

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Chief Administrative Law Judge
Case No. 15-ALC-15-0056-AP

MAY 19 2016
SC Court of Appeals

Appellate Case No. 2016-000530

Charlton Davis, #231377,

Appellant

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent

REPLY BRIEF OF APPELLANT

Charlton Davis, 231377
KER.CI/HC117
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

LEGAL

TABLE OF CONTENTS

| | |
|-------------------------------|-----|
| Table of authorities | ii |
| Statement of issues on appeal | 1 |
| Statement of the Case | 1 |
| Arguments | 1-4 |
| Conclusion | 4 |
| Certificate of counsel | 5 |
| Proof of Service | 6 |

TABLE OF AUTHORITIES

| Constitution: | Page: |
|------------------------------------|-------|
| S.C. Constitution Article 1, §3 | 1-4 |
| U.S. Constitution Amendment 14, §1 | 1-4 |
| Statutes: | |
| S.C. Code Ann. §24-21-10(F)(1) | 3 |
| S.C. Code Ann §24-21-640 | 1-4 |
| S.C. Code Ann. §24-21-645 | 1-4 |
| Other: | |
| COMPAS | 3 |
| Criteria | 1-4 |

STATEMENT OF ISSUES ON APPEAL

1. Did the Respondent fail to follow the mandates proscribed by the South Carolina Supreme Court in the Cooper opinion?
2. Did the Respondent err in denying parole due to the Appellant's prior offense without evidenced based rational nexus between the offenses and the Appellant's present behavior?

STATEMENT OF THE CASE

The Appellant incorporates and include his statement of the case from his Initial Brief of Appellant the statement of the case verbatim as stated therein.

ARGUMENTS

1. The Respondent did not follow all the mandates proscribed by the South Carolina Supreme Court in the Cooper opinion.

The findings of fact and conclusion of law in parole cases before the board of parole hearings may not base its findings and conclusions on hunches, speculation, or intuition. The Appellant emphasises that the order does not conform to due process of law under the federal and state constitution Amendment 14, §1, and Article 1, §3, substantial evidence test regarding circumstances warranting parole determination under §24-21-640, because the findings of fact and conclusion of law fails to show a rational nexus of the ultimate issue of the statutes, factors, and assessment used to determine the denial of parole when there is no substantial evidence of current dangerousness to public safety interrelated to Appellant's commitment offenses.

The reasons given for the denial of parole are not reasonable under Amendment 14, §1, and Article 1, §3, of the federal and state constitutions, and the undefined criteria used by the Respondent, that is impossible to refute.

Appellant asserts that this Court is authorize to review the factual basis of a decision denying parole in order to ensure that the decision comports with the requirements of due process of law, in which this Court may inquire whether substantial evidence in the record before the board of parole hearings supports the decision to deny parole, based upon factors specified by statute §24-21-640 and 24-21-645, and the undefined criteria.

The Board's decision in this case is arbitrary or capricious because the decision does not reflect an individualized consideration of the mandatory criteria, risk assessment, and statute, and the order does not state that it does.

The individualized consideration is required not a mere consideration. Such information must include the circumstances of Appellant's disposition to reform, and his conduct merited a lessening the rigors of the imprisonment which is reliably documented in the Appellant's disciplinary record. The ALC did commit error in its decision. The decision to dismiss this appeal should be reversed.

ARGUMENTS

2. The Respondent did err in denying parole due to the prior offense committed without an evidenced-based rational nexus between the offenses and present behavior.

The ALC decision was arbitrary or capricious. Appellant asserts that for any inmate to be denied parole there should be a need to be a showing of a rational nexus between the offenses and current behavior.

In essence, the order of rejection does not provide an individualized consideration of the criteria set forth in form 1212, thus, making it insufficient under the 14th, §1 Amendment, and Article 1, §3 of the federal and state constitutions, due process of law. The Respondent states that the Board also needs to consider if society will be safe by releasing Appellant into the public. The Appellant contends absent affirmative evidence of a change in his demeanor and behavior, the circumstances of the commitment offense may continue to be probative of his dangerousness for some time in the future. However, when there is affirmative evidence, based upon his demeanor or behavior, that if he is released, would not currently be dangerous, his past offenses may no longer realistically constitute a reliable or accurate indicator of his current dangerousness.

Appellant's character adjustments he made while incarcerated is evident in the Appellant's disciplinary record, classification summary reports, and institutional record. The Board does not provide an extensive process during his appearing before the Board, the minutes and record will reflect that he is before the Board 3 to 5 minutes before asking him to step out from their presence, and rendering the decision to deny parole. The nature and seriousness of the offender's offense, and circumstances of the commitment offense is not substantial or affirmative evidence of Appellant's current dangerousness. Also, the Appellant did not lack attitude into his commitments offenses, nor has the Appellant failed to participate in counseling, therapy, or other similar programs, are not substantial evidence of his current dangerousness. These aspects are major in which the Board must individualize consider, and must be shown in the order as such.

