole. Appellant filed his appeal with the ALC on June 26, 2015.

On December 8, 2015 The Honorable Judge Deborah Brooks Dunder Ordered as follows:
"It Is therefore ordered that the Board's determination that Appellant should be denied parole in this instance is Reversed and Remanded for additional proceedings consistent with this order".

In a letter dated Dated December 10, 2015 from Assistant General Counsel Tommy Evans, JR, he refused TO Comply with The Honorable Judge Deborah Brooks Dunders remand order by stating:

"Dear MR. Lismby: Pursuant to the enclosed order dated December 8, 2015, your case has been remand to the Parole Board. Your previously scheduled hearing has now been scheduled on April 13, 2016. Pursuant to South Carolina law, if you are deemed parole, you will have to wait one year from that date to be considered again for parole."

Appellant contends he should be scheduled for a rehearing asap, because he was denied due process in the initial hearing. Now due process is due. Evermore Appellant contends that the parole board is retaliating against Appellant and making statements with hopes they won't be check for accuracy. Tommy Evans states:

"Pursuant to South Carolina law, if you are denied parole, you will have to wait one year from that date to be considered again for parole."

The South Carolina Board of Paroles and Pardons Operations Manual has an entire section on re-hearings. Next MR. Evans above quote is not true. Attorney Tommy Thomas advised Appellant that he was suppose to receive a rehearing ASAP. Infact MR. Thomas stated "Inmate Antonio Gantt went up for Parole on Nov. 18th 2015, and due to the denial of due process he has a rehearing scheduled for January 27th 2016." On January 27th 2016 Antonio Gantt was granted parole.

To afford Appellate due process he should have a rehearing asap, and still be afforded his yearly parole hearing in April 13th 2016. Evermore April 13th 2016 is a projective date meaning that the exact date is not set in stone. Appellant's Parole Examiner states "he will not go up for parole until July 2016.

The allegations here are supported by *Compton v. S.C. Dept. of Probation and Parole Parole Services* 385 S.C. 476, 685 S.E. 175.

The Parole Board has fail to comply with the remand order. Since it is ruled by the Court (AKC), appellant Lisby's May 2015 order concerning the parole release application was flawed constitutionally contrary to due process clause, arbitrary, he should be granted the May 2015 parole hearing, a new hearing if this cannot be complied with, then Lisby should be released forthwith.

Argument 2

Did the Respondent's violate Appellant by not having his "medical history and psychological Report, even though he is a mental health inmate?"

On page 21 Section (4) Contents of The Parole Case Summary Report state in part:

"Every file that the department prepares for the Board's review includes, though it is not limited to the following information.

A medical history and psychological reports."

Appellant suffers from several mental health issues and this was not present at his hearing.

Argument 3

Was Appellant given a "Fair written notice of the date, time, and place of the parole hearing?"

On page 20 of The South Carolina Board of Parolees and Pardons and Operations Manual states in part as follows:

Section 1 That an inmate must be given "Fair written notice of the date, time, and place of the parole hearing".

Section 2. A. Notice to Offender. The Board Support Services Director is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the offender.

Appellant was never given Fair written notice of the date, time, and place of the parole hearing. Also he was not notified of his hearing at least 30 days before the date of the hearing. Even more he wasn't notified at all.

On page 21 and 22 of the Operations Manual it states in part in Section 5:

"5. Standard Procedure For Conducting Hearings"

"Parole hearings are informal proceedings, and the Board or its panels may properly conduct them with a fairly free hand. What follows here is a model plan for conducting hearings. In the experience of both the Board and the Department, this model has worked well. It is only a model, and the Board or its panels are free to deviate from it.

- The Department, through its office of Board Support Services schedules hearings. The names and case numbers of offenders who have been scheduled for a parole hearing are then published at the respective prisons where they are confined, so that they can begin preparing themselves for their hearing."

The Dept. does not do this, at all. By the Dept. not sending me a letter notifying Appellant of my parole date and time, and not abiding by the above denied him due process of law by not giving him fair notice of his hearing, so he could properly prepare for it.

Argument 4

Was Appellant denied his right to have a family member, friend, or lawyer present?

Appellant was denied the right to have his friend and lawyer Attorney Melvin Trey Cockerall III present at my hearing. He was never given the 30 day notice so he couldn't notify him. Attorney Cockerall showed up that day to represent another inmate. So Appellant asked could MR. Cockerall come in to represent him, and he was told no "because he had not notified the parole board." So Appellant asked that MR. Cockerall be allowed to come in as his friend in which a notice is not required, and Appellant was told no. Based upon these denials he was denied the right to have a family or friend present and a lawyer.

