

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

SEP 21 2016

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

S.C. SUPREME COURT

Appellate Case No. 2015-000689

Thomas Lowery, 83240,

Petitioner,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

APPENDIX

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

pro se

LEGAL

INDEX

Amended Record on Appeal	1-6
Amended Appellant Final Brief	7-16
Unpublished Op. No. 2016-UP-204	17-18
Appellant Final ^{REPLY} Brief	19-24
Petition for Rehearing	25-27
SCDC Classification Summary Reports	28-29
Affidavit in Support for Rehearing	30-31
Order	32

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Deborah Durden, Administrative Law Judge

Case No. 15-ALC-0009-AP

Appellate Case No. 2015-000689

Thomas Lowery, #083240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

AMENDED RECORD ON APPEAL

Thomas Lowery, #083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

INDEX

	PAGE
Respondent's Notice of Rejection dated 1/15/15	1
Criteria for Parole Consideration	2
Certificate of Counsel	3
Certificate of Service	4

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



JERRY B. ADGER
Interim Director

January 15, 2015

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

Mr. Thomas Lowery #00083240
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

RE: NOTICE OF REJECTION

Dear Mr. Lowery:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support Services

South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration

SC Board of Probation, Parole and Pardon Services
 P. O. Box 50666
 Columbia, SC 29250

Inmate Name <i>Thomas Lourey</i>	SCDC # <i>83240</i>
-------------------------------------	------------------------

set 10-22

Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature <i>Thomas Lourey</i>	Date <i>7-9-14</i>	Witness <i>Demond Davis</i>	Date <i>7/9/14</i>
--	-----------------------	--------------------------------	-----------------------

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Deborah Durden, Administrative Law Judge

Case No. 15-ALC-15-0009-AP
Appellate Case No. 2015-000689

Thomas Lowery, 083240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies this this Record on Appeal complies with SCACR
and contains all material to be included in the Record on Appeal.

s/ *Thomas Lowery*
Thomas Lowery, 083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29078

September 8, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
Deborah Durden, Administrative Law Judge

Case No. 2015-ALC-15-0009-AP

Appellate Case No. 2015-000689

Thomas Lowery, 083240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

PROOF OF SERVICE

I, Thomas Lowery, the Appellant certify that I have served the Record on Appeal, and Certificate of Counsel dated September 8, 2015, on Respondent this 8th day of September, 2015, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to: Tommy Evans, Jr.

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

s/ *Thomas Lowery*
Thomas Lowery, 083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Case No. 15-ALC-15-0009-AP
Appellate Case No. 2015-000689

Thomas Lowery, #083240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

AMENDED APPELLANT FINAL BRIEF

Thomas Lowery, #083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

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

Respondent

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	iii
Statement of The Case	1
Appellant's Argument	2,3
Conclusion,	3
Designation of Matter	4
Certificate of Counsel	5
Proof of Service	6

TABLE OF AUTHORITIES

CASES:	PAGES:
Ferrell v. SCDPPPS, 2014-MO-011 (2014)	
Cooper v. SCDPPPS, 661 S.E.2d 106 (2008)	2
	2
STATUTES:	
S.C. Code Ann. §1-23-600(D)	
	2
OTHER:	
SCDPPPS Criteria Form 1212	3

STATEMENT OF ISSUE ON APPEAL

1. WHETHER PAROLE BOARD FAR REACHING POWERS ABROGATES THE FAIRNESS DUE TO POTENTIAL ELGIBLE CANDIDATES ENDEAVORING TO OBTAIN A CHANCE AT SOCIETAL RE-ENTRY?

RESPONDENT STATEMENT OF CASE

1. Respondent's Brief does not entail the guilty plea induced by advice that Appellant would not be eligible for parole in ten (10) years. I does'nt contain the fact that Appellant at the time could not read or write nor had the comprehensive skill to articulate constitutional protections. It does not contain the capricious acts of 1976 proceedings or those now used arbitrarily and capriciously in his parole hearings.
2. The other factors considered by the Board in particular cases are the factors so far-reaching they can be hidden in number 11; 13; 14; and cloaked in the number "15" clause of discretionary powers (emphasis added). It is not the State that avoids race claim, it is the agents of the State that avoid a sensitive, authentic issue due a fair redress and disposition.
3. The ALC, respecting Judge Durden, avoided an issue(s) made present long before Judge Durden tenure. Discrimination can be address at any level of jurisprudence if "chosen" by the Court its before. It is when polictics enter the Courts, justice find it difficult to prevail.

