

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

RECEIVED

APPELLATE CASE NO. 16-ALJ-15-0002-AP

APR 08 2016

SC Court of Appeals

South Carolina Department of Probation,
Parole and Pardon Services

Respondent,

v.

Billy Rice, 0083744

Appellant.

APPELLANT'S AFFIDAVIT IN SUPPORT OF AUTHENTICATION

I, Billy Rice, Appellant solemnly swear that the account of claims, and the authentication of newspaper articles, related documents, records of the Court, public records, letters filed in public office, etc., delivered into this Court does contain a true and full account of claims; and makes attestation to the genuineness of documents, under the penalty of perjury certify that the information given in conforming to requirement of authentication as a condition precedent to admissibility by evidence sufficient to support a finding that the matter in question is what the Appellant claims true, and correct.

s/ Billy Rice
Billy Rice, 008374, Pro Se
Lee County Institution
990 Wisacky Hwy, F6B
Bishopville, SC 29010

Sworn to and Subscribed Before Me
this 8th day of Mar. 2016.

Notary: Darwin Pangle
My Commission Expires: 9/27/2023

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

MEMORANDUM

EXHIBIT-A

TO: All Policy Manual Holders
FROM: Mr. William R. Byars, Jr., Director
SUBJECT: CHANGE 2 to GA-01.12, "INMATE GRIEVANCE SYSTEM"
DATE: March 19, 2013

This change is effective immediately:

Section 8.3, amended as follows:

8.3 The disposition of any Department disciplinary proceeding (Disciplinary Hearing, Administrative Hearing) which resulted from a guilty plea by the inmate ~~if the inmate is convicted of 601, Court Order Credit Loss~~, or if the inmate accepted Informal or Administrative Resolution, unless the sanction imposed was excessive in relationship to the rule violation; and

Section 8.4, amended as follows:

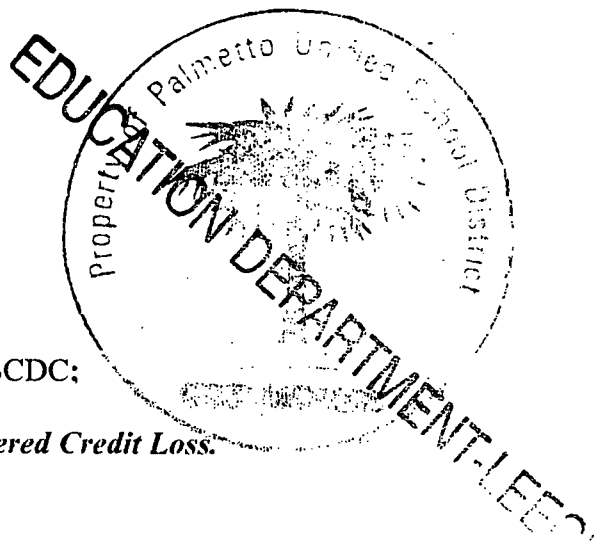
8.4 Any issue outside of the control of the Department:

- 8.4.1 State and federal court decisions;
- 8.4.2 State and federal laws and regulations;
- 8.4.3 Parole Board decisions;
- 8.4.4 Any other matters outside the control of the SCDC;
- 8.4.5 *If the inmate is convicted of 601, Court Ordered Credit Loss.*

Section 8, new section, #8.5 added as follows:

8.5 *Inmates can not file a grievance on the following issues:*

- 8.5.1 *Unprocessed grievance(s);*
- 8.5.2 *Against an Inmate Grievance Coordinator for un-processing a grievance;*
- 8.5.3 *The disposition on another grievance;*
- 8.5.4 *On an affidavit presented to the court by an employee;*
- 8.5.5 *The status of a pending grievance.*



Section 11, amended as follows:

11. RESPONSES: Each grievance will be answered in writing at each level of decision using the applicable SCDC Form (either form 10-5 or 10-5a) and will be served by the Inmate Grievance Coordinator to the inmate personally. ~~Exceptions to this procedure will be required to be approved by the Chief, Inmate Grievance Branch. The response will state the reasons for the decision reached and inform the grievant of his/her rights of appeal.~~ Time limits at each step in the procedure are contained herein; but in most instances, grievances will be processed from initiation to final disposition within ~~125~~ 171 days, except when the Branch Chief/Designee, Inmate Grievance Branch, specifically agrees to a request for an extension. If an extension is granted, the Inmate Grievance Coordinator will notify the inmate in writing (*The extension is at the Step 1 level only. No extension is required at the Step 2 level.*) (NOTE: The maximum extension that may be given is 90 days. Under certain circumstances the grievance process may exceed ~~215~~ 261 days.) (Also see Procedures #13 and #14.)

Section 13, amended as follows:

13.1 Inmates will be allowed to file five (5) grievances per month, which shall include all grievances that are returned unprocessed. After the five (5) grievances have been accepted, all others will be returned unprocessed, with the exception of a disciplinary conviction appeal or a classification reduction in custody level review. Grievances alleging criminal activity will be forwarded to the Division of Investigation (DOI), and if found to be without merit by DOI, will be returned unprocessed if the inmate has already had five (5) grievances accepted for the month. Emergency grievances will be considered on a case by case basis by the Branch Chief of the Inmate Grievance Branch.

