STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 13-ALJ-15-0027-AP
Appellate Case No. 2014-001047

Ronald Tate, #114188,.....Appellate,

v.

S.C. Dept. of Probation,
Parole and Pardon Service.....Respondent.

FINAL BRIEF OF APPELLANT

Ronald Tate, #114188
Appellant

Perry Correctional
Institution Q-2 B-220
430 Oaklawn Road
Pelzer, S.C. 29669

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of issue on appeal.....iii

Statement of the case.....1

Arguments

Appellant contends that the parole board's retroactive application of section 16-1-60 of the South Carolina Code of Laws redefining his offense as violent is in violation of the ex post facto clause....2

Appellant contends that the parole boards use of the current statute instead of the statute in effect at time of his offense deprive's him of liberty interest in parole and violate's the ex post facto clause.....3

The cumulative changes in the parole laws since appellant's conviction violate the ex post facto clause.....5

Conclusion.....6

Argument

Respondent has denied appellant annual parole review pursuant to South Carolina Law.....4

TABLE OF AUTHORITIES

CASES

Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 99 S.Ct. 2106.....4
Roller v. Cavanaugh, 984 F.2d 120 (4th Cir. 1993).....5
Garner, 529 U.S. 255, 120 S.Ct. 1362.....5,6
Cooper v. S.C. Dept., of Prob., Parole and Pard. Serv's.,
377 (S.C. 489, 499, 661 S.E.2d 106, 111-12 (2008).....3

STATUTES

16-1-60.....2,4
§55-612.....3
24-21-620.....4
24-21-640.....3,4
24-21-645.....1,2,4,5

OTHER

U.S. Const.....2,4,6
Act 100.....3
Act 462 (1986).....6

STATEMENT OF ISSUE ON APPEAL

1. The retroactive application of the violent crime definition is an Ex Post Facto violation as it applies to appellant.

2. Appellant is being denied of liberty interest in parole by the current version of 24-21-40 instead of the version in effect at the time he committed his offense.

3. Respondent has not followed the law as it applies to appellant appearing before the parole board on an annual basis.

4. South Carolina's parole laws have been changed numerous times and create a significant risk of increased punishment.

STATEMENT OF THE CASE

Appellant was indicted at the 1982 term of the Greenville County grand jury for the offenses of murder, assault and battery with intent to kill, armed robbery, housebreaking, grand larceny of a vehicle. Appellant appeared before the Honorable Frank Epps, on December 18, 1982, and proceeded to a jury trial and was sentence shortly thereafter for all of the offenses and received a life sentence plus fifty-five years.

At the time of appellant's conviction and sentence, S.C. Law provided that an individual serving a life sentence for murder would be eligible for parole following completion of twenty-years of his sentence. Appellant initially appeared before the Board of Probation, Parole and Pardon Services (the Parole Board) on April 1, 1998, after completing sixteen (16) years of his sentence through the award of earned work credits. The parole board denied appellant parole following that hearing, and on thirteen subsequent occasions.

The reasons for denial was due to 1) nature and seriousness of current offense; and, 2) the use of deadly weapon in this offense or previous offense; and 3) indication of violence in this offense or previous offense. Appellant's most recent appearance before the Board on June 12, 2013, is at issue here.

Appellant contends that the Respondent's fail to follow the mandatory criteria promulgated by parole board in 1982 and applied an amended version of section 24-21-645 instead. Appellant contends that he is being treated as a violent offender when appearing before the parole board. Appellant contends that the Board alters the frequency of his parole eligibility each year denying him annual 12 month parole hearings.

Finally, appellant contends that the cumulative changes in the parole laws and amendments when considered in total since his offense and conviction produces a sufficient risk of increasing the measure of punishment attached to his crime, violating Federal and State ex post facto clauses as applied retroactively. U.S.C.A. Const. Art. 1, § 10, cl. 1; const. Art. 1. § 4; Code 1976, § 24-21-645.

APPELLANT CONTENDS THAT THE PAROLE BOARD'S RETROACTIVE APPLICATION OF SECTION 16-1-60 OF THE SOUTH CAROLINA CODE OF LAWS REDEFINING HIS OFFENSE AS VIOLENT IS IN VIOLATION OF THE EX POST FACTO CLAUSE..

