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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Deborah B. Durden, Administrative Law Judge  
Unpublished Opinion No. 2016-UP-210 (S.C. Ct.App. Filed 5/11/16)

Appellate Case No. 2016-001997

Bernard Bagley, #175851,

Appellant,

v.

South Carolina Department of Probation,  
Parole and Pardon Services,

Respondent.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

Bernard Bagley  
#175851/HD133/KER.CI  
4848 Goldmine Hwy.  
Kershaw, SC 29067

Pro Se

**LEGAL**

ARGUMENTS/CENTRAL ISSUES

I. THE COURT OF APPEALS WAS INCORRECT IN AFFIRMING THE DECISION OF THE ALC DUE TO THE BOARD REVEALING THAT ALL OF THE MANDATORY CRITERIA WAS CONSIDERED PRIOR TO DENIAL.

A. Whether there is a rational nexus between the notice of rejection or evidence and the ultimate determination of current dangerousness;

1. The Petitioner is in no way asking the Court whether he is currently dangerous, because that question is reserved for the Parole Board.

B. Whether the Board's decision must reflect due consideration of the specified factors of current dangerousness and possible future dangerousness as applied to the individual prisoner in accordance with applicable legal standards to support parole eligibility, or does it has the effect of rendering and inmate parole ineligible, which warrants review under due process of law U.S. Constitution 14th Amendment, §1, and S.C. Constitution Article 1, §3.

C. Whether the Board's decision must reflect due consideration of the specified factors and positive factors as applied to the individual prisoner in accordance with applicable legal standards to support parole eligibility under the U.S. Constitution 14th Amendment, §1, and S.C. Constitution Article 1, §3 Due Process of Law Clause.

D. Whether in framing its Return, the Respondent does not contend that a rational nexus exists between the Board's cited factors, findings, and conclusion of Bagley's current dangerousness.

NOTE: The foregoing are the proper inquiries.

II. THE PETITIONER SEEKS REMEDIES THAT CAN BE GIVEN BY THE ALC AND THE COURT OF APPEALS.

A. Whether there is a rational nexus between the evidence and the ultimate determination of current dangerousness, and not doing so, the Board's decision making process is arbitrary and procedurally flawed;

1. The ALC has jurisdiction to review the entire record to determine probative and substantial evidence to support the notice of rejection or order denying parole of current dangerousness and possible future dangerousness.

2. If any future dangerousness or current dangerousness of Petitioner before the Board it must be considered.

## ARGUMENTS/CENTRAL ISSUES

3. The Board neither offered an explanation nor indicated in its order denying Bagley parole that it considered current dangerousness and possible future dangerousness of public safety of an individualized consideration of him, and as a result, rendering Petitioner parole ineligible.
  4. The Order denying Bagley parole or the Notice of Rejection does not reveal findings of fact and conclusion of law separately stating it considered Petitioner pose a threat or current dangerousness and possible future dangerousness to public safety, thus, making the parole hearing and proceedings unlawful.
- B. Whether the matters brought before the Board includes the 1) crime committed; 2) opinions of the victims; and 3) the Petitioner's prison record are considered as stated by the Respondent in its Return:
- A. Other matters are not considered: a) positive factors; b) postconviction conduct records; c) mitigating factors; d) remorse for the victim and crime; e) attitude regarding the crime; f) Parole Plans and Social Support; g) psychological evaluation; and h) more importantly, risk of current dangerousness and possible future dangerousness.
- C. Whether the Board's decision to deny Bagley parole notice of rejection lacked any supporting evidence stating that it considered current dangerousness and possible future dangerousness to public safety, or otherwise arbitrary in violation of federal and state guaranties to due process of law under the 14th Amendment, §1, of the U.S. Constitution, and Article 1, §3 of S.C. Constitution:
- A. Petitioner is not asking this Court or no other court to substitute its judgment for that of the Board's as to weight of evidence.
  - B. Rather, that the Court consider whether there is a rational nexus between the evidence or notice of rejection and the ultimate determination of current dangerous and possible future dangerousness.
    1. Petitioner is in custody of the department of corrections involving the denial of parole as an ineligible inmate by the department of probation, parole and pardon services based on the fact that he was not committed to a deadly weapon offense during a commission of a crime.
    2. Petitioner is in custody of the department of corrections involving the denial of parole as an ineligible inmate by the department of probation, parole and pardon services sentenced of incarceration for the remainder of his natural life which makes him ineligible for release on parole.
  - C. Petitioner request that the Court make a finding on record whether or not he was convicted or committed to a deadly weapon offense during the commission of a violent crime.