SUPPORTING ARGUMENTS BY RESPONDENT

The ALC correctly acted lawful by taking a hands off approach to a matter politics limited its authority to interpret, but remedy with the flexibility of the Cooper decision pointed to in Appellant's Initial Appeal. The Parole Board still offer no concrete factual explanations for its decisions, nor indicate a desire to do so. If more transparency of item "15" was made available through fair disclosure, a Lowery decision could be a paramount resolve, and the other "14" items modified to remove the ambiguties that dilute a good concept of law and order..

The Criteria established by General assembly and the Department:

The criteria quoted by Respondent says, the Board must carefully consider the record of the prisoner before, during and after imprisonment etc..., I submit:

1. The Board in its brief did not mention my educational or vocational growth.
2. My behavior adjustment the last thirty (30) years or other programs achievements.
3. It did not mention that earlier in my sentence prior to Director Moore, I

was a trustee in construction that help built now existing institutions. That I went about these tasks absent armed supervision and never escaped. They did not mention the money I contributed to Victim Witness the years of work in Prison Private Industry Program. They didn't mention my spiritual growth or involvement in Faith Base Programs. They didn't mention my 80 plus year old mother who tried to meet with the victim in search of forgiveness and closure. They didn't mention my supportive family.

All the Respondent relied on was a crime of 1976 to support its continuous denial of my potential chance to prove myself worthy of the grace.

The nature and seriousness will never change and remorse felt can't be forced on the victims to accept.

Items 13; 14; and particular 15, are items of the agency criteria that hinder me and race is the core issue, which item "15" is the platform for the arbitrary and capricious doings.

CONCLUSION

I submit that: If this Court affirm the ALC decision, again, politics will prevail the halls of justice. I implore this Court to love mercy, apply prudence and affirm justice conceived by the founding Fathers. This opposition I humbly submit in respect of all.

July 24. 2015

s/
Thomas Lowery, #083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Case No. 15-ALC-15-0009-AP

Appellate Case No. 2015-000689

Thomas Lowery, 083240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

DESIGNATION OF MATTER

In addition to the matter designated by the Respondent, the Appellant proposes the following to be included in the Amended Record on Appeal.

1. Respondent's Notice of Rejection dated 1/15/15; and
2. Criteria for Parole Consideration.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

s/ *Thomas Lowery*
Thomas Lowery, #083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

September 18, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
Deborah Durden, Administrative Law Judge

Case No. 15-ALC-15-0009-AP
Appellate Case No. 2015-000689

Thomas Lowery, 083240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant Amended Final Brief and Designation of Matter contains all material that is relevant to the appeal.

s/ *Thomas Lowery*
Thomas Lowery, 083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

September 18, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
Deborah Durden, Administrative Law Court

Case No. 2015-ALC-15-0009-AP
Appellate Case No. 2015-000689

Thomas Lowery, 083240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

PROOF OF SERVICE

I, Thomas Lowery, the Appellant certify that I have served the within Appellant Final Amended Brief, Designation of Matter, and Certificate of Counsel dated September 18, 2015, on Respondent this 18th day of September, 2015, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to: Tommy Evans, Jr.

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

s/ *Thomas Lowery*
Thomas Lowery, 083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

September 18, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
Deborah Durden, Administrative Law Judge

Case No. 15-ALC-15-0009-AP
Appellate Case No. 2015-000689

Thomas Lowery, 083240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant Amended Final Brief and Designation of Matter contains all material that is relevant to the appeal.

s/ *Thomas Lowery*
Thomas Lowery, 083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

September 18, 2015

**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**

Thomas Lowery, #083240, Appellant,

v.

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

Appellate Case No. 2015-000689

Appeal From the Administrative Law Court
Deborah Brooks Durden, Administrative Law Judge

Unpublished Opinion No. 2016-UP-204
Submitted February 1, 2016 – Filed May 11, 2016

AFFIRMED

Thomas Lowery, pro se.