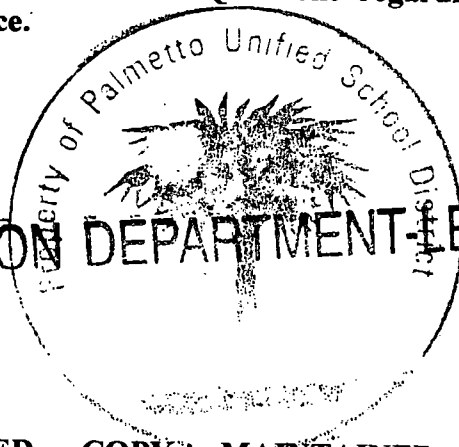
~~13.1~~ 13.2 Inmates must make an effort to informally resolve a grievance by either submitting a Request to Staff Member Form ~~or by discussing their complaint with~~ to the appropriate supervisor/staff. However, in certain cases, informal resolution may not be appropriate or possible (e.g., when the matter concerns staff not working at the institution, or when the matter involves allegations of criminal activity). An informal resolution is not necessary when appealing a disciplinary conviction or a custody reduction. If informal resolution is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, i.e., living areas, libraries, etc. and will ~~submit~~ place the form to an employee in a designated by the Warden (not the Inmate Grievance Coordinator) grievance drop box within ~~15~~ five (5) days of the alleged incident. Requests to hear disciplinary ~~tapes recordings~~ must be submitted to the Major, utilizing a Request to Staff Member form within 15 days of their disciplinary conviction. The Institutional Inmate Grievance Coordinator will be notified of this request, as well as the date the hearing ~~tape recording~~ was played for the inmate, through CRT message/memorandum. *Any information obtained from a review of the recording may be included in the Step 2 grievance appeal.* If an inmate needs additional space to complete their grievance, only one additional, one sided page will be permitted. An inmate will submit a grievance within the time frames established in the policy. (NOTE: Allegations involving sexual conduct between inmates and staff constitute criminal activity. When an inmate alleges that sexual activity/conduct has occurred between an inmate(s) and a staff member(s), that grievance must be processed as criminal activity.) See Procedure 15., below, for more information on processing a grievance alleging criminal activity. (NOTE: *Only one [1] disciplinary conviction can be appealed on a grievance form. Example: If an inmate has three [3] disciplinary convictions for one [1] incident, each conviction must be filed separately.*) (4-ACRS-6C-03)

(The only exceptions are listed at Procedure(s) #13.7 and 14.) The grievance form must contain information about how, *with whom*, and when attempts were made to resolve the problem informally *within five (5) days of the signature date on the SCDC Form 19-11, " Inmate Request To Staff Member."* (RTSM), a brief statement of the circumstances of the grievance, to include date and time; why the grievant believes s/he is entitled to relief, and a brief statement of the action(s) requested for

Coordinator must update the text in the CRT, and notify the Inmate Grievance Coordinator at the losing institution of the status of their pending grievance(s) via e-mail or CRT. However, it will still be the responsibility of the Inmate Grievance Coordinator at the losing institution to monitor the status of all transferred grievance(s), to ensure the grievance(s) have either been served and closed out in the automated system, or appealed to the Step 2 level.

~~18.4 If a grievant is transferred while the grievance is in the "Informal Resolution" stage, then the grievance will be forwarded to the next level in the procedure and will receive a Warden's response from the losing institution.~~

Policy Manual Holders should make the above changes to the Policy and place this memo immediately in front of SCDC Policy GA-01.12, "Inmate Grievance System," in each of the General Administration Manuals. Questions regarding this change should be directed to the General Counsel Office.



EDUCATION DEPARTMENT - EECI

SIGNATURE ON FILE

William R. Byars, Jr., Director

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT

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

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

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December 9, 2015

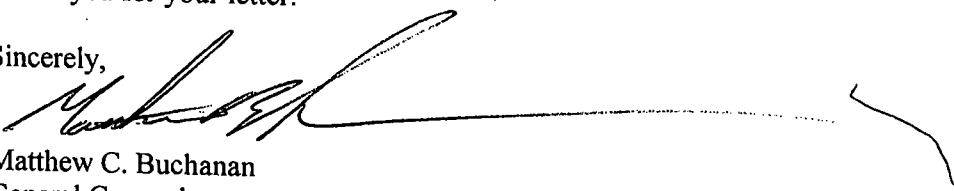
Bill Rice, #83744
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

Dear Mr. Rice:

I am responding to your Request for Reconsideration from your recent parole denial. Please be advised that there is no appeal process for the routine denial of parole. Also, keep in mind that the Board is an independent body and makes its decisions in its absolute discretion. However, in an effort to assist you, I am forwarding your letter to our office of Board Support Services to be placed in your parole file for review by the Board at any future hearings.

Thank you for your letter.

Sincerely,


Matthew C. Buchanan
General Counsel

MCB:dn

cc: Larry Patton, Director of Board Support Services

Parole Board Members
S.C. Department of Probation, Parole and Pardon Services

Bill Rice, #0083744, F6B 1210
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

November 25, 2015

REVIEW AND RE-EXAMINATION FOR
PAROLE WARRANTED

I, Bill Rice, #0083744, respectfully submit that ^{OCTOBER} 21, 2015, parole consideration was for reasons outlined below, unfair; incomplete process; capricious or whimsically predetermine case; and review were void of grace in consideration. Despite of heartfelt plea and strong support clan of successful reputable overall quality of law abiding individuals of good character to fellowship . . . clean community to reside . . . job opportunity . . . and furthered met all promulgated reasonable requirements of written criteria . . . and has taken accountability/responsibility for my action.

The undersigned parole candidate now bases reasons for review and reexamination as follows:

I.

Hearing tribunal fail to adhere to purpose and subject encompass and approved by legislative intent intended at time of my offense pursuant to SC Code Ann. 24-21-13(b), that reads at pertinent part:

" . . . It [Board] shall develop written policies and procedures for the following, . . . (b). the granting of parole and pardon."

In essence a specialized subject of legislative intent tailored for that purpose, to release prisoners from imprisonment before the full sentence has been served or death . . . granted for good behavior on the condition that the parolee regularly report to supervising officer for a specified period, and on condition that the prisoner abide by certain rules during the balance of the sentence, and parole is not freedom.

However, reasons/finding of facts statement was unfairly used in my case to deny parole.

