

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah B. Durdan, Administrative Law Judge

MAY 25 2016

SC Court of Appeals

Appellate Case No. 2015-000478

Bernard Bagley, #175851,

Petitioner,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

PETITION FOR REHEARING

Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

LEGAL

The Petitioner, Bernard Bagley, pro se, petition for a rehearing by the Court of Appeals unpublished opinion 2016-UP-210, submitted February 1, 2016-filed May 11, 2016, based from an appeal of an order by the ALC affirming the Parole Board's January 14, 2015 denial of his parole.

In essence, Petitioner's January 15, 2015, Notice of Rejection from the Board clearly does not reflect an individualized inquiry or consideration into his criminal risk factors pursuant to §24-21-10(f)(1), of the S.C. Code Ann.; his circumstances warranting parole under §24-21-640; and his positive factors for parole as required by the criteria for parole consideration Form 1212, that could be consistent with due process as proscribed by the Federal Constitution Amendment 14, §1, and South Carolina Constitution Article 1, §3, that will answer the essential question of whether Bagley currently poses threat to public safety.

Memorandum in support of the foregoing provides that no state cannot deprive any person of liberty without due process of law. U.S. Constitution Amendment 14, §1, and S.C. Constitution Article 1, §3. The substantial evidence test under S.C. Code Ann §1-23-610(B)(e), may be understood as meaning that circumstances warranting parole determinations must have some rational basis in fact that is, factual basis of a decision by the Board denying parole must be premised upon substantial evidence relevant to the factors the Board is required to consider.

In other words, the focus of judicial review should be on the rationality of the Board's decision, not only the ultimate conclusion of current dangerousness but also the evidence and reasoning on which the Board actually relied to reach that conclusion.

There is no nexus between Bagley's immutable factors found in the Notice of Rejection dated 1/15/15, and the conclusion and findings of fact that he presents an unreasonable risk to public safety if released on parole.

This petition involves [a] question(s) of exceptional importance that may require for rehearing en banc. Exceptional circumstances exist because the Board's procedure is unconstitutional regarding a routine denial of parole that limit the ALC authority to review the decision. *Cooper v. SCDPPPS*, 661 S.E.2d 106 (2008), is insufficient and in good faith does not provide an adequate remedy, and being misinterpreted by the Board. S.C. Constitution Article 5, §5, authorize this Court to reverse or modify the ALC decision if the substantive rights of the petitioner have been prejudiced under §1-23-610(B)(e). Applicable law created an exception that allows judicial review of improper procedure. SCDPPPS has operated the parole eligibility, consideration for parole, and release and denial of paroles, as well of its notice of rejections as one of day-to-day operations pursuant to guidelines and statements expressed in its criteria, statutes, policies, with South Carolina offender Management System, or SCDC Classification. The Board's policies covers positive factors of circumstances warranting parole under §24-21-640; procedures; rehabilitation procedures; exemplary conduct record procedures; disciplinary prison record procedure; prior criminal record procedures; and establishing the required nexus between the commitment offense(s) or immutable factors and a current risk of danger to the community procedures; along with education and self-improvement programs procedures.

The ALC and Court of Appeals are authorized to review the factual basis of a decision denying that violate the substantive rights of this petitioner that have been prejudiced because of the finding, conclusion, and decision by the Board in order to ensure that the decision, conclusion, and finding comports with the requirements of due process of law under Amendment 14, §1, of the Federal Constitution, and S.C. Constitution Article 1, §3, which provide that no state cannot deprive any person of liberty without due process of law.

Bagley contends that the Court's may inquire only whether substantial evidence in the record before the Board supports the decision to deny parole, based upon the positive factors of specified circumstances warranting parole by statute, and criteria procedures.

Additionally, the COMPAS risk assessment results procedures under §24-21-10(F) (1), AND §24-21-5(2). Petitioner asserts that he has a due process liberty interest in an impartial parole proceeding that may not deprive him of life, liberty, or property under §24-21-640, Amendment 14, §1, and Article 1, §3 of the federal and state constitutions. An expectation that he will be granted an impartial parole proceeding that will allow him an opportunity to be granted parole upon evidence-based or substantial evidence, not a mere routine denial based on guesswork whether a particular fact is probative of the central issue of current threat or risk to public safety when considered in light of the Board's day-to-day procedures that cover all relevant positive factors, and an individualized consideration of the specified procedures that cannot be arbitrary or capricious.