Appellant claims that the retroactive application of the violent crime definition in section 16-1-60 (1986) for the purposes of parole violates the ex post facto clause of the State Constitution. The ALC was misled by the parole board and erred in his findings by a clear and erroneous view of the reliable, probative, and substantial evidence on the whole record.

At time of appellant's offense and conviction (1982), he was not classified as violent under the laws of the State of South Carolina. The statute defining crimes as violent was enacted in 1986 and retroactively applied to appellant as evident in his initial appearance before Parole Board on April 1, 1998, and all subsequent hearings to date. Respondent asserts that appellant is not being classified as violent by the Department (SCDPPP'S), as it pertains to his parole eligibility, or hearings". However, respondent applies the definition of 16-1-60 in the parole rejection notification form citing (indication of "violence" in this offense or previous offense; as a finding of fact, after appellant's appearance before a Board comprised of seven members whereby two-thirds of the members must authorize and sign orders approving parole for persons convicted of a "violent crime" as defined in section 16-1-60 of the S.C. Code. & S.C. Code § 24-21-645(A) (Supp. 2012.

Here, by view of the probative and substantial evidence on the record. This Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach whether the parole board views appellant's crime as violent.

The statute defining violent crimes, S.C. Code Ann. § 16-1-60 was enacted in 1986, thus, the retroactive application of the violent crime definition in § 16-1-60 for the purposes of parole violates his ex post facto rights. A retroactive change in state law which infilcts a greater punishment for a crime than that which applied when the criminal act was committed violates the ex post facto clauses of the Federal and State Constitutions. U.S. Const. Art. I, § 10; S.C. Const. Art. I, § 4.

APPELLANT CONTENDS THAT THE PAROLE BOARDS USE OF THE CURRENT STATUTE INSTEAD OF THE STATUTE IN EFFECT AT TIME OF HIS OFFENSE DEPRIVE'S HIM OF LIBERTY INTEREST IN PAROLE AND VIOLATE'S THE EX POST FACTO CLAUSE.

Appellant is being deprived of liberty interest in parole by the current version of 24-21-640 instead of the version in effect at the time he committed his offense. Appellant's crime was committed in 1982 under S.C. Code Ann. § 55-612, as amended by addition of Act 100 of 1981, and criteria promulgated by Parole Board in 1982. The relevant parole standard in effect at that time provided:

The South Carolina Parole and Community Corrections Board is mandated under Code of Laws of South Carolina 1976 Section 24-21-640 to consider circumstances warranting parole:

The Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it shall appear 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 shall establish specific criteria for the "granting" of parole and provisional parole. Such criteria shall reflect all the aspects of this section. The criteria shall be made available to all prisoners at the time of their incarceration and the general public. Section 24-21-640 of Act 100 of 1981 (SCDC 19-109, Jan. 1982).

In contrast, the relevant parole standard in effect at the time of Appellant's initial hearing of April 1, 1998 and all subsequent hearings applied by the Parole Board changed shall to must and may. Thereafter, the Board established guidelines for the "denying" of parole, instead of specific criteria for the "granting" of parole. See section (1986); Act 462, § 30; 1990 Act 510, § 1. PE Form 6 July (1991), removing all language that Board was mandated to consider circumstances warranting parole".

The Parole Board asserts that the criteria's differ only by the word "shall" replaced by the word "may", and that this change is merely procedural and not an ex post facto violation. Appellant's claims are based on statutory changes that effects his substantial personal right to statutorily correct parole review. See Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs., 377 S.C. 489, 499, 661 S.E.2d 106, 111-12 (2008). In contrast to the Board's assertion, the ALC stated the current version of § 24-21-640 is substantially the same as § 55-612 which was in effect at the time of Appellant's conviction. The ALC's judgment is clearly arbitrary and erroneous. A change in language that instructed the parole board shall release the prisoner if certain conditions were met to language that the board may release" (emphasis added.) The statute

in effect at the time of Appellant's offense created an "expectancy of parole" protected by the Due Process Clause. Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 99 S.Ct. 2106. The Court held that the mandatory language and structure of a Nebraska parole-release statute created an "expectancy of release," a liberty interest entitled to protection under Due Process. U.S.C.A. Const.Amends. 5, 14; 42 U.S.C.A. § 1983.