- * Nature and seriousness of current offense
- * Indication of violence in this or previous offense
- * Use of deadly weapon in this or previous offense
- * Prior criminal record indicates poor community adjustment
- * Failure to successfully complete a community supervision program

Clearly inconsistent with design or plan of legislative intent at time of my conviction and sentence ingredient. Cited inference statement(s) were not elements for granting/denying parole, because I was once paroled on current sentence, nor were it encompass in legislative approve criteria or legislative idea standard for granting parole, nor does the Board's criteria encompass a aim to accomplish beyond what has already been achieved . . . nor does the criteria requires overturning judicial/administrative facts that Board uses in finding of fact statement to become parole suitable, and since there is no dispute of inferred findings of fact statements they has no place in rejection letter, and should not be an issue when insufficient/inadequate to prove something already settled, and further immaterial/lacking in probative value because it fail to prove or disprove whether parole candidate is now 26 years later suitable for parole. In addition, finding of fact conclusion that regulate denying parole places a substantial obstacle and unachievable burden in the path to achieve parole, which the Board routinely and wrongfully uses to restrict granting a first/second chance. Rehashing and reproducing the same generality inferred statements does not address any one specific requirement for the granting or denying parole. SEE Exhibits. Therefore, improper findings, judgment arrive at by prefabricated ready built fact(s) which judgment cannot be justified based upon inadequacies, and irregularities. Contrary to legislative intent a tribunal that render conclusion drawn from stale facts that prejudice parole candidate is unfair.

II.

The parole candidate submits that new parole Board's policy/criteria reflected in notice of rejection letter, not promulgated, nor existed at time of my conviction or sentencing, not made known by open declaration before applying to my case constituted an unfair disadvantage, and unfair surprise

having had no notice of new clearly shift in parole Board's policy/criteria; and where procedure for granting or denying parole drawn from amended SC Code Ann. 24-21-10(F)(1). The candidate submits that he should have been notified in writing, or by method that is understood, or made known by Lee Correctional Institution parole agent. Section number Four (4) inserted in notice of rejection letter is incoherent; cause to be unprepared for parole hearing; and unprepared to answer or refute for what ever reason; or coordinate appropriate emphasis on related concern. Hearing were not conducted accordance with due process, and denying opportunity to complete new process, that a reasonable ordinarily prudent person expect to be inform prior to hearing.

III.

The parole candidate further submits that the Board's decision to deny parole were determine months in advance and guided by mere impulse, emotion, and unguided sensation. There is not a dispute to work through regarding "Findings of Fact", where duplication having the same particulars, and effectes arrived before . . . respectfully amounts to a show trial/hearing staged primarily for a resemblance/theoretically parole hearing only in theory . . . outcome predetermine and predictive . . . because no one listen, or ask question(s) directed at granting parole. We know that "inferred findings of fact' are permanent, immovable and lifelong, yet contrary to criteria and granting parole . . . at some point the Board must be estop and barred from alleging inferred finding of fact statement(s) in good conscience and fairness, because they no longer has merits in hearing to deny or grant parole. Apparently the parole Board has classed me and many others unconstitutionally as "Business and Chattel"; and permanent unsuitable for parole, never to morally qualify for parole?? However, that is not a rhetorical question, I deserve an answer to . . . and not merely a standard letter, because the Board has not shown that evaluative tools are used, or results fairly assess to aid rationally the Board's determination of cases sufficiently without biasness, generalization, and stereotype pattern. The denial of parole in my case are clearly shaded and clouded by politics guiding the Board's decision, and unconstitutionally abridgement of my civil liberties, requires review and reexamination for cause of predetermination,

fixing and settling in advance upon matters outside legislative intent.

IV.

The parole candidate respectfully submits that Board members refused to view my case with a practical -eye, as opposed to speculation, or drawing away attention upon inferred findings of fact; or ignoring information that validates for good cause to grant parole; or make sure case by case that disapproval were sufficiently justified, and not based on biasness, generalization; or develop a mental stereotype of parole candidate(s) that lacks originality or individuality. I have only experienced a cold mechanical repetition of the same posture, held in common by members of the Board, lacking sign of genuine consideration for granting parole. However, one of the Board's invested character trait, they may exercise grace in form of parole by virtue of legislative intent.

I am not a brute or a ruffian, my prayer is that this Tribunal judge me on whom I have become, and not upon my past. My conduct, activity and current institution record is a true measurement of my character, progress, considering my age, health, conduct, and that people are mutable/prone to change. I cannot mutate the facts or modify the fact, or make less in a grammatical construction to serve a different end, but I can truthfully say I am accountable for my wrongs, and marked by remorse, and reform.

I respectfully request anew and prompt examination of my case and reconsideration for granting parole.

Respectfully,

s/ Billy Rice
Billy Rice #0083744, BLIC Unit
Lee County Correctional Institution

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

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

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www.state.sc.us/ppp

October 18, 2013

Mr. Billy Rice(83744)
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Rice:

I am in receipt of your letter dated October 9, 2013 in reference to a rehearing.

A request for a rehearing should be submitted in writing to this agency within thirty (30) days of your parole rejection. Your parole hearing was held on September 4, 2013; therefore you are ineligible to be considered for a rehearing. You will be notified thirty days prior to your next scheduled parole reconsideration date.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support

LRP/eaw

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

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

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www.state.sc.us/ppp

January 5, 2016

Billy Rice, #83744
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Rice:

I am responding to your grievance letter addressed to Director Adger concerning your recent parole rejection. The concerns you have mentioned in your letter have been litigated in the Administrative Law Court and dismissed. Furthermore, should you wish to appeal your parole denial for the reasons stated in your letter, you will need to do so through the Administrative Law Court, however, I believe you have missed the deadline to do so.

I am forwarding your letter to our Board Support Services section to be placed in your parole file for review at any future hearings.