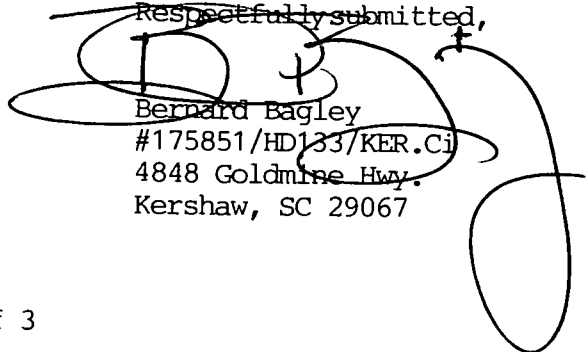
The ALC failed to make a determination that the Board made a decision, findings of fact, and conclusion of law that constitutes an error of law. Also the Appellant court exists to review errors in law as well. The Board's order does not reflect an individualized consideration of the criteria or §24-21-640.

Again, the decision, findings of fact, and conclusion of law of the Board of Parole Hearings does not reflect individualized due consideration of §24-21-640, of the specified statutory positive factors, and criteria as applied to him the individual prisoner in accordance with applicable legal standards, because the immutable facts such as Bagley's social history and criminal history do not by themselves demonstrate that he continues to pose an unreasonable risk to public safety.

CONCLUSION

For the reason stated, Petitioner asks the Court to grant the petition for rehearing.

Respectfully submitted,


Bernard Bagley
#175851/HD133/KER.Cj
4848 Goldmine Hwy.
Kershaw, SC 29067

May 20, 2016

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

Appellate Case No. 2015-000478

Bernard Bagley, #175851,

Petitioner,

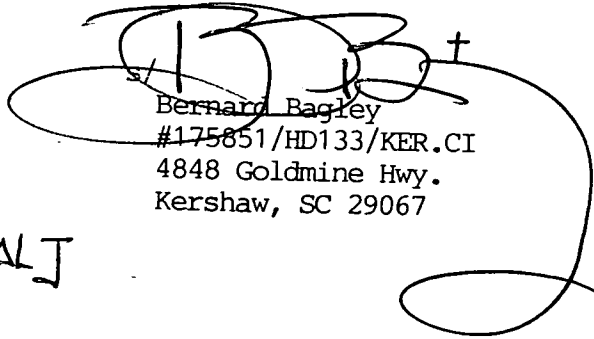
v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Petition for Rehearing, and Affidavit of Petitioner in Support of Petition for Rehearing on Tommy Evans, Jr., by depositing a copy of the same in the U.S. Mail, postage prepaid, on May 20, 2016, addressed to him, the attorney of record, at SCDPPPS, P.O. Box 50666, Columbia, SC 29250.


Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

May 20, 2016

cc: DeBORAH B. Durden, ALJ

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Bernard Bagley, #175851, Appellant,

v.

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

Appellate Case No. 2015-000478

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

Unpublished Opinion No. 2016-UP-210
Submitted February 1, 2016-filed May 11, 2016


AFFIDAVIT OF PETITIONER
IN SUPPORT OF PETITION FOR REHEARING

Bernard Bagley, being first duly sworn, deposes and says:

1. That this is the Petitioner, pro se in the above-entitled action.
2. That on May 20, 2016, affiant filed and served herein a Petition for Rehearing on the grounds that the facts relied upon in support of the petition are not contained in the Record on Appeal.
3. That on May 11, 2016, the Court made and entered an order for that affirmed the ALC decision, in which the affiant received the same on May 16, 2016 from the institutional mail room whom received it stamped May 13, 2016.
4. That the petition involves questions of exceptional importance, that may require for rehearing en banc.
5. That the notice of rejection is proof that the Board's denial of parole does not reflect an individualized consideration of the criminal risk factors pursuant to §24-21-10(f)(1); of all relevant facts and factors proscribed under the Federal Constitution Amendment 14, §1, and South Carolina Constitution Article 1, §3, that prohibit the state from depriving any person of liberty without due process of law by the opportunity to be heard by a fair and impartial Board, and to have the Board to carefully individualize consider the complete record before, during, and after imprisonment.
6. That judicial review is on the rationality of the Board's and the ultimate conclusion of current dangerousness affiant poses to the public, as well as to the substantial evidence and reasoning on which the Board actually relied to reach that conclusion as required under S.C. Code Ann. §1-23-610(B).
7. That affiant is being made ineligible for parole in 2012, and then again in 2015 when the Board does not provide an adequate remedy that reflects individualize consideration of all relevant facts and factors.

8. That it is true since there is no legal effect upon existing controversy, the affiant, Bagley is ineligible for parole thus making it impossible for release on parole and adequate judicial review to grant effectual relief.

9. That I declare under penalty of perjury that the foregoing is true and correct to the best of my belief, knowledge, and information.


s/ Bernard Bagley
#175851/HD1337/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

Sworn to and Subscribed before me

this 19th day of May, 2016

Catherine A. Connor

Notary Public for South Carolina

My Commission expires: ~~My Commission Expires~~ December 22, 2018

Norshaw
C.I.

INMATE TRUST FUND ACCOUNT REPORT for SOUTH CAROLINA COURT FILING FEES

INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

MAY 25 2016

INMATE NAME (print): Bernard Bagley SC Court of Appeals

SCDC # 175851 INMATE SIGNATURE: 

(Appellate Case No. 2015-000478)

I plan to file this action in the SC County of Richland County, S.C. Court of Appeals

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period* \$ _____
- (2) Twenty percent (20%) of line 1 \$ _____
- (3) Account balance - current date \$ _____
- (4) PAYMENT AMOUNT **
(lesser of line 2 or line 3)
Enclosed check # _____ \$ _____

****NOTE to COURT:** If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21787
Columbia, SC 29221-1787

*Admission date is noted here if inmate incarcerated less than six months ____/____/____

May 20, 2016

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SC Court of Appeals

S.C. Court of Appeals
Jenny A. Kitchings, Clerk
P.O. Box 11629
Columbia, SC 29211

RE: Bagley v. SCDPPPS, 2015-000478

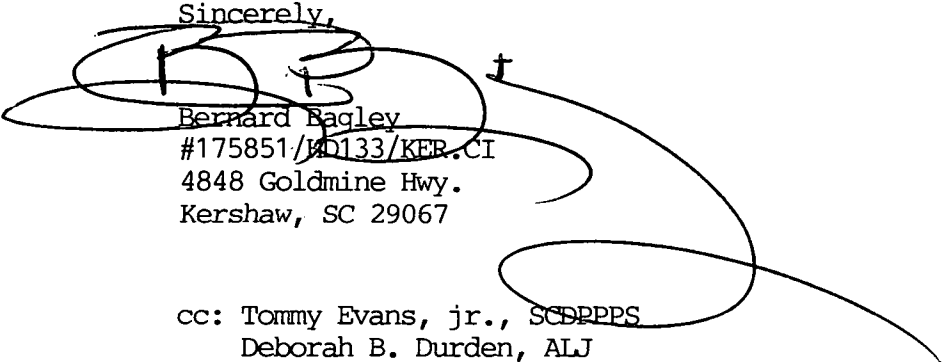
Dear Madam Kitchings:

Enclosed are the following for filing:

1. Inmate Trust Fund Account Report for \$25.00 filing fee. Please note that you may have to mail to SCDC Financial Accounting, because if I submit I'll miss and by-pass my 15 day deadline to submit the following enclosures;
2. Affidavitt of Petitioner in Support of Petition for Rehearing; and
3. Petition for Rehearing; along with
4. Certificate of Service

Thank you.

Sincerely,


Bernard Bagley
#175851/W0133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

cc: Tommy Evans, jr., SCDPPPS
Deborah B. Durden, ALJ

Enclosures