



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 26, 2016

The Honorable Jana E. Shealy
1205 Pendleton Street
Suite 224
Columbia SC 29201

REMITTITUR

Re: James Tinsley v. SCDPPPS
Lower Court Case No. 2014ALJ150028AP
Appellate Case No. 2015-000196

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

Enclosure

cc: Tommy Evans, Jr., Esquire
Matthew C. Buchanan, Esquire
The Honorable S. Phillip Lenski

The South Carolina Court of Appeals

James Tinsley, 171943, Appellant,

v.

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

Appellate Case No. 2015-000196

ORDER

Respondent filed a petition for rehearing. Appellant filed a return along with a motion to file the return out of time. The motion is granted. Appellant subsequently notified this court Appellant was released on parole. Because this appeal is now moot, the petition for rehearing is granted. We dispense with further briefing and argument. The attached opinion is substituted for the previous opinion, which is withdrawn.

Thomas C. Huff

J.

H. Bruce Williams

J.

Paul E. Thomas

J.

Columbia, South Carolina

cc: Tommy Evans, Jr., Esquire
Matthew C. Buchanan, Esquire

FILED

August 19, 2016

Jana E. Shealy
The Honorable S. Phillip Lenski

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

James Tinsley, Appellant,

v.

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

Appellate Case No. 2015-000196

Appeal From The Administrative Law Court
S. Phillip Lenski, Administrative Law Judge

Unpublished Opinion No. 2016-UP-163
Submitted December 1, 2015 – Filed April 6, 2016
Withdrawn, Substituted and Refiled August 10, 2016

APPEAL DISMISSED

James Tinsley, pro se.

Tommy Evans, Jr., of the South Carolina Department of
Probation, Parole and Pardon Services, of Columbia, for
Respondent.

PER CURIAM: James Tinsley appeals the Administrative Law Court's (ALC's) order affirming the South Carolina Parole Board's (Parole Board's) denial of his parole. Tinsley argues the ALC erred when it found it did not have jurisdiction to review whether the Parole Board used inaccurate information as a basis to deny him parole. Specifically, Tinsley argues the Parole Board considered information that was expunged from his criminal record in making its decision and thereby deviated from the statutory criteria.

Because Tinsley was released on parole on May 25, 2016, a decision by this court regarding the ALC's jurisdiction to review the Parole Board's previous denials of parole will have no effect upon the existing controversy. Therefore, this case is moot. *See Byrd v. Irmo High School*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) ("A case becomes moot when judgment, if rendered, will have no practical effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." (quoting *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973))).

The South Carolina Department of Probation, Parole and Pardon Services asserts this court should exercise its discretion to issue an opinion in this case because the issue is capable of repetition yet evading review. *Id.* (noting this court may still review moot issues when "the issue raised is capable of repetition but evading review." (quoting *In re Darlene C.*, 278 S.C. 664, 665, 301 S.E.2d 136, 137 (1983))). However, Tinsley will no longer be subject to parole hearings, and the Parole Board's use of allegedly inaccurate information to deny him parole is no longer capable of repetition. Accordingly, we find the capable of repetition yet evading review exception does not apply in this case. Because no justiciable controversy exists, we dismiss this appeal. *Id.* (noting appellate courts "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy").

APPEAL DISMISSED¹

HUFF, WILLIAMS and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.