When scrutinized under Greenholtz the statute created a constitutionally protected interest, the Court found significant its mandatory language-the use of the word "shall"-and the presumption created-that parole release must be granted unless one of four designated findings are made. Greenholtz, 442 U.S. 12, 99 S.Ct., at 2106.

RESPONDENT HAS DENIED APPELLANT ANNUAL PAROLE REVIEW PURSUANT TO SOUTH CAROLINA LAW.

Respondent has not followed the law as it applies to appellant appearing before the parole board on an annual basis pursuant to review schedule following a negative determination of parole in section(s) 24-21-620; 24-21-640; 24-21-645. The following is a list of Appellant's parole hearing's after denial of parole:
April 1, 1998; May 24, 2000, May 22, 2001; July 17, 2002; July 16, 2003; July 18, 2004; July 13, 2005; July 26, 2006; August 29, 2007; October 8, 2008; November 17, 2009; February 9, 2011; May 9, 2012 and June 19, 2013.

Appellant has a total of fourteen (14) hearings since his initial hearing of April 1, 1998. If Appellant would have received annual hearings pursuant to the aforementioned statutes, he would have appeared before the Board sixteen (16) times. The math is simple. The review or consideration for parole is granted by statute. Upon a negative determination for parole, prisoners in confinement for a violent crime as defined in 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole, "except that prisoners who are eligible for parole pursuant to section 16-25-90, who are subsequently denied parole must have their cases reviewed every twelve (12) months for the purpose of a determination of parole". Section 24-21-645. If Respondent had followed the law as it applies to an annual twelve month review or re-hearing after rejection, in either of the above statutes, appellant would have appeared before the parole board

following the negative determination for the sixteenth (16) time on June 19, 2013.

The parole board admitted that appellant appeared yearly except for two occasions and that the hearings were postponed but immediately rescheduled. Absurd, there is no record of the 1999 or 2010 hearings as indicated above. The board when on to say that the statute does not require a hearing be held exactly every year. Admittingly, the Board unlawfully denied Appellant annual parole reviews pursuant to 24-21-645.

The ALC found that Appellant has been afforded a parole hearing every year since 1998 except for 1999 and 2010. Thereafter he agrees with the Board by stating appellant did not have a hearing due to "unforeseen circumstances". The ALC concluded that "it is unclear why the appellant did not have a parole hearing in 1999 and 2010.

The record before the court is clear, appellant has not received annual reviews pursuant to any of the above statutes. The frequency of his reviews have altered the conditions his pre-existing parole eligibility, that causes him to become parole ineligible by this unlawful procedure employed by the parole board. Thus, Appellant is being deprived of a state-created liberty interest which triggers due process requirements of judicial review.

The ALC's decision is in violation of constitutional and statutory provisions, made upon unlawful procedure and effected by other error of law. The validity under the statutory scheme in effect when Appellant committed his crime he was eligible for parole every twelve (12) months and statutes enacted or amended after a prisoner was sentenced cannot be applied to alter the conditions of pre-existing parole eligibility. Roller v. Cavanaugh, 984 F.2d 120 (4th Cir. 1993).

THE CUMULATIVE CHANGES IN THE PAROLE LAWS SINCE APPELLANT'S CONVICTION VI VIOLATE THE EX POST FACTO CLAUSE.

South Carolina parole laws have been amended and changed numerous times since appellant's crime in 1982; Courts must examine the cumulative changes in the parole laws since an inmate's conviction. Garner defined the framework for determining the requisite risk by instructing lower courts to first consider the risk inherent in the wording of the statute itself and then, alternately, to explore the evidence of the statute's practical implementation. 529 U.S. 255, 120 S.Ct. 1362. The rules of

constitutional law pronounced in Garner remains the proper standard by which to measure as ex post facto violation.

Since appellant's conviction, there have been major changes in the parole process that, taken together, create a sufficient risk of an increased penalty, as was with the passage of Act No. 462, of 1986, the Omnibus Criminal Justice Improvement Act that retroactively applied to all inmates. This act amended and changed all relative parole statutes since appellant's offense and have produced a sufficient risk of increasing the measure of punishment attached to covered crimes; any retroactive application of the above statutes as they were amended and applied to appellant constitute an ex post facto violation. The United States and South Carolina Constitutions specifically prohibit the passage of ex post facto laws. U.S. Const. art. 1, § 4.