## ARGUMENTS/CENTRAL ISSUES

- D. Petitioner request that the Court make a finding on record whether or not that a sentence of incarceration for the remainder of his natural life means until death as an offender without the possibility of release on parole.
1. Petitioner is an individual serving a natural life sentence rather than serving a life sentence which makes him ineligible for release on parole.
  2. Respondent states that the matters brought before the Board includes the crime committed; opinions of the victims; and the Petitioner's prison record that forms the crux of the parole decision.
  3. The significant circumstance is how those factors interrelate to support a conclusion of current dangerousness or future dangerousness to public safety.
  4. The Board must determine whether a particular fact is probative of the central issue of current dangerousness when considered in light of the whole record.
  5. And, the decision does not reflect due consideration of the specified factors of current dangerousness nor possible future dangerousness to public safety.
- [D.] Whether there is substantial or any evidence in the order denying parole or notice of rejection that the Board considered or offered an explanation of current dangerousness and future dangerousness;
- A. In essence, there is no rational nexus between the immutable factors and the necessary basis for the ultimate decision of the determination of current threat or risk to public safety.
    1. Bagley has not killed or injured anyone since the commitment offense.
    2. The Board improperly included an impermissible factor that the murder was heinous which is an insufficient basis to justify current dangerousness or future dangerousness unless there is an evidence-based rational nexus between the offense and present behavior.
- E. Whether there is nexus between the immutable factors and Bagley's current behavior in accordance of legal standards of the 14th Amendment, §1 of the U.S. Constitution, and Article 1, §3 of the S.C. Constitution.
- F. Whether there exists some substantial evidence demonstrating that Bagley poses a current threat to public safety.
- G. Whether any dissatisfaction by the Board under §24-21-640, of S.C. Code of Law, concerning current and future dangerousness offered an explanation or indicated in the Board's order or has the effect rendering Bagley parole ineligible.

ARGUMENTS/CENTRAL ISSUES

H. Whether future parole review hearings recitation of boiler plates results of denying parole sufficient if it states in its notice of rejection that it considered the specified factors of current dangerousness or possible future dangerousness does it complies with procedure, and the decision constitute a routine denial of parole.

NOTE: The foregoing are the proper inquiries as to whether and to what extent Respondent burdened Bagley's state created liberty interest denying his parole eligibility under §16-1-60, and §24-21-610, along with §24-21-645 of S.C. Code Ann.

Also, the Respondent is obligated to follow its own rules and regulations or procedures founded in principles of administrative law in carrying out the legitimate purposes of the agency.

The ALC failed to follow the procedure in dispute, and there is no basis shown how the failure to apply all ALC Special Rules is rationally grounded.

## STATEMENT OF THE CASE

Appellant incorporates into his reply and the record and repeat as if verbatim herein his Statement of the Case filed in his Petition for Writ of Certiorari with this Court.

## ARGUMENTS

1. THE COURT OF APPEALS WAS INCORRECT IN AFFIRMING THE DECISION OF THE ALC DUE TO THE BOARD REVEALING THAT ALL OF THE MANDATORY CRITERIA WAS CONSIDERED PRIOR TO DENIAL.

The Appellant asserts that the Supreme Court can consider to accept a petition for writ of certiorari where there are novel questions of law; and where substantial constitutional issues are directly involved.

Here the ALC did make a determination prior to him being able to make an argument regarding the denial of his request for parole as established by the ALC Special Appeals Rules of procedure used in appeals from final decisions of the Department of Corrections and Department of Probation, Parole and Pardon Services. These rules are based upon the Court's existing general procedural and appellate rules, with adaptations for this specific type of appeal. (Emphasis added).

The ALC Rule 62, Dismissal of Appeal does not authorize the ALC to abuse its power by arbitrary orders of dismissals because of their bias opinion that the failure to provide a factual basis for each alleged constitutional violations when in essence the court is required to consider whether there is a rational nexus between the notice of rejection or evidence and the ultimate determination of current dangerousness.

The Appellant in no way asked the court whether he is currently dangerous, because that question is reserved for the executive branch, i.e. Parole Board. Current dangerousness has to be involved into the entire record, and not to do so based on an abuse of discretion to uphold a denial as routine under the cover of a blanket policy that recitation of the immutable factors without recognition that an inmate's right to due process cannot exist in any practical sense without a remedy against its abrogation. The general legal standard is that the State may not deprive any person of life, liberty, or property without due process of law. SEE: U.S. Constitution 14th Amendment, and S.C. Constitution Article 1, §3.

Bagley further contends that that the ALC has the jurisdiction to consider whether the Board's decision must reflect due consideration of the specified factors and positive factors as applied to the individual prisoner in accordance with applicable legal standards to support the parole eligibility, or does it has the effect of rendering an inmate parole ineligible, thus, warrants review.