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

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 377 S.C.
489, 496, 661 S.E.2d 106, 110 (2008) ("Parole is a privilege, not a right."); *id.*

("The parole board . . . has the sole authority to determine parole eligibility"); S.C. Code Ann. § 24-21-640 (Supp. 2015) (providing the parole board shall "carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him"); S.C. Code Ann. § 1-23-600(D) (Supp. 2015) ("An administrative law judge shall not hear . . . an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services."); *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112 (holding a parole denial that does not comply with statutory procedure "constitutes an infringement of a state-created liberty interest and, thus, warrants minimal due process procedures"); *id.* at 500, 661 S.E.2d at 112 ("[T]he [p]arole [b]oard may avoid the result in the instant case if it clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form. If the [p]arole [b]oard complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the [p]arole [b]oard followed proper procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal."); *Compton v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009) (holding the ALC erred in remanding the case to the parole board when "the [p]arole [b]oard clearly stated in its notice of rejection that it considered the statutory criteria and the criteria set forth in Form 1212, which is sufficient under *Cooper*").

AFFIRMED.¹

WILLIAMS, LOCKEMY, and MCDONALD, JJ., concur.

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable Deborah Durden, Administrative Law Judge
Case No. 15-ALC-15-0009-AP

APPELLATE CASE No. 2015-000689

Thomas Lowery, #083240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

APPELLANT FINAL REPLY BRIEF

Thomas Lowery, #083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

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

Respondent

The Petitioner, Thomas Lowery attached and incorporates his SCDC Offender Management System Release Date Screen authentic copy dated 4/3/15, as Exhibit-A, and his SCDC Classification Summary Report dated 4/3/15 as Exhibit-B in support of his petition and affidavit, as proof and evidence that the Board has committed error of law by prejudicing his substantive rights by depriving him of liberty without due process of law under the 14th Amendment of the Federal Constitution, and Article 1, §3, of the S.C. Constitution.

The focus of this judicial review is whether or not the Petitioner has a liberty interest in an impartial parole proceeding every 12 months upon rejection of parole on a non-violent classification status, rather than 2 years under the violent classification status.

It's clear that the Board has not carefully considered the Petitioner's record to determine the correct and proper next parole hearing date that should have been in January 2016.

For the reason stated, Petitioner moves this court to review his parole procedures from 1/1/1985 to this current date.

CONCLUSION

For the reason stated, Lowery asks this court to grant his petition/.

s/

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

5/20/16

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
Deborah Durden, Administrative Law Judge

Case No. 15-ALC-15-0009-AP

Appellate Case, No. 2015-000689

Thomas Lowery, #083240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant Final Reply Brief complies with
SCACR.

July 24, 2015

s/ *Thomas Lowery*
Thomas Lowery, #083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW JUDGE
Deborah Durden, Administrative Law Judge

Case No. 15-ALC-15-0009-AP

Appellate Case No. 2015-000689

Thomas Lowery, #083240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

PROOF OF SERVICES

I, Thomas Lowery, the Appellant certify that I have served the within Appellant Final Reply Brief, and Certificate of Counsel dated July 24, 2015, on Respondent this 24th day of July, 2015, by depositing a copy of the same in the U.S. mail, postage prepaid, addressed to: Tommy Evans, Jr.

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

July 24, 2015

s/ *Thomas Lowery*
Thomas Lowery, #083240
HD235/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2015-000689

Thomas Lowery, 83240,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

PETITION FOR REHEARING

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

25

The Petitioner, Thomas Lowery attached and incorporates his SCDC Offender Management System Release Date Screen authentic copy dated 4/3/15, as Exhibit-A, and his SCDC Classification Summary Report dated 4/3/15 as Exhibit-B in support of his petition and affidavit, as proof and evidence that the Board has committed error of law by prejudicing his substantive rights by depriving him of liberty without due process of law under the 14th Amendment of the Federal Constitution, and Article 1, §3, of the S.C. Constitution.

The focus of this judicial review is whether or not the Petitioner has a liberty interest in an impartial parole proceeding every 12 months upon rejection of parole on a non-violent classification status, rather than 2 years under the violent classification status.

It's clear that the Board has not carefully considered the Petitioner's record to determine the correct and proper next parole hearing date that should have been in January 2016.

For the reason stated, Petitioner moves this court to review his parole procedures from 1/1/1985 to this current date.