Sincerely,

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

Matthew C. Buchanan
General Counsel

MCB:dn

cc: Larry Patton, Director of Parole Services

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Rice, #0083744)
)
Appellant,)
)
vs.)
)
South Carolina Department of Probation,)
Parole and Pardon Services,)
)
Respondent.)

NOTICE OF APPEAL

DOCKET NO. -ALJ-15- -AP

Notice is hereby given that Billy Rice does hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated December 17, 2015 and received on January 11, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

The Appellant submits that he is not challenging the denial of parole, or routine denial of parole (emphasis added), but the denial of state created liberty interest which he contends typically involving; and herein hereof incorporates as if verbatim Appellant's grievance; and Review and Re-Examination for parole warranted, that:

1. The South Carolina Probation, Parole, and Pardon Services, and the Parole Review Board (hereinafter "Board"), fail to promulgate new parole criteria; and fail to perform non-discretionary legislated ministerial duty ordered pursuant to South Carolina Code of Laws Ann. Sec. 24-21-10(F)(1); and fail to perform required duty to give notice of newly amended criteria in a timely manner, resulted in undue prejudice, to prepare for parole hearing and/or receive benefit from new provision. Appellant submits having not receive required advance notice pursuant to South Carolina Constitution, Rules,

Billy Rice
Appellant's Name
F6B 2210 990 Wisacky Hwy
Mailing Address
Bishopville, SC 29010
City, State, Zip Code
N/A
Telephone Number

Billy Rice
Signed
1-25-2016
Dated

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Regulations, and Procedural Laws that create a protectable liberty interest for advance notice, and right to know what criteria entitles denied due process. However, Appellant first learned of S.C. Code Sec. 24-21-10 (F)(1) in "rejection letter" in hindsight, void information of new criteria. The Board are required to promulgate criteria and information related materia pursuant to the authority invested them by legislature to establish parole guideline, whereby notice . . . and criteria is standard requirement to view parole candidate's suitability for conditional parole, denial violated State and Federal Constitution; procedural Due Process, substantive rights; Legislated mandate, and procedural law.

(2.) The Board failed to perform prescribe legislative ordered Regulation instituting procedure for specific course of action regarding Administrative proceeding that further a legitimate government objective . . . Where Board are required to take some action a liberty interest is created, and disregarding duty/regulation constitutes a liberty interest Due Process clause violation, and non-discretionary duty. Though there is no absolute right to parole, the Appellant has a right to prepare for consideration. The Board arbitrarily deprived him of entitlement violated substantive due process requirement, and S.C. Code Ann. Sec. 24-21-10(F)(1). Mandatory language also creates liberty interest. The Board fail to adhere to . . . and fail to perform ministerial duty . . . or meet mandatory statutory requirement of Sec. 24-21-10(F)(1). When construing the statute the Court must presume that legislature did not intend a futile act, but rather intended its statutes to accomplish something, Tns. Mills Inc. v. S.C. Dept. of Revenue, 331 SC 611, 503 SE2d 471 (1999). The Board's decision(s) made outside of . . . and failure to include subscribed legislative intent, or use newly procedural guideline tool, and change that altered criteria the Board must apply in determining parole eligibility . . . and facts that change very much procedural in nature constituted First and Fourteenth Amendment violation, and warrants anew prompt parole review hearing, and application/benefit of amended proviso and criteria.

(3.) The Board arbitrarily and capricious enlarged time frame between parole review hearings constitute an unfair increase in time length between hearings and possible relief from the daily rigor of prison life, and conflict

with State and Federal Constitutional rights, because it hindered his First Amendment's free speech guarantee; and Fourteenth Amendment due process right, not reasonably related to legitimate interest.

(4.) The Board erred in calculating Appellant's sentence, sentence related credits, actual days served toward max-out of his 1976 ten (10) years paroleable life sentence, pursuant to S.C. Code of Law Sections 55-611. and 55-611.1 read in conjunction, sentence define as thirty (30) years cumulation of actual time served and earned work credits, as a result his life sentence has expired.

(5.) The Board erred in construing his 1976 "Felony Offender" classification and custody status as a "Violent Offender" classification and custody status, under S.C. Code of Law Ann. Sec. 16-1-60, in violation of Ex Post Facto clause. Felony Offender, and Violent Offender entails different meaning(s), and different connotations that was not legislative intent at time of Appellant's conviction.

(6.) The Board is arbitrarily and capriciously denying Appellant annual parole review, void legitimate authority, law, or policy . . . which the Appellant demand "strict proof". Whereby the Court fail to investigate the Board's conjecture or exercise Rules 901 and 902 SCRE, or substantive law to prove or disprove the truth, instead substitute the Board's decision for its own. Had the Court made its own assessment it would discover that the Board's posture derived from the S.C. Code Ann. Sec. 16-1-60 and Sec. 24-21-645 1986 Omnibus Crime Bill, and predicate had no existence at time of the Appellant's 1976 conviction, nor can the Board prove otherwise. However, the Board has manifestly abused its discretion, and the Court has respectfully been over-trusting and naive. The Appellant submits that he is entitled to annual parole review hearings.

The Board fail to address viable complaints outline in Appellant's documents titled, "Review and Re-Examination for Parole Warranted", dated November 25, 2015; and "Grievance", date December 17, 2015. Furthered violated due process rights, depriving him of substantial right, and fair and full opportunity to procedural administrative remedy to contest parole review concerns, and grieve claims.

Appellant's only recourse is State Court to enforce proviso; procedures; Rules, regulations, policy, and criteria, because the basic requirement of due process are right to notice, and opportunity to be heard at a meaningful time and meaningful manner that he have been deprived.

