

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Administrative Law Court

The Honorable S. Phillip Lenski, Administrative Law Judge

Appellant Case No. 2015-000196

S.C. COURT OF APPEALS Opinion NO. 2016-UP-163

Submitted December 1, 2015 - Filed April 6, 2016

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

vs.

JAMES Tinsley, #171943, Appellant,

APPELLANTS BRIEF IN OPPOSITION
TO THE RESPONDENTS PETITION FOR
REHEARING

THE ABOVE Respondents have filed a petition for a rehearing of this court's previous order remanding the matter to the ALC to conduct an evidentiary hearing into whether the parole board relied upon false information in determining Appellants parole.

THE Respondents contend that this court has somehow erred because the parole board should be allowed to consider historical events outside the scope of the actual conviction. In other words, the Respondents maintain that Appellant committed

and was convicted of youthful offender offenses that were never overturned and violated that Y.O.A. Parole even though he eventually had the Y.O.A. convictions expunged under the Y.O.A. Statutes governing expungements. The Parole board maintains that they should be allowed to consider the underlying historical events surrounding Appellants failure to abide by a previous supervision program.

Appellant does not disagree that generally a parole board should be allowed to consider underlying historical events WITH ONE caveat: That the information relied upon concerning his record "before, during and after imprisonment" must be truthful and accurate. In a legal notice sent to the parole board members dated May 26, 2014, Appellant recognized that the board is probably authorized to consider "historical events or facts precipitating a charge," but that this argument would not apply to this case because Appellant is maintaining that the very historical facts being utilized are False.

Contrary to the alleged facts presented to this court by the respondents in their petition for a rehearing, Applicants Y.O.A. convictions were actually overturned in a post-conviction relief

hearing, Applicant was determined to have been actually innocent of the alleged offenses and contrary to the beliefs of the Respondents, it does negate the argument that Appellant committed the acts. Likewise, the PCR Court determined that the facts and information provided by the parole agent to the Revocation Judge were false and therefore Appellant did not violate the terms of his parole and should never had his parole violated. Ultimately the PCR Court determined that the parole violation was a nullity.

Therefore, when the board denies parole on the ground that Appellant has failed to complete a prior supervision program, they are being dishonest and are relying upon false and expunged records. If the board wants to consider underlying facts, how about considering the fact that all the grounds given for warranting the parole violations turned out to be untrue.

The Respondents are attempting to mislead and trick this court into issuing a new order declaring that the board may consider the record of a parolee prior to his incarceration, regardless if the offenses and events have been expunged and regardless of whether the information being considered is false.

The COURT had IT Right the FIRST TIME. THERE are disputed Facts concerning whether or not the convictions and Revocations were overturned and expunged, and whether the PAROLE board relied upon those facts in determining PAROLE. The proper COURSE OF ACTION would be to Remand the matter to the ALC to conduct an evidentiary hearing into whether or not the information relied upon by the parole board was false, inaccurate, or expunged.

April 28, 2016

Respectfully submitted,
s/ James Douglas Tinsley
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CERTIFICATE OF SERVICE

I, James Douglas Tinsley, Sr., hereby certify that I did cause the foregoing to be served upon opposing counsel this 4th day of MAY, 2016, by placing a true and correct copy in the U.S. Mail, with proper postage affixed thereto and addressed to Tommy Evans, Jr., General Counsel For Probation, Parole and Pardon Services, P.O. Box 50666, Columbia, S.C. 29250

James Douglas Tinsley
④ JAMES DOUGLAS TINSLEY SR.