CONCLUSION

For the reason stated, Lowery asks this court to grant his petition/.

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

5/20/16

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Appellate Case No. 2015-000689

Thomas Lowery, 083240

Appellant

v.

South Carolina Department of Probation,
Parole and 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, and Exhibit-A (SCDC Offender Management System date 4/3/15) on Tommy Evans, Jr., by depositing a copy of the same in the US Mail postage prepaid on May 20, 2016, addressed to him at SCDPPPS, P.O. Box 50666, Columbia, SC 29250.

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


27

South Carolina Department of Corrections

Classification Summary Reports

Date: Friday, April 3, 2015

Classification Summary Reports	
Inmate Number <input style="width: 150px;" type="text" value="83240"/>	<input type="button" value="Submit"/>

Classification Summary Report for LOWERY, THOMAS - :		<input type="button" value="Create PDF"/>																					
CLASSIFICATION SUMMARY REPORT DATED 04/03/2015																							
SCDC# 00083240	LOWERY, THOMAS -	FBI# 834144P2																					
<p>OFFENDER ADULT-STRAIGHT TYPE: SENTENCE</p> <p>INSTITUTION: KERSHAW</p> <p>SECURITY/CUST: 2 MINIMUM IN</p> <p>CURR INCARC 999 YRS 0 MOS SENT: 0 DAYS</p> <p>VICTIM WITNESS: Y SEPREQ: N</p> <p>MED CLASS: NO MED PROB/NO WORK RESTR</p> <p>INST RESTRICT: NO RESTRICTION</p> <p>MENTAL CLASS: MH-S (MENTALLY STABLE)</p> <p>CURRENT PROGRAM: ALCOHOL ANONYMOUS GROUP</p> <p>SEX REGISTRY: N</p> <p>DNA: C</p> <p>AGE: 59</p>		<p>RESIDENT STABILITY: SI</p> <p>DORMROOMBUNK_CODE: HD 0235 T</p> <p>PROJ MAXOUT DATE:</p> <p>PROJ PAROLE DATE: 01/14/2017</p> <p>EWC JOB: INDUSTRIES TRAINEE</p> <p>ASSIGNMENT: PRISON INDUSTR</p> <p>EWC LEVEL: 3F5 EEC LEVEL:</p> <p>EDUC PGM: NO CURR EDUC PROGRAM</p>																					
<p>PREVIOUS NUMBERS:</p> <p style="text-align: center;">*NO PREVIOUS NUMBERS*</p>																							
<p>CURRENT OFFENSES:</p> <p>MURDER BEFORE 1977, JUNE</p>	<table border="0"> <tr> <td colspan="4">SENTENCE</td> </tr> <tr> <td>YRS</td> <td>MOS</td> <td>DYS</td> <td>COUNTY</td> </tr> <tr> <td>999</td> <td>99</td> <td>999</td> <td>LEE</td> </tr> </table>	SENTENCE				YRS	MOS	DYS	COUNTY	999	99	999	LEE	<table border="0"> <tr> <td colspan="3">SENTENCE</td> </tr> <tr> <td>START</td> <td>V/NV</td> <td>CAT INDICT</td> </tr> <tr> <td>05/28/1976</td> <td>U</td> <td>5 76GS31193</td> </tr> </table>	SENTENCE			START	V/NV	CAT INDICT	05/28/1976	U	5 76GS31193
SENTENCE																							
YRS	MOS	DYS	COUNTY																				
999	99	999	LEE																				
SENTENCE																							
START	V/NV	CAT INDICT																					
05/28/1976	U	5 76GS31193																					

28

EXHIBIT-A

11:14:42 Friday, April 03, 2015

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 04/03/15
OMCOMITA RELEASE DATE SCREEN C056427

SCDC# > 83240 LOC: KERSHAW
LOWERY, THOMAS - SCDC CLASSIFICATION...: NON-VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
SEXUAL PREDATOR...:
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:

CURRENT SENTENCE: CONSECUTIVE SENTENCE ...
LIFE CURRENT SENT START DATE: 05/28/1976

PROJECTED COMPLETION DATES
MAXOUT DATE: 99/99/9999 CURRENT EWC .:
YOA SIX YEAR DATE: CURRENT EEC .:
INITIAL PAROLE DATE: 01/01/1985 NEXT PAROLE HEARING DATE: 01/14/2017

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS .: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ..: 000000 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Thomas Lowery, 83240, Appellant,

v.