Date: January 25, 2016

s/ Billy Rice
Billy Rice, #0083744

Jerry B. Adger, Director
 SC Department of Probation, Parole and Pardon Services

Bill Rice #0083744, F6B 2210
 Lee County Correctional Institution

GRIEVANCE

I, Billy Rice, respectfully is grieved, and take exception to the following concerns:

1. On or about 1976, I were tried and found guilty of murder and sentenced to a 10 years parolable life sentence under statutory proviso that define offense classification as "felony", whereby a person convicted of a felony may be punishable by imprisonment for more than one year or death, that then included (Murder; Armed Robbery; Assault and Battery with Intent to Kill; and Kidnapping), but the term felony were not any express part of my sentence, merely a definition, (See, State v King, 150 SC 251, 155 SE 409, SC Code 16-11). However, classification as a violent offender imply, encompass connotation different from felon/felony offender. Whereby violent offender classification, characterization, and/or qualification is a process that ascribe in addition but not limit to, harsher punishment; sanctions; restrictions; limited priviledges; greater quantum of parole votes/larger quorum of board members; heighten/increase overall severity in punishment, etc., assessed against individuals class pursuant to non-violent/violent sentences after 1986, in contrast to misdemeanor/felony classification.

However, there exist a clear disconnection/conflict between the South Carolina Department of Corrections (SCDC), and the South Carolina Department of Probation, Parole, and Pardon Services (PPPS) classification. The SCDC's classify my 1976 offense as non-violent as equivalent to felony definition, and the PPPS's classify same offense felony under violent proviso (16-1-60, 1986) under conditions/stipulations not in effect at time of offense. See, Exhibit A. I am clearly harmed by the PPPS's application and connotations of violent offender classification. In addition the Board has fail to adhere to Legislative Mandate South Carolina Code Ann 24-21-13 (b), at pertinent part reads: ". . .It [Board] shall develop written policies and procedures for the following, (b). the granting of parole and pardon."

2. Annual and Bi-annual parole review hearings after denial of parole. The Grievant submits that in his case denial of annual parole hearings to him is simply wrong, and void of any "certified" authority, and that at time of his offense annual review for member of his class were routine practice, despite of no codified statutory law . . . known upon personal knowledge (emphasis added). There existed no law determining how long an inmate must wait to reappear before the Board upon denial of parole. The Grievant submits that from inception of the South Carolina Probation, Parole, and Pardon Board proviso, allowed caucasians prisoners the opportunity to reappear upon denial after twelve (12) months. In addition, under South Carolina's revised law inmates "will" be entitled to a parole hearing each year, unless the crime they committed was classified a violent crime at the time of the offense; and the PPPS's conduct is an unlawful act not authorized by law, and unconstitutional "irregularities" . . . in violation of

civil/criminal law. Therefore, the Grievant submits that for said reasons, but not limited to entitle him to annual parole hearings. However, if the Agency/Entity disagree with any part of claim, please identify and provide to me copy of any authority, regulation, or policy the Agency/Entity believe support their posture.

3. Arbitrarily and capricious enlarged time frame [initially April moved bi-annually to October] between hearings constitute an unfair increase in time between review length and possible release from the rigor of prison life, in a manner that conflict with related constitutional right, especially that of the United States Constitution. Grievant further submits a person convicted of a crime and sentence to a paroleable Life sentence, in North Carolina and South Carolina jurisdiction, their prisoner(s) (at time of Grievant's 1976 offense) became eligible for release on good behavior, rehabilitation, or the like. Life sentence at said time were defined in number of years 30/40 years, See North Carolina v Bobby E Bowden, SC (2008). Grievant submits that his life sentence has likewise expired, thus require immediate release.

4. Grievant submits October 21, 2015 parole review hearing were unfair, incomplete, denied due process, and requires immediate anew parole review. First and foremost, Grievant adamantly submits that instant grievance/argument is not about denial of parole, or a routine denial of parole (emphasis added), but that of the PPPS procedural violations; required process; and legislative mandate South Carolina Code of Law Ann Section 24-21-10 (F)(1), that the PPPS fail to perform; and void of "fair notice" by the PPPS before use of new proviso/criteria in violation of state act/statute regarding reasonable notice given directly to the affected person. Grievant submits that "actuarial risk and needs assessment factors pursuant to 24-21-10 (F)(1) SC Code of Law" did not occur . . . yet implying that it had/would occur to aid in deciding parole suitability as to his October 21, 2015 parole hearing. To the contrary created a false appearance, and moreover used in narrative as a factor to deny parole candidate(s) opportunity in a prejudicial/scienter manner, said report is false and flawed. Grievant's "Parole rejection letter" upon clear reason vague, and where statute/criteria allude to establish a required duty of care . . . not done and without specifying requirement that legislative mandate intended to achieve some end or results. Therefore parole review results must be made void on its face upon inspections of the contents, and anew hearing immediately held, because results are legally unfair and void; and the PPPS's conduct is against public law and policy.

Date: December 17, 2015

Respectfully Submitted,

s/ Billy Rice
Billy Rice

PRISONERS SERVING LIFE SENTENCE RECEIVES ANNUAL PAROLE HEARINGS; AND
IRREGULARITY IN SYSTEM:

Inmates sentenced prior to 1981 currently receiving annual parole review hearings:

*Muhammad, Ismeal, SCDC# 091408
*Logan, Larry, SCDC# 109472
*Erwin, Ralph L., SCDC# 051231

Inmates whom received annual parole review hearings, and subsequently changed to bi-annual review:

Brown, Willie J. SCDC# 092654
2-13-1993
4-7-1994
10-12-1995

*McPhall, James F., SCDC# 056625
1-13-1993
7-20-1994
7-12-1995

*Owen, Kenneth, SCDC# 083964 Tried 1976
1984 review
1985 review

*Sumpter, Nathaniel, SCDC# 081695 Tried 1976
7-31-1985
7-3-1986
7-6-1994
7-5-1995

*Ortiz, Nelson, SCDC# 083417
1-22-1985
3-13-1986

s/ Billy Rice
Billy Rice, #083744

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

DEC 09 2015

TO: NAME: <i>Ms. Brown</i>	TITLE: <i>Classification</i>	DATE: <i>12-7-2015</i>	EE CI CLASSIFICATION
INMATE'S NAME: <i>Billy Rice</i>		SCDC #: <i>083744</i>	
INSTITUTION: <i>Lee</i>		LIVING QUARTERS: <i>F6-13-210</i>	

Please check my S.C.D.C. Classification Record
as to my Classification status, as how am I classified

- 1- Felony
- 2- Non-Violent
- 3- Violent
- 4- unclassified

Thank you:

Billy Rice

DISPOSITION BY STAFF MEMBER:

Your current SCDC Classification is Non-violent.