CONCLUSION

The ALC failed to examine the factors in conjunction with the amendments decrease in frequency of hearings to determine whetner the overall changes when considered in total have significantly disadvantaged appellant in violation of the Ex Post Facto Clause. The substantive rights of Appellant have been prejudiced because the finding, the conclusion, and decision of the ALC was affected by other error of law. Cooper, holding that an inmate has a state created liberty interest in requiring the parole board to adhere to statutory criteria in rendering a decision.

Therefore, Appellant is being unlawfully denied liberty and property interest in parole.

Ronald Tate

Ronald Tate, #114188
Appellant

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Docket No. 13-ALJ-15-0027-AP

Appellate Case No.: 2014-001047

RONALD TATE, #114188,.....APPELLANT

V.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and is limited on access to colored paper or bind/bounding material by the Department of Corrections.

Ronald Tate

Ronald Tate, #114188
Appellate

April 9, 2015

STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED
APR 15 2015
SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 13-ALJ-15-0027-AP
Appellate Case No. 2014-001047

Ronald Tate, #114188,.....Appellate,

v.

S.C. Dept. of Probation,
Parole and Pardon Service.....Respondent.

FINAL BRIEF OF APPELLANT

Ronald Tate, #114188
Appellant

Perry Correctional
Institution Q-2 B-220
430 Oaklawn Road
Pelzer, S.C. 29669

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 13-ALJ-15-0027-AP
Appellate Case No. 2014-001047

Ronald Tate, #114188,.....Appellate,

v.

S.C. Dept. of Probation,
Parole and Pardon Service.....Respondent.

CERTIFICATE OF SERVICE

I, Ronald Tate, #114188, hereby certify that I have served the within Final Brief Of Appellant dated April 9, 2015, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, in the Interagency Mail Service, or by electronic mail addressed to the attorney of record below:

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

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

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

Ronald Tate

Ronald Tate, #114188
Appellant
Perry Correctional
Institution Q2 B220
430 Oaklawn Road
Pelzer, S.C. 29669

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of issue on appeal.....iii

Statement of the case.....1

Arguments

Appellant contends that the parole board's retroactive application of section 16-1-60 of the South Carolina Code of Laws redefining his offense as violent is in violation of the ex post facto clause....2

Appellant contends that the parole boards use of the current statute instead of the statute in effect at time of his offense deprive's him of liberty interest in parole and violate's the ex post facto clause.....3

The cumulative changes in the parole laws since appellant's conviction violate the ex post facto clause.....5

Conclusion.....6

Argument

Respondent has denied appellant annual parole review pursuant to South Carolina Law.....4

TABLE OF AUTHORITIES

CASES

Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 99 S.Ct. 2106.....4
Roller v. Cavanaugh, 984 F.2d 120 (4th Cir. 1993).....5
Garner, 529 U.S. 255, 120 S.Ct. 1362.....5,6
Cooper v. S.C. Dept., of Prob., Parole and Pard. Serv's.,
377 (S.C. 489, 499, 661 S.E.2d 106, 111-12 (2008).....3

STATUTES

16-1-60.....2,4
§55-612.....3
24-21-620.....4
24-21-640.....3,4
24-21-645.....1,2,4,5

OTHER

U.S. Const.....2,4,6
Act 100.....3
Act 462 (1986).....6

STATEMENT OF ISSUE ON APPEAL

1. The retroactive application of the violent crime definition is an Ex Post Facto violation as it applies to appellant.

2. Appellant is being denied of liberty interest in parole by the current version of 24-21-40 instead of the version in effect at the time he committed his offense.

3. Respondent has not followed the law as it applies to appellant appearing before the parole board on an annual basis.

4. South Carolina's parole laws have been changed numerous times and create a significant risk of increased punishment.

STATEMENT OF THE CASE

Appellant was indicted at the 1982 term of the Greenville County grand jury for the offenses of murder, assault and battery with intent to kill, armed robbery, housebreaking, grand larceny of a vehicle. Appellant appeared before the Honorable Frank Epps, on December 18, 1982, and proceeded to a jury trial and was sentence shortly thereafter for all of the offenses and received a life sentence plus fifty-five years.

