

STATE OF SOUTH CAROLINA
IN The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, Chief Administrative Law Judge
Docket No. 15-ALC-15-0056-AP

Appellate Case No. 2016-000530

Charlton Davis, 231377,

Appellant

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent

FINAL BRIEF OF APPELLANT

Charlton Davis, 231377
KER.CI/HC117
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

LEGAL

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STATEMENT OF ISSUES ON APPEAL

1. DID THE RESPONDENT FOLLOW THE MANDATES PROSCRIBED BY THE SOUTH CAROLINA SUPREME COURT IN THE COOPER OPINION?
2. DID THE RESPONDENT ERR IN DENYING PAROLE DUE TO THE PRIOR OFFENSE COMMITTED WITHOUT AN EVIDENCED-BASED RATIONAL NEXUS BETWEEN THE OFFENSES AND PRESENT BEHAVIOR?

STATEMENT OF THE CASE

On February 1, 1996, the Appellant was convicted for burglary 1st degree, armed robbery, and assault with intent to commit CSC 1st. Judge R. Markley Dennis, Jr. sentenced the Appellant to a forty (40) year term of incarceration for the burglary 1st; twenty-five (25) year period of incarceration for armed robbery; and fifteen (15) year period of incarceration for assault with intent to commit CSC 1st. The Appellant was obligated to serve one-third (1/3) of this sentence before he became eligible for parole.

The Appellant initially became eligible for parole on July 28, 2004; however, he waived his initial hearing. The 2006 hearing was waived by the Appellant as well. Between 2008 to his initial appearance before the Board, the Respondent deferred Appellant's 2008 and 2010 parole hearings, thus, making him ineligible for parole due to an alleged second or subsequent conviction based on an error of law.

The Board reinstated Appellant's eligibility status for parole consideration on June 22, 2011, in which the Board denied him an opportunity to be released on parole. He has since appeared before the Board an additional two (2) times each resulting in a denial of parole, whereby the September 9, 2015, hearing the Board denied parole due to: 1) the nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; and, 3) the use of a deadly weapon in this or a previous offense. Upon being notified as to this denial of parole the Appellant filed a notice of appeal before the Administrative Law Court, docket no. 15-ALC-15-0056-AP, was dismissed by Ralph K. Anderson, III, Chief Administrative Law Judge on February 11, 2016, in which Appellant filed notice of appeal on his order. The Appellant's brief follows.

FACTS

Appellant desire to point out the facts relevant to the arguments that can be found in the notice of rejection dated 9/10/15 (ROA, p.6). The Respondent has open the door to Appellant's prison disciplinary record in its conclusion of law, as well as the COMPAS risk assessment factors pursuant to §24-21-10(F)(1), S.C. Code Ann., results that indicate no evidence-based rational nexus that he poses an unreasonable risk or danger to public safety. Whereas, the Appellant require his prison disciplinary record and COMPAS risk assessment results to be made part of the record as other material or documents relevant in support

OF HIS BRIEF AND ARGUMENTS. There is no substantial evidence that will support Respondent's arguments that Appellant's prison disciplinary record and COMPAS risk assessment results under §24-21-10(F)(1) interrelate to his commitment immutable offenses factors under federal and state due process of law Amendment 14, §1, and Article 1, §3.

ARGUMENTS

1. THE RESPONDENT DID NOT FOLLOW ALL THE MANDATES PROSCRIBED BY THE SOUTH CAROLINA SUPREME COURT IN THE COOPER OPINION.

In the present case the order does not conform to due process of law under the the federal and state constitution Amendment 14, §1, and Article 1, §3, substantial evidence test circumstances warranting parole determination under §24-21-640, and conclusion of law, and finding of fact must have some rational basis of the ultimate issue of Appellant's prison disciplinary record and COMPAS results current dangerousness to public safety interrelated to his commitment offenses. This is not shown whereby further review by this Court is necessary, and a new parole hearing is required under applicable legal exception that allow for a hearing before 9/9/16, or grant a supervised reentry term parole release date.

It's the Respondent's belief that the Board only have to submit a rote recitation of an order to deny parole and that it will suffice the mandates proscribed by the 14th Amendment §1, of the Federal Constitution, and Article 1, §3, of the S.C. Constitution. Cooper argument was based on procedural error. See Cooper v. SCDFPPS, 661 S.E.2d 106 (2008). Appellant asserts that Respondent's practice of its procedure in Cooper is in violation of constitutional and statutory provisions of federal and state constitution, and §24-21-21-10(F)(1), and §24-21-640, A review that must apply the criteria of S.C. Code Ann. §1-23-610. Without an individualized consideration of all the relevant facts and reasonable probability factors warranting parole under §24-21-640, the order that is a rote recitation that was submitted to the Appellant is arbitrary or capricious clearly abuse of discretion or unwarranted exercise of discretion when a finding of lack of character is not supported by any substantial evidence in Appellant's prison disciplinary record, and COMPAS results.