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

Appellate Case No. 2015-000689

Appeal from the Administrative Law Court
Deborah B. Durden, Administrative Law Judge

Unpublished Opinion No. 2016-UP-204
Submitted February 1, 2016-Filed May 11, 2016

AFFIDAVIT OF PETITIONER
IN SUPPORT FOR PETITION FOR REHEARING

Thomas Lowery, being first duly sworn, deposes and says:

1. That he is the petitioner pro se and moving party in the above entitled action.
2. That on May 19, 2016, affiant filed and served herein a petition for re-hearing because the facts relied upon in support of petition are not contained in the Record on Appeal.
3. That an authenticated copy of the South Carolina Department of Corrections SCDC Offender Management System Release Date Screen dated 4/3/15, marked Exhibit-A, thereof is attached hereto, and made a part hereof.
4. That on May 11, 2016, the Court made and entered an order affirmed the above entitled action.
5. That on May 16, 2016, the affiant received a copy of the order, which the institutional mail room stamped received by them on May 13, 2016.
6. That Exhibit-A is crucial to Thomas Lowery, for the reason that proof is necessary, such as: SCDC Classification status: Non-Violent; Initial Parole Date: 1/1/1985; and Supervised Reentry Date: 0/0/00, and the document is the only proof that can show as to the fact establishing whether or not the Respondent has seriously prejudiced the affiant who is serving a life sentence upon service of ten (10) years was eligible for parole under non-violent classification status; but the Respondent continue to bring affiant before the Board every 2 years upon rejection for parole, when the law under §16-3-20, S.C. Code Ann., require affiant to appear before the Parole Board every 12 months or year upon rejection of parole.
7. That the applicable law of affiant Current Sentencing Start Date: 5/28/1976, was §16-3-20, S.C. Code Ann. 1976, that authorized him to appear before the Parole Board every year upon rejection for parole.

8. That affiant has been imprisonment since 5/28/1976, and that his parole denials have never complied with statutory procedure that reflects an individualized consideration of all the relevant facts and circumstances warranting parole by substantial evidence that he currently poses a threat to public safety.

9. That the parole board not clearly state in its notice of rejection that its decision reflect an individualized consideration of the statutory criteria and the criteria set forth in Form 1212, after a general and pro forma reference to the record and regulatory factors, the Board focused entirely on just the immutable factors why affiant was rejected for parole, despite a record replete with reasons for circumstances warranting parole.

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

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

SWORN to before me, this ^{19th} day of May, 2016,

Catherine A. Amesa

Notary Public for South Carolina

My commission Expires: ~~My Commission Expires~~ December 23, 2018

The South Carolina Court of Appeals

Thomas Lowery, #083240, Appellant,

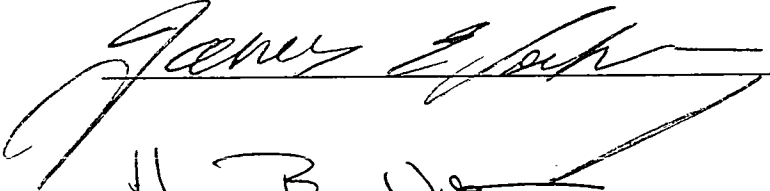
v.

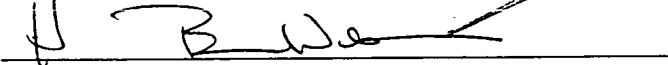
South Carolina Department of Probation, Parole and
Pardon Services, Respondent.

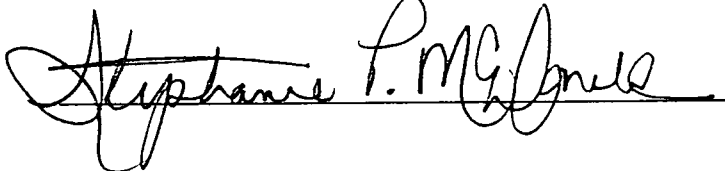
Appellate Case No. 2015-000689

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ C.J.


_____ J.


_____ J.

Columbia, South Carolina

cc:

Thomas Lowery, 083240
Tommy Evans, Jr., Esquire

FILED

August 18, 2016 27

32