DATE: <i>12-14-15</i>	SIGNATURE: <i>Brown</i>
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Justices dismiss parole case; law already amended

By RICHARD CARELLI
The Associated Press

WASHINGTON

The Supreme Court on Tuesday backed out of a South Carolina case in which it was expected to decide whether states may increase the time between parole hearings for all prison inmates.

The court, in a one-sentence, unsigned decision, dismissed the case as "improvidently granted."

That outcome was predictable after questions arose during a high court oral-argument session earlier this month about the continued legal relevancy of the South Carolina dispute.

The state amended its invalidated parole law in June, but no one told the justices until the day before the argument session. The court had agreed to

review the case in March.

Chief Justice William H. Rehnquist began the Nov. 8 argument session by asking lawyers for both sides about the "mootness problems" raised by the amendment.

Under South Carolina's revised parole law, inmates will be entitled to a parole hearing each year unless the crime they committed was classified as a violent crime at the time of the offense. The General Assembly approved the revision in June, and it will take effect Jan. 1.

Violent criminals are entitled to a parole hearing every two years in South Carolina. The Legislature classified crimes as violent and nonviolent in the Omnibus Crime Bill passed in 1986.

There are 13 violent crimes: murder; first-degree criminal sexual con-

Under South Carolina's revised parole law, inmates will be entitled to a parole hearing each year unless the crime they committed was classified as a violent crime at the time of the offense. The General Assembly approved the revision in June, and it will take effect Jan. 1.

duct; second-degree criminal sexual conduct; assault and battery with intent to kill; kidnapping; voluntary manslaughter; armed robbery; drug trafficking; first-degree arson; first-degree burglary; second-degree burglary; criminal sexual conduct with a minor; and assault with intent to commit criminal sexual conduct.

The 4th U.S. Circuit Court of Appeals had ruled that a 1986 South Carolina law that requires parole reconsideration hearings every two years instead of every 12 months cannot be applied to inmates who committed their crimes before the 1986 law took effect.

The appeals court said applying

the law to some inmates would represent an unconstitutional after-the-fact punishment.

The 1986 law had been challenged by Gary Lee Roller, convicted in 1983 of voluntary manslaughter and grand larceny.

Roller was sentenced to 35 years in prison, but was eligible for parole in 1990. The state parole board refused to parole him, however. He was told that he would receive another parole hearing in 1992.

Roller sued, contending he was entitled to a hearing in 1991.

The change in South Carolina law, the justices were told at the Nov. 8 session, meant that whatever the court decided would have no effect on Roller.

The case is *Cavanaugh vs. Roller*, 92-150.

Attached Exhibit - F

The Herald
Rock Hill, SC.

3-14-2000

High court rejects some parole hearing limits

The Associated Press

COLUMBIA — Inmates convicted before a 1986 law that limited parole hearings for violent crimes still are entitled to annual hearings, says the South Carolina Supreme Court.

The justices Monday said Circuit Judge Marc Westbrook was wrong to dismiss an appeal by Darryl Vincent Jernigan, who pleaded guilty to armed robbery in Lexington County in 1983.

Jernigan had complained in 1996 that he was restricted to one parole hearing every two years, instead of annually.

The justices said the 1986 law limiting parole hearings to once every two years for violent criminals could not be applied to inmates convicted before the law took effect.

3/4-00



HENRY MCMASTER
ATTORNEY GENERAL

November 4, 2010

The Honorable Chip Huggins
SC House of Representatives, Dist. No. 85
308 Wayworth Court
Columbia, SC 29212

Dear Representative Huggins:

We received your letter requesting an opinion of this Office concerning the South Carolina Board of Pardons and Paroles voting procedures. You asked our Office to advise "what the correct procedures are for the board to re-vote on a case which has already been decided by a previous vote."

To better illustrate your question, you provided a hypothetical situation:

"The board voted to reject a parole request for an offender incarcerated for murder with four board members in favor and two members voting not to parole (the board procedures require violent offenders to receive five votes in order to be paroled. The board is composed of seven members, but there were only six board members present.) After the decision was made and the hearing was closed on this case, one of the board members voting not to parole the offender requested the case be reconsidered. The board member making the request stated the reason was he wanted to change his vote, there was no new evidence. A motion was made to reconsider the case and it passed 5 to 1. The board then voted to parole the offender with a 5 to 1 vote." In this case, neither the victims nor the offender was notified that the case was being reconsidered.

This Office will address prior opinions, relevant statutes, caselaw and the SC Board of Pardons and Paroles' Operations Manual to determine the proper way to conduct a re-vote.

Law/Analysis

The South Carolina Department of Probation, Parole and Pardon Services was created by S.C. Code § 24-21-10. The Department includes the Board of Pardons and Paroles, as explained in S.C. Code § 24-21-10(B). The enabling statute reads in relevant part as follows:

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South Carolina Jurisprudence summarizes the procedure of the board's parole hearings as follows:

At the parole hearing the prisoner himself has the right to appear and present evidence in his own behalf; but if he fails to appear, the Board has the right to decide the case in his absence. He may, if the Board allows it, have up to three witnesses, of his own choosing, appear in his behalf. In addition, the prisoner may at his own expense have an attorney represent him at his hearing. Under the Victim's and Witness's Bill of Rights, victims and their families and prosecution witnesses also have the right to appear at parole hearings if they wish to be heard on the question of a prisoner's release. **After the hearing itself has concluded and all the people, both for and against parole, have been heard, the Board votes to grant or deny parole.** If the Board decides to deny parole, the prisoner is given written notice of the Board's reasons for rejecting him. If the Board decides to grant parole, the prisoner will be released from the custody of the Department of Corrections into the custody of the parole authorities, under certain standards, and often under certain special conditions of supervision.