There are novel questions of law that was not addressed in *Cooper v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008), and continue to recite in its boiler plate notice of rejections the seriousness of offense, but unable to establish a nexus between the commitment offense(s) and current risk of danger to the community.

However, in light of the constitutional liberty interest at stake, (rendering an inmate parole ineligible) judicial review must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights, based on a question of law whether there is a rational nexus between the evidence and or notice of rejection and the ultimate determination of current dangerousness.

Again, the ALC was incorrect to make a determination prior to him being able to make an argument. The ALC improperly used an unlawful procedure to determine that the Petitioner failed to raise an issue that "can be supported" she had no right to dismiss this appeal, and the determination by the Court of Appeals was improper as well.

The Petitioner requests the Supreme Court to review the decision of the Court of Appeals for a possible reversal of their decision because its his belief that the decision of the Court of Appeals was unlawful, and the reasons provided by him do fall into the criteria that the Court may consider: 1) Whether there is a rational nexus between the evidence or notice of rejection and the ultimate determination of current dangerousness; 2) Whether the Board's decision must reflect due consideration of the specified factors and positive factors as applied to the individual prisoner in accordance with applicable legal standards to support parole eligibility, or does it has the effect rendering an inmate parole ineligible, which warrants review; and 3) Whether in framing its return, the Respondent does not contend that a rational nexus exists between the Board's cited factors, findings, and conclusion of Bagley's current dangerousness.

## 2. THE APPELLANT SEEKS REMEDIES THAT CAN BE GIVEN BY THE ALC AND THE COURT OF APPEALS.

The Appellant asserts that the ALC must review the entire record to determine probative and substantial evidence support the notice of rejection, current and possible future dangerousness decision. Also, whether there is a rational nexus between the evidence and the ultimate determination of current dangerousness, and not doing so, the Board's decision making process is arbitrary and procedurally flawed.

The Court may not interfere with the Board's determination regarding parole unless that determination lacks a rational basis and is arbitrary or capricious, and procedurally flawed, resulting in a denial of due process under the 14th Amendment of the U.S. Constitution, and S.C. Constitution Article 1, §3, the general legal standards are that the State may not deprive any person of life, liberty, or property without due process of law.

If any future dangerousness or current dangerousness of an inmate appearing before the Board must be considered, as such, the Board neither offered an explanation nor indicated that it considered current and the possible future dangerousness of an individualized consideration of him, and as a result, ren-

dering him parole ineligible. The Parole Board did not in Bagley's case and order denying parole that it considered current or any future dangerousness outlined in §24-21-640 and the fifteen factors published in its parole form, and the decision making process under §24-21-10(F)(1), or any other question of fact that must be considered by the Board.

In the case at bar, the order or notice of rejection does not reveal a finding of fact and conclusion of law separately stating it considered current and possible future dangerousness to public safety, thus, making the order denying parole unlawful due to it not presenting any conclusion of law or finding of fact it considered current dangerousness and possible future dangerousness to public safety.

Matters brought before the Board includes the crime committed, opinions of the victims, and the Petitioner's prison record are all considered; however, other matters are not considered: 1) positive factors; postconviction records; mitigating factors; remorse; for the victim and crime; attitude regarding the crime; Parole Plans and Social Support; psychological evaluation; and more importantly, current dangerousness and possible future dangerousness.

Petitioner is not asking this Court to substitute its judgment for that of the Board's as to weight of evidence, rather, that the Court consider whether there is a rational nexus between the evidence or notice of rejection and the ultimate determination of current dangerousness; and whether the Board's decision to deny Bagley parole notice of rejection lacked any supporting evidence stating that it considered current dangerousness and future dangerousness to public safety, or otherwise arbitrary in violation of federal and state guaranties to due process of law under the 14th Amendment, §1, of the U.S. Constitution, and Article 1, §3 of S.C. Constitution.

In addition, Bagley argues that he is in the custody of the department of corrections involving the denial of parole as an ineligible inmate by the department of probation, parole and pardon services based on the fact that he was not committed to a deadly weapon offense. As such, the Petitioner request that the Court make a finding on record that he was not convicted nor committed to a deadly weapon during a commission of a crime; and he request that the Court make a finding that a sentence of incarceration for the remainder of his natural life means until death of the offender without the possibility of parole, on record. A judgment is required for the foregoing requests that the Court make a finding on record regarding the same. Because he is an individual serving a natural life sentence rather serving a life sentence which makes him ineligible for parole.

