

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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

Appellate Case No. 2015-000689

**RECEIVED**

SEP 21 2016

S.C. SUPREME COURT

Thomas Lowery, 83240,

Petitioner,

v.

South Carolina Department of Probation,  
Parole and Pardon Services,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Thomas Lowery, 83240  
HD235/KER.CI  
4848 Goldmine Hwy.  
Kershaw, SC 29067

pro se

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## CERTIFICATE OF COUNSEL

Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 18, 2016.

### QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that the Petitioner does not have a liberty interest for an impartial parole proceeding every 12 months upon rejection of parole on a non-violent classification status, but instead under a 2 year violent classification status?
2. Did the court appeals err in holding that the gravity of commitment offense remained relevant to parole consideration after Petitioner has exceeded a maximum 40 year base period of confinement?

### STATEMENT OF THE CASE

On May 28, 1976, the Appellant along with his co-defendant were arrested and charged for murder and larceny. On September 8, 1976, the Appellant appeared before Circuit Court Judge Paul M. Moore for these offenses. Upon the conclusion of this appearance, Judge Moore sentenced the Appellant to a period of incarceration for the remainder of his natural life for murder, and ten years for grand larceny.

At the time the Appellant committed this offense, South Carolina law allowed individual serving a life sentence for parole eligibility upon the service of ten (10) years.

The Appellant made his initial appearance before the Board on October 30, 1985. NOTE: The Appellant completed his sentence for grand larceny on February 23, 1982. Upon the conclusion of this hearing, the Board denied the Appellant to be released on parole. Since this initial hearing, the Appellant appeared before the Board every 12 months until the year 2000 whereby the Board changed the Appellant's appearance before the Board every 24 months or more, whereby each resulting in a denial of parole. His last appearance occurred on 1/14/15, and parole denied to: 1) nature and seriousness of the current offense; and 2) an indication of violence in this or a previous offense. Upon being notified of this denial of parole the Appellant filed a notice of appeal before the ALC.

On March 3, 2015, ALC Judge Deborah B. Durden, sua sponte issued an order dismissing the Appellant's appeal as a routine denial. Upon receiving this order, the Appellant filed a notice of appeal before the S.C. Court of Appeals. The Respondent argues that the Board followed the Cooper opinion; however, the Appellant argues that the Board must determine consistent with due process the essential question of whether he currently poses a threat to public safety, applicable to constitution standards as required by Art. 1, §3, of S.C. Constitution. The S.C. Court of Appeals Unpublished Opinion affirmed pursuant to Rule

220(b), SCACR. Petitioner filed a petition for rehearing, along with SCDC Classification Summary Reports (App. pp 28 and 29), and his affidavit in support for petition for rehearing ( App. pp. 30 and 31). S.C. Court of Appeals denied the petition for rehearing on August 18, 2016. This Petition for Certiorari Follows. Petitioner seeks a writ of certiorari to review the decision Thomas Lowery v. South Carolina Department of Probation, Parole and Pardon Services Unpublished Op. No. 2016-UP-204, filed May 11, 2016.

#### ARGUMENTS

1. THE COURT OF APPEALS SHOULD HAVE HELD A JUDICIAL REVIEW AS TO WHETHER THE PETITIONER HAS A LIBERTY INTEREST FOR AN IMPARTIAL PAROLE PROCEEDING EVERY 12 MONTHS UPON REJECTION OF PAROLE ON AN NON-VIOLENT CLASSIFICATION STATUS RATHER THAN 2 YEARS UNDER A VIOLENT CLASSIFICATION STATUS.

The Petitioner asserts that under State Executive Statute §24-21-610, §24-21-640, and §24-21-645, the Board has committed error of law by not complying to allow him to appear before the Board every 12 months upon rejection of parole on non-violent classification status, rather than 2 years under the violent classification status as required under applicable statute §16-1-70, of S.C. Code of Laws, 1976, for an individual serving time for a nonviolent offense that will be reheard for parole one year following the date of parole rejection.

Petitioner offenses were committed in May 1976, and his parole eligibility at the time was 10 years, and that he would be reheard for parole one year following the date of rejection for parole, and for the Board not complying with the law the Petitioner has been denied impartial parole proceedings every 12 months, thus, in violation of his substantive rights under due process of law applicable under the 14th Amendment of the U.S Constitution, and Article 1, §3, of S.C. Constitution. See App. pp. 28 and 29, in support thereof.

2. THE COURT OF APPEALS SHOULD HAVE HELD WHETHER THE GRAVITY OF COMMITMENT OFFENSE REMAINED RELEVANT TO PAROLE CONSIDERATION AFTER PETITIONER HAS EXCEEDED MAXIMUM BASED PERIOD OF CONFINEMENT.

The Petitioner asserts that he was not sentenced to life without parole, and for the Board to interpret "incarceration for the remainder of his natural life for murder" has exceeded a maximum 40 year base period of confinement in the State of South Carolina due to the Board's arbitrary and capricious determination that amount of time served on the imposition of sentence that he is not rehabilitated and ready for release, in which this conclusion by the Board is unsupported by any factual finding and thus irrational, because in evaluating the Petitioner's acceptance of responsibility for his 1976 crimes, family support, and readiness for release. The Board's decision process reveals it accorded no weight and no emphasis whatsoever to any factor apart from the seriousness of his offense, and no determination consistent with due process as applicable to constitution standards under Art.1 §3, of S.C. Constitution, the essential question of whether he the Appellant currently poses a threat to public safety. The Board's decision must reflect consideration of the interrelationship of all relevant facts and

positive factors in determining whether Petitioner is currently dangerous, and not to do so, is a serious procedure error that was not addressed in Cooper v. S.C. Dept. of Probation, Parole and Pardon Services, 685 S.E.2d 175 (2009). When left with the seriousness of Petitioner's offense as the exclusive factor considered and sole basis for the Board's conclusion of nonrehabilitation and unreadiness for release, the conclusion have to be irrational.

The question for this Court must consider is whether there is a rational nexus between the evidence listed in the notice of rejection dated 1/15/15 (APP. p. 3).

#### CONCLUSION

For the reasons stated, Petitioner asks the Court to grant the petition for writ of certiorari.

Respectfully submitted,

*Thomas Lowery*  
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September 13, 2016

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Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Petition for Writ of Certiorari by depositing a copy of the same in the U.S. Mail, postage prepaid, on September 15, 2016, addressed to Tommy Evans, Jr.

SCDPPPS Assistant General Counsel  
P.O. Box 50666  
Columbia, SC 29250

s/ *Thomas Lowery*  
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September 15, 2016