26 S.C. Jur. Probation, Parole, & Pardon § 18 (emphasis added).

Because of the offender's right to appear, certain notice requirements are set in place. The Director of Parole Board Support Services is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the offender. Additionally, the Director of Victims Services is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the victim or, if deceased, the victim's immediate family; the solicitor in jurisdiction where offender was prosecuted; law enforcement agency that made arrest; and the judge of court in which offender was convicted and sentenced. See, SC Board of Pardons and Paroles, Operations Manual, Part II, Notice Requirements, p. 20. See also, 26 S.C. Jur. Probation, Parole, & Pardon § 18.

South Carolina law gives the Board sole and exclusive power to grant or deny paroles; however, this power is not unlimited. In making its parole decisions, "the Board is required by law to carefully consider the record of the prisoner before, during and after imprisonment." SC Board of Pardons and Paroles, Operations Manual, Part II, Absolute Discretion of the Board, p. 28.

Rehearing Requirements

The full Board or one of its panels may consider re-hearing in a case if one or more of the following reasons apply:

- 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.

SC Board of Pardons and Paroles, Operations Manual, Part III, Re-hearings of Parole Cases, p. 44.

American Jurisprudence explains that the parole board has inherent power to reconsider a case if there is newly discovered evidence:

The paroling authority has inherent power to reconsider its grant of parole to a prisoner, and to rescind the grant for cause. Thus, a parole board acts properly in rescinding its vote on a parole where, after having initially voted to release the parolee, ~~the parole board discovered that it had failed to avail the victims of the parolee's crime of their statutory right to address the parole board prior to its vote,~~ after reopening the matter to allow such testimony, and after hearing from the parolee and his or her counsel, ~~the board could rescind its earlier vote.~~

Until a prisoner is actually released, a parole board has the power to reopen and advance, postpone, or deny a parole which has been granted. **Reopening of a parole determination may be made to depend on the existence of "new information," either on behalf of, or in opposition to, the granting of parole, even if the new information was in existence,**

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Conclusion

It is the opinion of this Office that a court would likely find that the SC Board of Pardons and Paroles may not conduct a re-hearing and re-vote simply because a member of the board desires to change his or her original vote. The board may only conduct a re-hearing if one of the following occur: 1) subsequent misconduct by the prisoner; 2) new criminal charges against the prisoner; 3) after-acquired information about the prisoner; 4) failure of the prisoner to meet conditions of release; 5) requested by the inmate of the inmate's authority. See, SC Board of Pardons and Paroles, Operations Manual, Part III, Re-hearings of Parole Cases, p. 44; 59 Am. Jur. 2d Pardon and Parole § 101.

Finality is important to maintain a healthy legal system. Therefore, public policy restrains the Board from rehearing a case for no reason other than a member of the board wants to change his or her decision.¹

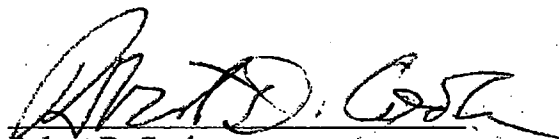
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

¹ If a member of the Board simply needs to correct an error, America Jurisprudence explains that "a parole board has the authority, as an agency performing quasi-judicial functions, to correct a clerical mistake in a parole order which mistakenly reflects the wrong parole release date or release information." 59 Am. Jur. 2d Pardon and Parole § 102. However, it is unlikely that correcting such an error would cause the Board to call a rehearing nor is there any indication in the hypothetical that the board member wishes to change his vote because of a clerical error.

Order of revocation need not be made within probationary period.—This section and § 55-595 do not require that the order of revocation be made within the probationary period. It is only provided that during this period the warrant shall be issued, which is the pertinent jurisdictional fact. *Lovell v. State*, 223 S. C. 112, 74 S. E. (2d) 570 (1953).

ARTICLE 4.

Parole Generally and Release for Good Conduct.

★ § 55-611. When Board may parole prisoner.—In all cases cognizable under this chapter the Probation, Parole and Pardon Board may, upon ten days' written notice to the solicitor and judge who participated in the trial of any prisoner, parole such prisoner convicted of a felony and imprisoned in the State Penitentiary, in any jail or upon the public works of any county:

(1) Who, if sentenced for not more than thirty years, shall have served at least one third of the term for which he was sentenced,

(2) Who, if sentenced to life imprisonment or imprisonment for any period in excess of thirty years, shall have served at least ten years, or

(3) Who, if he is a first offender and is sentenced for an indeterminate term shall have served the minimum for which he was sentenced,

Not deducting in any instance any allowance of time for good behavior. (1952 Code § 55-611; 1942 Code § 1038-10; 1942 (42) 1456; 1949 (46) 311.)

Applied in *Bearden v. Manning*, 238 S. C. 187, 119 S. E. (2d) 670 (1961). Cited in *State v. Williams*, 221 S. C. 107, 69 S. E. (2d) 371 (1952).

★ § 55-611.1. When prisoner entitled to review.—After a prisoner has served one third of his sentence, if such sentence exceed one year, the Board shall review his case, irrespective of whether or not any application has been made therefor, for the purpose of determining whether or not such prisoner is entitled to any of the benefits provided for in this chapter. (1952 Code § 55-611.1; 1942 Code § 1038-10; 1942 (42) 1456; 1949 (46) 311.)