The Appellant contends that the Board should show an evidence-based nexus inter-related to the committed offenses and his present record that he still pose an unreasonable risk to public safety, and not decide there exist a possible future dangerousness to the community, or there is a possibility he would not succeed supervision based on findings on hunches, speculation, or intuition under §24-21-640, and §24-21-645, to deny him parole.

Because Appellant's commitment offenses are classified violent offenses pursuant to South Carolina law [citations omitted] are not evidence of current violence when his present record does not reflect any violence since 6/19/1994. In addition there is no evidence that the Appellant failed to complete a supervision program, which clearly is not stated in the order rejecting him parole.

Of course, the legislature placed a huge responsibility upon the Parole Board, but the Board members knew and accepted the responsibility upon taking the position, and the first and foremost factor that must be individualized considered is whether this Appellant will continue to be threat if released to society, and that must be done with substantial evidence of a rational nexus between the offenses and present behavior under §24-21-640. The only way the Board can be absolutely convinced that the release of the Appellant on parole not be determinant

to society is by applying an evidence-based rational nexus between the offenses and current behavior, such reliance as required to completely satisfy the Board and once this satisfaction is made the Appellant's parole can be awarded. Simply speculating with a hunch that Appellant will not be successful and not violate, or his release will cause harm to the community can only be convincing or satisfaction to the Board is by a rational nexus between the offenses and current behavior.

The Court has the responsibility to review the factual basis of a decision denying parole in order to ensure that the decision comports with the requirements of the 14th, §1 Amendment, and Article 1, §3, of due process of law, based upon the factors specified by statute §24-21-640, Board's criteria, only by substantial evidence is required, Appellant's contentions.

In light of the constitutional liberty interest of an impartial hearing is at stake in judicial review of parole decisions, judicial review must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights. Again, simply pointing to the existence of negative factors is not sufficient. Because not only must there be substantial evidence to support the Board's factual findings, there must be some connection between the findings and the conclusion that the Appellant is currently dangerous. SEE: §24-21-10(F) (1), S.C. Code Ann., COMPAS results. (Appellant ask this Court to review his assessment that was provided to the Board for consideration prior to its final decision).

Appellant further asserts that the order of rejection is proof and substantial evidence that the Board did not apply an "individualized" consideration of §24-21-640, and §24-21-645, and the Board's criteria regarding his positive factors such as his disposition to reform, his ability to obey the law and lead a correct life, and that his conduct merited a lessening the rigors of the imprisonment, and that the interest of society will not be impaired if released on parole. The decision does not reflect due "individualized" consideration of the specified factors as not applied to him the individual inmate in accordance with applicable legal standards, then the Court's review is not limited to ascertaining whether there is substantial evidence in the record that supports the decision. Furthermore, The violent nature and definition of Appellant's violent crimes which alone are not rationally indicative of current dangerousness, thus, making the Board arbitrarily and capriciously relying on incorrect factual contentions and its own guesswork.

The Court has the authority to grant the Appellant what he is requesting based on the foregoing because the denial of his parole was an error of law pursuant to South Carolina law regarding an impartial hearing. The Court has the responsibility in this matter to grant the case remand for a new parole hearing for a supervised reentry term parole release date based on the Board's arbitrary or capricious for relying on incorrect factual contentions and its own gueswork.

Appellant asserts that no prisoner may be paroled until it appears to the satisfaction of the board upon substantial evidence standard review, only if those facts support the ultimate conclusion that the inmate continues to pose an unreasonable risk to public safety. On the other hand, the unexceptional nature

of the commitment offenses will not inevitably reflect a lack of current dangerousness without due individualized consideration of the inmate's post-conviction actions and progress toward improving his/herself, or toward rehabilitation.

The Board and ALC made error of law under Amendment 14, §1, and Article 1, §3 of the federal and state constitution his case, because the Board's order does not reflect an individualized consideration of the mandatory criteria, or §24-21-640. and §24-21-645.

CONCLUSION

Based on the foregoing reasons the ALC did commit an error of law under the 14th Amendment, §1, and Article 1, §3, of the federal and state constitution; therefore, its decision to dismiss this appeal was incorrect. The Appellant respectfully request this Court to vacate or reverse the decision of the ALC.

Respectfully submitted,

s/ *Charlton Davis*

Charlton Davis, 231377

KER.CI/HC117

4848 Goldmine Hwy.

Kershaw, SC 29067

April 29, 2016

pro se

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAY 19 2016

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Chief Administrative Law Judge
Docket No. 15-ALC-15-0056-AP

SC Court of Appeals

Appellate Case No. 2016-000530

Charlton Davis, 231377

Appellant

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent

CERTIFICATE OF COUNSEL

The undersigned certifies that this Reply Brief complies with Rule 208,
SCACR.

s/ *Charlton Davis*

Charlton Davis, 231377
KER.CI/HC117
4848 Goldmine Hwy.
Kershaw, SC 29067

April 29, 2016