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OCT 20 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

<++++=====++++>

Joseph H. Gibbs, #185709)	Case <u>16-ALJ-15-0022-AP</u>
Appellant)	
Vs)	MOTION: <u>TO MODIFY LEGAL</u>
The SC. Probation, Parole, and)	<u>Points and Holding in Case Law</u>
Pardon Services Board.)	
<u>Respondents</u>)	

On Appeal from: Administrative Law Court, Order.

Honorable; John D. McLeod, ALJ

I respectfully move this court to modify the legal points and holding in Cooper V SCPPPSB 377 SC 489,500, 661 SE.2d 106,112 (2008), underscored in Compton V SCPPPS 385 SC 476 @ 479, 685 SE.2d 175 @ 177; which was cited in order on appeal by the ALC, 9/20/16, as ground for summary dismissal.

FACTS

I went before the parole board on 5/13/16, for the third time. Denied by written order dated 5/19/16. I petitioned the board for a rehearing and consideration dated 5/31/16. Denied by order from counsel, without submitting same to the board, dated 6/7/16. I filed a timely NOA to the ALC, filed 6/15/16, assigned 6/22/16. The respondents filed there ROA, dated 8/12/16. I filed my Initial Brief with Appendix 1 & 2. The ALC summarily dismissed the appeal with prejudice by order dated 9/20/16. I filed a timely NOA, with attached order on appeal, and motion for informa pauperis, and this motion dated 10/16/16, and proof of service.

ARGUMENT

In the Cooper Case, the court advised the respondent, that [if] it stated in its form order, that it relied upon the outlined requirements of statute §24-21-640 and form 1212, and in Compton a separate statement of fact, that a routine denial of parole would be had, and the ALC had limited jurisdiction, see §1-23-600(D) Supp.2015. The court noted that the "fixed immutable criteria" used abrogated reform or rehabilitation. The court did not mention parole for "good behavior" under §24-21-610.

The ALC relies on Cooper and Compton to deny my appeal, and by all appearance this is not even appealable before the judicial branch, ie court of appeals. I pointed out in my NOA to the ALC, that routine denial of parole was not the basis of appeal, and that I was denied a fair and impartial hearing on the record, and evidence; and that on the petition for rehearing, counsel denied the petition without submitting same to the board, as an absolute denial of appealability. I argued in my initial brief, that immutable criterial was legislative facts, and not material facts, and the order was not based on evidence or the record.

Here I submit and argue that, the Fixed immutable criteria, should be held as legislative facts, and not material facts suitable for denying the elements of §24-21-640, and as for parole under §24-21-610 I have never had a charge or administrative conviction in 24 years, and the record as argued in my brief, shows that the order is not supported by the record. No one ever asked anyone I know about my parole from the Board or agent id 24-21-280(c), and I was cut off at hearing and prevented from presenting my case on the record and criteria, or asking about the evidence based, actuarial assessments, and risk needs findings.

If the board is only required to state in its form letter the requirements; when the record of the hearing id. SC ALC Rules 58(A)(B)(F), 61 shows that I was cut off from presenting my case, and counsel did not file this in there ROA, that these were met, without having actually conducting a fair and impartial hearing on the elements of law, then this cannot be a routine denial of parole, or within the constitution of due process or equal protection of the law, and it should not be said that a citizen of SC dose not have a liberty interest, when life, liberty, and pursuit of happiness is inalienable, is unreasonable violation of separation of powers, and substantive due process.

The recent change of law, has merged the parole agency with the SCDC, but the public and myself and peers have not been advised or informed of the ramifications of same, and §24-1-20 makes reform a ministerial duty of SCDC, and Art XII §2 SC Const makes Rehabilitation a ministerial duty by the mandatory language of shall. When these have been met, and the elements of parole law have been met, then denying same contrary to the evidence is arbitrary and capricious and a denial of a fair and impartial review by a government agency,

which is reviewable.

CONCLUSION

I pray that this court will modify the holdings in case law to allow for a meaningful and evidence based review, and order the respondents to make its orders based on actual evidence and elements of law, after a fair and impartial hearing.

October/16/2015

Respectfully

/s/ Joseph H. Gibbs
Joseph Hugo Gibbs, #185709
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Appellant pro Se

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TO: Clerk of Court; Tonya A. Gee
SC. Court of Appeals
1015 Sumter St
Po. Box 11629
Columbia SC 29211

Filing Letter

RE: Joseph H Gibbs #185709 vs The SCPPPSB Case 16-ALJ-15-0022-AP

On Appeal from the Administrative Law Court; Judge J.D. Mcleod

Please find enclosed for filing in the above case, my;

1. Notice of Appeal, Original
2. Copy of the Order appealed.
3. Motion for Informa Paupris.
4. Motion to Modify case law.
5. Proof of service / Filing letter.

Thanks for your time and attention in this case.
Mr. Tommy Evans, jr
Counsel for Respondent,

Respectfully
1/s/ Joseph H. Gibbs
Appellant Pro Se

PROOF OF SERVICE

I the undersigned appellant pro se, certifies that i have on this / 19th / day of October / 2016, served one true copy of my NOA W/order, Motion for informa paupris, Motion to modify case law, proof of service & filing letter, to the Clerk of Court, ALC, and Counsel Mr. Tommy Evans, jr, as addressed below, by depositing same in the US mail at evans postage prepaid and proper.

Ms. Jana Shealy
Clerk of Court; ALC
1205 pendleton St. Suite 224
Columbia SC. 29201

Sincerely
1/s/ Joseph H. Gibbs
ECI, F-3-B-242A
610 Hwy 9 West
Bennettsville SC. 29512
Appellant pro se

Mr. Tommy Evans, jr
Assitant General Counsel
Dept of general Counsel; SCPPPSB
PO. Box 50666
2221 Devine St. Suite 600
Columbia SC. 29250
Ph 803-734-9220

Ph 843-479-4181

Sworn to and subscribed before me
on 18 day of October, 2016
S. Owen
(Notary Public of South Carolina)
My Commission Expires 2/17/24

Joseph H. Gibbs, 185709
E.C.F., F-3-B-242A
610 Hwy 9 West
Bennettsville SC-29512



OCT 19 RECD

Honorable: Tonya A. Gee
Clerk: SC. Court of Appeals
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