★ § 55-612. Circumstances warranting parole; reports of parolees.—The Probation, Parole and Pardon 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 interests of society will not be impaired thereby and that suitable employment has been secured for him. The paroled prisoner shall, as often as may be required, render a written report to the Board giving such information as may be required by the Board which shall be confirmed by the person in whose employment the prisoner may be at the time. (1952 Code § 55-612; 1942 Code § 1038-11; 1942 (42) 1456; 1949 (46) 311.)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Rice, 0083744,)
Appellant)
)
v.)
)
SC Dept. of Probation,)
Parole, and Pardon)
Services,)
Respondent.)
_____)

Case No. 16-P-002-Durden

APPELLANT'S NOTICE OF MOTION, AND
RULE MOTION(S) 52, 59(e), & 60(b), SCRPC

TO: JUDGE DURDEN, ADMINISTRATIVE LAW COURT

PLEASE TAKE NOTICE, that Appellant Pro Se, will move before the Honorable Durden, to alter or amend the judgement entered February 8, 2016. A copy of Order of Dismissal were received February 11, 2016.

COMES NOW, the Appellant submits the following grounds in support of his Motion(s) pursuant to Rules 52, 59(e), and 60(b), SCRPC.

STANDING

Pursuant to SC Code Ann. Sec. 1-23-380(B); Sec. 1-23-150(a); Sec. 18-1-30; Rule 201(b), SCRPC; and Rules 52/59(e), SCRPC; and South Carolina Administrative Procedures Act, and the Administrative Law Judge Division's Rules of Procedure. See, Biales v Young, 432 SE 2d 482; Lindsay v Lindsay, 491 SE 2d 583.

THEORY OF THE CASE

This Honorable Court respectfully overlooks the motive of the Appellant's complaint, clearly stated ". . . he is not challenging the denial of parole, or routine denial of parole (emphasis added)." The ALC erred, and erroneously formed conclusion about the subject matter of the appeal was the

denial of appeal on October ²¹~~22~~, 2015. The Appellant herein hereof incorporates as if verbatim Appellant's (Request for Reconsideration) "Review and Re-Examination for Parole", dated November 25, 2015, and Respondent's ("SC Dept of Probation, Parole & Pardon Services/Parole Board, hereafter "Board") reply dated December 9, 2015, alleging ". . . there is no appeal process, however see Respondent's reply dated October 18, 2015 regarding "Appellant's request for Reconsideration" alluding that request fro reconsideration, "A request for a rehearing should be submitted in writing to this agency within thirty (30) days of your parole rejection." Clearly request for rehearing was timely filed, thereby Appellant was not grieved until the Board issued objection to his request dated December 9, 2015, See, Exhibit A & B, "Mandatory required informal resolution" marking the date of incident, requirement prior to filing grievance, time for filing grievance is legally postponed. Subsequent grievance was properly filed December 17, 2015, and final Agency decision dated January 5, 2016, See, Exhibit(s) C, ___, recieved Appellant January 11, 2016, and Notice of Appeal was then properly filed January 25, 2016. The Appellant is bound by state law doctrines of exhaustion, thus toll period in time.

Therefore, grievance and Notice of Appeal was properly filed. The ALC's misconception or erroneous belief formed untrue conclusion about subject matter of appeal, and order should be reversed and rendered void, and issues on appeal advance.

I.

The Appellant hereby herein hereafter incorporates his grievance dated December 17, 2015 as if verbatim. The gist of Appellant's grievance are based upon procedural violations; promulgation of regulations, etc. violations; erroneously calculated sentence-related credits, custody status, and sentence expiration; State-created liberty interest violations; Constitutional and due process violations; and irregularities in procedures. The Appellant submits that he was unduly prejudiced where the ALC failed to address issues brought properly before the Court, SC Const. art 1, Sec. 22.

II.

The Appellant seeks for issues on appeal be squarely address that they may be preserved for appellate review, See, Pruitt v State, ___ SC ___, 423 SE 2d 127; Nolsettle v Ismail, 403 SE 2d 122.

ISSUES ON APPEAL:

1. Whether Appellant was denied due process when the Board fail to promulgate new parole criteria, and/or give notice prior to using related [SC Code Sec. 24-21-10(F)(1)] Statute in rejection letter; and warrant new parole hearing.
2. Whether Appellant was denied due process when the Board failed to perform non-discretionary legislated ministerial duty command pursuant to Sec. 24-21-640 ". . . to create criteria for granting parole"; and Sec. 24-21-10(F)(1) (History, 2010, 2011, & 2012) ". . . create a tool for assessment of parole candidate."
3. Whether Appellant was denied a protected liberty interest when the Board failed to perform ministerial duty, or meet mandatory statutory requirement pursuant to Sec. 24-21-10(F)(1).
4. Whether the Board erred in construing Appellant's 1976 Felony Offender classification and custody status as Violent Offender under SC Code Sec. 16-1-60(1986).
5. Whether the Board erred in calculating Appellant's sentence, sentence related credits, actual days served towards 1976 ten (10) years paroleable life sentence that has expired pursuant to SC Code of Law Sections 55-611, and 55-611.1.
6. Whether the Board erred, and abused its discretion when denying Appellant sentenced prior to 1981 annual parole review hearings without any controlling authority to do so; and denying some of same class annual parole review hearings.
7. Whether the Board erred, and abused its discretion, and denied Appellant's right to exercise his First Amendment freedom of speech, when arbitrarily, capriciously enlarged time frame between parole review hearings.

Therefore, based upon the foregoing the Appellant's prayer is that this Honorable Court, alter and amend, and/or rescind its Order; squarely address his claims; and grant just relief.

Date: February 15, 2016

s/ Billy Rice
Billy Rice, 0083744, Pro Se
Lee County Institution
990 Wisacky Hwy, F6B
Bishopville, SC 29010