At the time of appellant's conviction and sentence, S.C. Law provided that an individual serving a life sentence for murder would be eligible for parole following completion of twenty-years of his sentence. Appellant initially appeared before the Board of Probation, Parole and Pardon Services (the Parole Board) on April 1, 1998, after completing sixteen (16) years of his sentence through the award of earned work credits. The parole board denied appellant parole following that hearing, and on thirteen subsequent occasions.

The reasons for denial was due to 1) nature and seriousness of current offense; and, 2) the use of deadly weapon in this offense or previous offense; and 3) indication of violence in this offense or previous offense. Appellant's most recent appearance before the Board on June 12, 2013, is at issue here.

Appellant contends that the Respondent's fail to follow the mandatory criteria promulgated by parole board in 1982 and applied an amended version of section 24-21-645 instead. Appellant contends that he is being treated as a violent offender when appearing before the parole board. Appellant contends that the Board alters the frequency of his parole eligibility each year denying him annual 12 month parole hearings.

Finally, appellant contends that the cumulative changes in the parole laws and amendments when considered in total since his offense and conviction produces a sufficient risk of increasing the measure of punishment attached to his crime, violating Federal and State ex post facto clauses as applied retroactively. U.S.C.A. Const. Art. 1, § 10, cl. 1; const. Art. 1. § 4; Code 1976, § 24-21-645.

APPELLANT CONTENDS THAT THE PAROLE BOARD'S RETROACTIVE APPLICATION OF SECTION 16-1-60 OF THE SOUTH CAROLINA CODE OF LAWS REDEFINING HIS OFFENSE AS VIOLENT IS IN VIOLATION OF THE EX POST FACTO CLAUSE..

Appellant claims that the retroactive application of the violent crime definition in section 16-1-60 (1986) for the purposes of parole violates the ex post facto clause of the State Constitution. The ALC was misled by the parole board and erred in his findings by a clear and erroneous view of the reliable, probative, and substantial evidence on the whole record.

At time of appellant's offense and conviction (1982), he was not classified as violent under the laws of the State of South Carolina. The statute defining crimes as violent was enacted in 1986 and retroactively applied to appellant as evident in his initial appearance before Parole Board on April 1, 1998, and all subsequent hearings to date. Respondent asserts that appellant is not being classified as violent by the Department (SCDPPP'S), as it pertains to his parole eligibility, or hearings". However, respondent applies the definition of 16-1-60 in the parole rejection notification form citing (indication of "violence" in this offense or previous offense; as a finding of fact, after appellant's appearance before a Board comprised of seven members whereby two-thirds of the members must authorize and sign orders approving parole for persons convicted of a "violent crime" as defined in section 16-1-60 of the S.C. Code. & S.C. Code § 24-21-645(A) (Supp. 2012.

Here, by view of the probative and substantial evidence on the record. This Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach whether the parole board views appellant's crime as violent.

The statute defining violent crimes, S.C. Code Ann. § 16-1-60 was enacted in 1986, thus, the retroactive application of the violent crime definition in § 16-1-60 for the purposes of parole violates his ex post facto rights. A retroactive change in state law which infilcts a greater punishment for a crime than that which applied when the criminal act was committed violates the ex post facto clauses of the Federal and State Constitutions. U.S. Const. Art. I, § 10; S.C. Const. Art. I, § 4.

APPELLANT CONTENDS THAT THE PAROLE BOARDS USE OF THE CURRENT STATUTE INSTEAD OF THE STATUTE IN EFFECT AT TIME OF HIS OFFENSE DEPRIVE'S HIM OF LIBERTY INTEREST IN PAROLE AND VIOLATE'S THE EX POST FACTO CLAUSE.

Appellant is being deprived of liberty interest in parole by the current version of 24-21-640 instead of the version in effect at the time he committed his offense. Appellant's crime was committed in 1982 under S.C. Code Ann. § 55-612, as amended by addition of Act 100 of 1981, and criteria promulgated by Parole Board in 1982. The relevant parole standard in effect at that time provided:

The South Carolina Parole and Community Corrections Board is mandated under Code of Laws of South Carolina 1976 Section 24-21-640 to consider circumstances warranting parole:

The Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it shall appear 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 shall establish specific criteria for the "granting" of parole and provisional parole. Such criteria shall reflect all the aspects of this section. The criteria shall be made available to all prisoners at the time of their incarceration and the general public. Section 24-21-640 of Act 100 of 1981 (SCDC 19-109, Jan. 1982).