Page 22 of the Parole Manual Section 6 states in part:

"IF they are represented by counsel, their must also be allowed to be present."

Argument 5

Did the Parole Board abide by Code of Law (24-21-640) the 15 Criteria list?

OF The 15 Criteria list, the board ignored and fail to consider the following:

OF(24-21-640)

- The offender's attitude toward family members, the victim, and authority in general. The board never contacted his family or friends to determine his attitude towards his community.

Argument 6

Did the Parole Board violate Appellant by not using the Compass system, and fail to make a finding that such an assessment tool was used, in its order?

The parole board offended Robert F. Spigner v. SC. Dept. of Parole S.E. 2d 2015 WL 1681270 April 15, 2015. which states:

"Section 24-21-10 (F)(1) requires the parole board to evaluate an inmate's risk using the Department's adopted assessment tool in reaching a decision to grant or deny parole. The Department must develop a plan that includes the establishment of a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions."

The Parole board failed to use the Compass (Correctional Offender Management Profiling For Alternative Sanctions) when determining his parole.

See Page 9 of The Operation Manual under objectives which states:

"To ensure that Board members are provided with effective risk assessment tools and with complete and accurate information about each offender"

The Parole Board fail to use the Compass system, and fail to make a finding that such an assessment tool was used, its order is affected by an error of law. In RUFF v. SC. Dept. of Probation and Parole 2015 WL 3885638 S.C. 2015 June 24, 2015 which states:

"Because the ALC failed to make a finding that such an assessment tool was used its order is affected by an error of law."

This was not mentioned in Appellant's order period.

On May 29th 2015 Appellant notified Respondent's via "A Request For Reconsideration Hearing and/or Appeal," that they did not considered nor make a findings in his order using the assessment tool. The Respondent's Responded by on June 11, 2015 and stated "Therefore, no action will be taken on your request." They intentionally ignored their notice.

After Appellant filed his Notice to Appeal to the ALC on June 26th 2015 on July 29th 2015 (2) months after their first Notice they sent Appellant an Amended Notice of Rejection letter dated July 29th 2015, stating they used the Compas. They did this without a rehearing or taking Appellant in front of the board. This is illegal. They could've addressed this at the hearing and on May 29th when Appellant requested for a Reconsideration Hearing and for Appeal. "Estoppel has come into play. Estoppel is a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true." The Respondents fail to put the Compas assessment in the order, as outlined in Section 24-21-10(F) (A) of the S.C. Code of Laws, when notified on May 29, 2015 they still didn't take action. Estoppel must now apply because a reasonable man would be convinced that the Respondents didn't use the Compas.

Cooper v. S.C. Dept. of Prob Parole & Pardon Service, 377 S.C. 489, 499, S.E. 2d 106, 112 (2008) (holding on inmate has a state created liberty interest in requiring the parole board to adhere to statutory criteria in rendering a decision.

Argument 7

Did the Parole Board retaliate against Appellant for filing a lawsuit against them? Appellant was turned down for "Prior Criminal Record Indicates Poor Community Adjustment." In 2014 they did not use this meaning it was not an issue. But after I filed a lawsuit against the Parole in 2015 they added an issue. This is retaliation because in 2014 he was only turned down for failure to successfully complete a Community Supervision Program; and Institutional Record Is Unfavorable. But in 2015 he was turned down for three issues. Is this retaliation?

Argument 8

Did the Parole Board make their decision based on an incomplete file? The Parole Board has a website that allows inmates families to support their family or friends in parole. On this site they can make recommendations in the inmates behalf. A email address is needed to do this on http://www.dppps.sc.gov/victim_services_hearing_schedules.html. Plaintiff ask about this website in his lawsuit against the Parole Board and The Parole Board stated "Regarding Plaintiff's request to the Parole Board's website, upon information and belief, the Parole Board does not maintain a website." But they do maintain a website, and if they did not review the recommendations this means their information is incomplete, and they made a decision based on a incomplete file. Appellant has had numerous family and friends go on this website, and make recommendations on his behalf. If the board didn't review this then they based their decision on an incomplete file

Argument 10

Did the Parole Board violate §16-1-70 by not taking him up for parole once per year? I'm serving a non-violent sentence and is due to go up for parole once per year, pursuant to §16-1-70 of the South Carolina Code of Laws which states "An individual serving time for a non-violent offense will be reheard for parole one year following the date of parole rejection." I have not been going up yearly and now due to the delays his parole date is nearly a year behind. I was due to go up for parole in May 2011 and it was delayed until August 2011. In 2012 he was due to go up in August, but he didn't go up for parole until January 2013, meaning he didn't go up for parole at all in 2012. In 2014 I went up in March. He suppose to go up for parole every May. When he went up for parole in 2015 it was delayed 12 months. This is unfair and violates due process of law.