Furthermore, the Respondent states that the matters brought before the Board including the crime committed; opinions of the victims; and the Petitioner's prison record (Note not his post-conviction conduct record) forms the crux of the parole decision; however, the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness or future dangerousness to public safety. It's Bagley's contentions that the Board must determine whether a particular fact is probative of the central issue of current dangerousness when considered in light of the whole record, and the decision does not reflect due consideration of the specified factors of current dangerousness nor future dangerousness to public safety as applied to him the individual prisoner in accordance with applicable legal standards as to whether

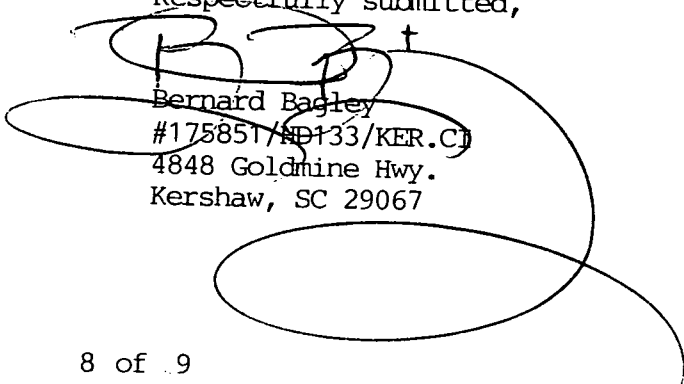
there is substantial or any evidence in the order denying parole or notice of rejection that the Board considered or offered an explanation of current dangerousness and future dangerousness. In essence, there is no rational nexus between the immutable factors and the necessary basis for the ultimate decision of the determination of current threat or risk to public safety. Bagley has not killed or injured anyone since the commitment offense, and improperly including an impermissible factor that the murder was heinous is an insufficient basis to justify current dangerousness or future dangerousness unless there is an evidence-based, rational nexus between the offense and present behavior.

The Petitioner requests the Supreme Court to review the decision of the Court of Appeals for a possible reversal of their decision because in his belief that the decision of the Court of Appeals was unlawful, and the reasons provided by him do fall into the criteria that the Court may consider: Whether there is nexus between the immutable factors and Bagley's current behavior in accordance of legal standards of the 14th Amendment §1, of the Federal Constitution, and Article 1, §3, of S.C. Constitution; 2) Whether there exists some substantial evidence demonstrating that Bagley poses a current threat to public safety; 3) Whether any dissatisfaction by the Board under §24-21-640, of S.C. Code Ann., concerning current and future dangerousness offered an explanation or indicated in the Board's order or has the effect rendering Bagley parole ineligible; and 4) Whether future parole review hearings recitation of boiler plate results sufficient, if it states in its order denying parole that it considered the specified factors the Board must and can only be considered by the Board if it states current dangerousness and future dangerousness, and does it comply with procedure, and the decision constitute a routine denial of parole.

#### CONCLUSION

For all the reasons set forth herein, the Petitioner submits this Court should grant the Petition for Writ of Certiorari and deny the Respondent's Return to Petition for Writ of Certiorari, and reverse the case as improperly decided by the Court of Appeals. Upon the Court granting the Petition for Writ of Certiorari the Petitioner respectfully request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

  
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October 20, 2016

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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
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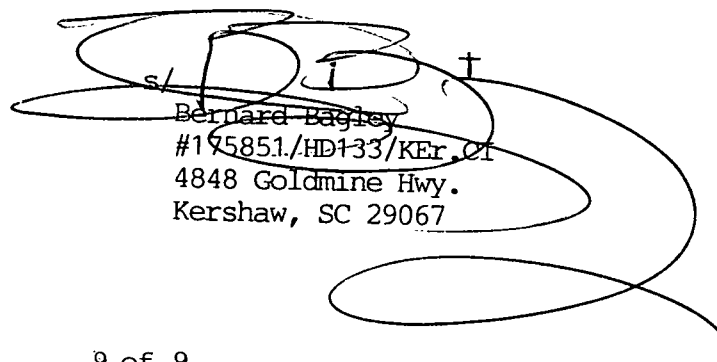
Respondent.

**CERTIFICATE OF SERVICE**

I, Bernard Bagley, pro se, hereby certify that this 20th day of October, 2016, have served the following documents by first class mail, postage prepaid as follows: 1) Petitioner's Reply to Return to Petition for Writ of Certiorari; and 2) Certificate of Service to: Tommy Evans, Jr.

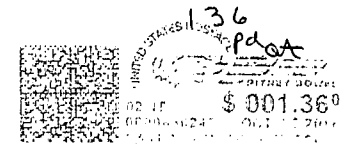
SCDPPPS Assistant General Counsel  
P.O. Box 50666  
Columbia, SC 29250

I further certify that all parties required by Rule to be served have been served.

  
s/ Bernard Bagley  
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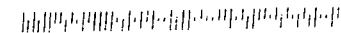
**LEGAL**

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