In contrast, the relevant parole standard in effect at the time of Appellant's initial hearing of April 1, 1998 and all subsequent hearings applied by the Parole Board changed shall to must and may. Thereafter, the Board established guidelines for the "denying" of parole, instead of specific criteria for the "granting" of parole. See section (1986); Act 462, § 30; 1990 Act 510, § 1. PE Form 6 July (1991), removing all language that Board was mandated to consider circumstances warranting parole".

The Parole Board asserts that the criteria's differ only by the word "shall" replaced by the word "may", and that this change is merely procedural and not an ex post facto violation. Appellant's claims are based on statutory changes that effects his substantial personal right to statutorily correct parole review. See Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs., 377 S.C. 489, 499, 661 S.E.2d 106, 111-12 (2008). In contrast to the Board's assertion, the ALC stated the current version of § 24-21-640 is substantially the same as § 55-612 which was in effect at the time of Appellant's conviction. The ALC's judgment is clearly arbitrary and erroneous. A change in language that instructed the parole board shall release the prisoner if certain conditions were met to language that the board may release" (emphasis added.) The statute

in effect at the time of Appellant's offense created an "expectancy of parole" protected by the Due Process Clause. Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 99 S.Ct. 2106. The Court held that the mandatory language and structure of a Nebraska parole-release statute created an "expectancy of release," a liberty interest entitled to protection under Due Process. U.S.C.A. Const.Amends. 5, 14; 42 U.S.C.A. § 1983.

When scrutinized under Greenholtz the statute created a constitutionally protected interest, the Court found significant its mandatory language-the use of the word "shall"-and the presumption created-that parole release must be granted unless one of four designated findings are made. Greenholtz, 442 U.S. 12, 99 S.Ct., at 2106.

RESPONDENT HAS DENIED APPELLANT ANNUAL PAROLE REVIEW PURSUANT TO SOUTH CAROLINA LAW.

Respondent has not followed the law as it applies to appellant appearing before the parole board on an annual basis pursuant to review schedule following a negative determination of parole in section(s) 24-21-620; 24-21-640; 24-21-645. The following is a list of Appellant's parole hearing's after denial of parole:
April 1, 1998; May 24, 2000, May 22, 2001; July 17, 2002; July 16, 2003; July 18, 2004; July 13, 2005; July 26, 2006; August 29, 2007; October 8, 2008; November 17, 2009; February 9, 2011; May 9, 2012 and June 19, 2013.

Appellant has a total of fourteen (14) hearings since his initial hearing of April 1, 1998. If Appellant would have received annual hearings pursuant to the aforementioned statutes, he would have appeared before the Board sixteen (16) times. The math is simple. The review or consideration for parole is granted by statute. Upon a negative determination for parole, prisoners in confinement for a violent crime as defined in 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole, "except that prisoners who are eligible for parole pursuant to section 16-25-90, who are subsequently denied parole must have their cases reviewed every twelve (12) months for the purpose of a determination of parole". Section 24-21-645. If Respondent had followed the law as it applies to an annual twelve month review or re-hearing after rejection, in either of the above statutes, appellant would have appeared before the parole board

following the negative determination for the sixteenth (16) time on June 19, 2013.

The parole board admitted that appellant appeared yearly except for two occasions and that the hearings were postponed but immediately rescheduled. Absurd, there is no record of the 1999 or 2010 hearings as indicated above. The board when on to say that the statute does not require a hearing be held exactly every year. Admittingly, the Board unlawfully denied Appellant annual parole reviews pursuant to 24-21-645.

The ALC found that Appellant has been afforded a parole hearing every year since 1998 except for 1999 and 2010. Thereafter he agrees with the Board by stating appellant did not have a hearing due to "unforeseen circumstances". The ALC concluded that "it is unclear why the appellant did not have a parole hearing in 1999 and 2010.

The record before the court is clear, appellant has not received annual reviews pursuant to any of the above statutes. The frequency of his reviews have altered the conditions his pre-existing parole eligibility, that causes him to become parole ineligible by this unlawful procedure employed by the parole board. Thus, Appellant is being deprived of a state-created liberty interest which triggers due process requirements of judicial review.

