

THE STATE OF SOUTH CAROLINA
Administrative Law Court
15-ALJ-15-0046

RECEIVED

JUN 13 2016

SC Court of Appeals

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Kenneth Green #116020,

Appellant,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

SUPPLEMENTAL RECORD ON APPEAL

Tommy A. Thomas
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Tommy Evans, Jr.
Attorney for Respondent
Assistant General Counsel
S.C. Department of Probation
Parole and Pardon Services
P.O. Box 50666
Columbia, SC 29250
(803) 734-9220

INDEX

South Carolina Board of Pardons and Paroles, Operations Manual, January 2014
Pages 35, 46 1

9. POSTPONED CASES

After hearing any parole case, the Board or panel may, where it seems appropriate under the circumstances to do so, postpone giving its final decision for up to one year in order to allow an offender to complete a treatment program, vocational training course, or other similar worthwhile endeavor.

10. BARTON HEARINGS

The South Carolina Supreme Court decision in Barton v. SCDPPPS held that the Board is to consider a majority and two-thirds majority to be based on the number of Board members present, rather than based on the full Board membership. If an offender's old vote is brought to the Department's attention, the Office of Parole Support Services staff will investigate to verify that the offender did receive the proper number of votes, and the Department's Office of Legal Services will verify it qualifies under Barton. The Department's Office of Victim Services will contact the victim and explain the Barton decision and the Board's vote. During a full Board day, the Board will hold a Barton hearing on the offender. This hearing will not require the presence of the victim or the offender.

At the Barton Hearing, the Board may impose any conditions on the offender as it feels necessary, including all statutory conditions. The Board will then sign a special Barton Order of Parole, which ratifies the votes of the previous Board members which would have granted conditional parole.

The offender is then treated as any other offender granted conditional parole, and will have to comply with the conditions in order to receive parole.

RE-HEARINGS OF PAROLE CASES

This section considers re-hearings of parole cases: the various reasons why the Board may want to conduct a re-hearing in any given case and the possible decisions that may come out of any such re-hearing. In general, there are three possible outcomes of any re-hearing: rescission of parole, grant of parole, and no change in the original decision.

1. REASONS FOR CONDUCTING A RE-HEARING

After the Board or the panel has decided any given parole case, the Board or panel may in certain cases want to re-consider its decision and re-hear the case. There are, generally speaking, five reasons why the Board or panel might want to do this. These reasons are given below:

- 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 Board should re-hear this case. The 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.

2. POSSIBLE RESULTS AFTER A RE-HEARING

For any of the foregoing reasons, the Board or panel might want to re-hear a case in order to reconsider its original parole decision. Any such re-hearing may result in one of four decisions. These decisions are rescission of parole, grant of parole, no change in the original decision and an amendment.