Argument 11

Is Parole Now a Constitutional Right? And has Respondent's violated Appellant's Right to equal protection of law, and Due process of Law along with discrimination and retaliation?

The Parole Board is the only agency in the U.S. to have as much discretion as they do. They violate the Constitution, and they have no rules. They go against the legislative intent. The legislative intent states "if we fit the criteria we should be paroled to the program". This is why we have a paroleable offenses. Here they are turning me down for a youthful offender program I didn't complete 20 years ago. I cannot change this. The Courts sentenced me to a paroleable offense, but I cannot be released because of a crime I committed 20 years ago, in which I finished the sentence and all.

Evenmore they violated equal protection rights, and his right to due process, by denying him parole. Because now parole is a right based on the same sex marriage case, Obergefell v. Hodges 135 S.Ct 2584 (2015), and based upon cell assignment under RLUIPA *Jehovah v. Clarke* (2015) WL 4126391 July 9, 2015, and in *Incumaa v. Stirling* 2015 WL 4081648 based on RLUIPA. These cases show that a privilege has become a constitutional right. Therefore Appellant should be granted parole because the same person under the same circumstance, would make parole.

Appellant argues that his equal protection of law and Due process of Law rights, have been violated. Also he feels he is being discriminated against, and retaliated against.

First they are using a Youthful Offender Sentence to Deny Appellant Parole. Appellant was only 17 years old when he caught this. See *Miller v. Alabama* U.S. 132 S.Ct 2455, 183 L. Ed 2d 407 2012 and *Aiken v. Bryan* 410 S.C. 534, 765 S.E. 2d 572 S.C. 2014 and NOV. 12, 2014.

"Miller extends to defendants under eighteen years of age and therefore the purpose of this opinion we consider juveniles to be individuals under eighteen."

So S.C.D.C is using a juvenile sentence to turn Appellant down for parole. In 1993 he was 17 years old.

His discrimination, retaliating because he filed a lawsuit against the Parole board, and violation of equal protection, and his right to due process claims are as follows:

Appellant is serving 10 years for a common law misdemeanor ANIX, and a misdemeanor failure to stop for a blue light in which he received (3) years. But he is constantly being turned down for the parole program. James Funtick Cite as 576 S.E. 2d 146 (S.C. 2002) was a murderer and career criminal see Funtick as follows:

"Respondent pled guilty to voluntary manslaughter in 1968 and was sentenced to 30 years. Respondent escaped from prison in 1971 was captured, and sentenced to (2) additional years for escape. In addition Respondent was charged with homebreaking and grand larceny (committed before he was recaptured) and was sentenced to 15 additional years. In 1973 Respondent was released on parole for the remainder of the 47 years of his sentence."

Steele v. Benjamin 362 S.C. 66, 606 S.E. 2d 499 S.C. App. 2004 Steele was paroled in 1978 for murder in 1967. Steele's parole was revoked in May 1987 for conviction, in Tennessee for possession with intent to Resell drugs and under the influence. Steele was again granted Parole one year later in July 1988. Steele violated his parole and it was revoked on Feb. 9, 1994.

Appellant has never been on Adult Parole nor probation. They are constantly turning him down for misdemeanors and non-violent offenders, but granting parole to violent offenders, that kill people

Conclusion

Wherefore, for all the reasons stated above, Appellant ask that he be given a rehearing and granted parole.

Dated: Feb. 15th 2016

Respectfully Submitted,

Billy Lee Lisenby

Billy Lee Lisenby JR; #200273

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Certificate of Compliance

The undersigned hereby certifies that this Appellant's Initial Brief
of Appellant complies with Rule 211(b), SCACR and the Supreme Court's order
of Aug. 13, 2007

Billy Lee Jr

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Judge Deborah Durden

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vs.

South Carolina Department of Probation, Parole
and Pardon Services Respondent

Certificate of Service

The above Appellant swears under penalty of perjury that he has sent one copy of the enclosed Appellant's Initial Brief to the following by placing it in the U.S. Postal on Feb. 15th 2016.

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Dated: Feb. 15th 2016

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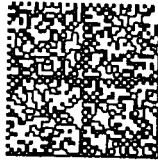
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