The ALC's decision is in violation of constitutional and statutory provisions, made upon unlawful procedure and effected by other error of law. The validity under the statutory scheme in effect when Appellant committed his crime he was eligible for parole every twelve (12) months and statutes enacted or amended after a prisoner was sentenced cannot be applied to alter the conditions of pre-existing parole eligibility. Roller v. Cavanaugh, 984 F.2d 120 (4th Cir. 1993).

THE CUMULATIVE CHANGES IN THE PAROLE LAWS SINCE APPELLANT'S CONVICTION VI VIOLATE THE EX POST FACTO CLAUSE.

South Carolina parole laws have been amended and changed numerous times since appellant's crime in 1982; Courts must examine the cumulative changes in the parole laws since an inmate's conviction. Garner defined the framework for determining the requisite risk by instructing lower courts to first consider the risk inherent in the wording of the statute itself and then, alternately, to explore the evidence of the statute's practical implementation. 529 U.S. 255, 120 S.Ct. 1362. The rules of

constitutional law pronounced in Garner remains the proper standard by which to measure as ex post facto violation.

Since appellant's conviction, there have been major changes in the parole process that, taken together, create a sufficient risk of an increased penalty, as was with the passage of Act No. 462, of 1986, the Omnibus Criminal Justice Improvement Act that retroactively applied to all inmates. This act amended and changed all relative parole statutes since appellant's offense and have produced a sufficient risk of increasing the measure of punishment attached to covered crimes; any retroactive application of the above statutes as they were amended and applied to appellant constitute an ex post facto violation. The United States and South Carolina Constitutions specifically prohibit the passage of ex post facto laws. U.S. Const. art. 1, § 4.

CONCLUSION

The ALC failed to examine the factors in conjunction with the amendments decrease in frequency of hearings to determine whether the overall changes when considered in total have significantly disadvantaged appellant in violation of the Ex Post Facto Clause. The substantive rights of Appellant have been prejudiced because the finding, the conclusion, and decision of the ALC was affected by other error of law. Cooper, holding that an inmate has a state created liberty interest in requiring the parole board to adhere to statutory criteria in rendering a decision.

Therefore, Appellant is being unlawfully denied liberty and property interest in parole.

Ronald Tate

Ronald Tate, #114188
Appellant

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Docket No. 13-ALJ-15-0027-AP

Appellate Case No.: 2014-001047

RONALD TATE, #114188,.....APPELLANT

V.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and is limited on access to colored paper or bind/bounding material by the Department of Corrections.

Ronald Tate

Ronald Tate, #114188
Appellate

April 9, 2015

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 13-ALJ-15-0027-AP
Appellate Case No. 2014-001047

Ronald Tate, #114188,.....Appellate,

v.

S.C. Dept. of Probation,
Parole and Pardon Service.....Respondent.

CERTIFICATE OF SERVICE

I, Ronald Tate, #114188, hereby certify that I have served the within Final Brief Of Appellant dated April 9, 2015, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, in the Interagency Mail Service, or by electronic mail addressed to the attorney of record below:

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

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

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

Ronald Tate

Ronald Tate, #114188
Appellant
Perry Correctional
Institution Q2 B220
430 Oaklawn Road
Pelzer, S.C. 29669

Ronald Tate, #114188
Perry Correctional
Institution Q2 B220
430 Oaklawn Road
Pelzer, S.C. 29669

April 9, 2015

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

RE: Ronald Tate v. SCDPPPS'S (4)
Appellate Case No. 2014-001047

Honorable Kitchings:

Enclosed please find the original and fourteen (14) copies of Appellant's Final Brief, along with proof of service in the above referenced-case.

Thank you for your cooperation in this matter.

Sincerely,

Ronald Tate

Ronald Tate, #114188
Appellant

cc: Tommy Evans

Ronald Tate # 114188
Perry Correctional
Institution Q2 B220
430 Oaklawn Road
Pelzer, S.C. 29669

AMS

Honorable Jenny Kitchings
Clerk of South Carolina
Court of Appeals
1015 Sumter St., 5th Floor
Columbia, S.C. 29201