Appellant concedes that he does not request for the prison disciplinary record or COMPAS results for himself, but the same be provided to this Court to be review and apply the criteria of §1-23-610, to reflect the ultimate issue regarding the interrelationship of all relevant facts and circumstances warranting parole factors in determining whether Davis prison disciplinary record and COMPAS results is currently dangerous to public safety if released on parole. In essence, the rote recitation or boiler plate order in the instant case did not consider all relevant factors outlined in the immutable factors rational nexus of Appellant's character and prison disciplinary record current dangerousness to public safety. The reasons given for denial of parole does not have a rational basis provided regarding Appellant's current dangerousness to public safety if released on parole, thus, continue to make him ineligible for an opportunity to be release on parole. A supervised reentry term parole release date is required.

ARGUMENTS

2. THE RESPONDENT DID ERR IN DENYING PAROLE DUE TO THE PRIOR OFFENSE COMMITTED WITHOUT AN EVIDENCE-BASED RATIONAL NEXUS BETWEEN THE OFFENSES AND PRESENT BEHAVIOR.

The use of the facts of his immutable factors for a reason for denial is in violation of the federal and state constitutions Amendment 14, §1, and Article 1, §3, because the order of denial did not clearly state that it considered all the aspects of §24-21-645, and §24-21-640, nor the evidence-based nexus between the committed offenses and present behavior of whether Appellant poses a risk to public safety if released on parole under §24-21-10(F)(1), decision-making process.

The General Assembly made it mandatory for the Board to create department policy that they must consider prior to the awarding of parole, but the nature and seriousness of the offender's offense, the circumstances surrounding that offense, and prisoner's attitude toward it must be taken into individualized consideration of all relevant facts and circumstances warranting parole and, if it does, is supported by some substantial evidence that the prisoner currently poses a threat to public safety.

Appellant asserts that he has a due process liberty interest in an impartial parole proceeding that may not deprive him of life, liberty, or property under Amendment 14, §1, of the Federal Constitution, and Article 1, §3, of S.C. Constitution, an expectation that he will be granted an impartial parole proceeding that will allow him an opportunity to be granted parole upon evidence-based or some substantial evidence, not mere guesswork whether a particular fact is probative of the central issue of current threat or risk to public safety when considered in light of his prison disciplinary record.

Additionally, the immutable fixed factors of the committed offense when considered as required by due process of law it will reveal whether an inmate character, or if that person is a possible threat to the community when there is some substantial evidence of a rational nexus or interrelationship of current behavior of dangerousness. It's the Board's responsibility to be absolutely convinced by some substantial evidence-base nexus or interrelationship to the crimes committed and current risk or threat to society. The only way the Board can be completely satisfied that an inmate release will not cause any harm to the community is to determine if its decision-making process reflects an individualized consideration of all the relevant facts and circumstances warranting parole is supported by some substantial evidence that the prisoner currently poses a threat to public safety, as required by §24-21-640.

As such, reversal and remand is required based on the foregoing determination that the Board decision-making process constituted an arbitrary error of law in violation of constitutional and statutory provisions. The Board failed to follow all the mandatory criteria that does not reflect in the rote recitation boiler plate order of denial. A new parole hearing is required under applicable legal exception that allow a hearing before 9/9/16, or grant a supervised reentry term parole release date.

CONCLUSION

Based on the foregoing reasons the Appellant respectfully requests that the ALC and Parole Board's final decisions be vacated for a supervised reentry term parole release date.

Respectfully submitted,

Charlton Davis

Charlton Davis, 231377

HC117/KER.CI

4848 Goldmine Hwy.

Kershaw, SC 29067

June 21, 2016

pro se

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South Carolina Department of Probation,
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Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this ~~Final~~ Brief complies with Rule 208,
SCACR.

s/ *Charlton Davis*
Charlton Davis, 231377
KER.CI/HC117
4848 Goldmine Hwy.
Kershaw, SC 29067

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PROOF OF SERVICE

I certify that I have served the ~~Final~~ Brief of Appellant and Certificate of Counsel on the Respondent by depositing a copy of the same in the U.S. Mail, postage prepaid, on June 21, 2016 addressed to:

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

s/ *Charlton Davis*
Charlton Davis, 231377
KER.CI/HC117
4848 Goldmine Hwy.
Kershaw, SC 29067

June 21, 2016

LEGAL

CHARLTON DAVIS #231377
KER. CORR. INST. HC #117
4848. GOLDMINE HWY
KERSHAW. S.C.

29067

TO: SOUTH CAROLINA COURT OF APPEALS
JENNY ABBOTT KITCHINGS CLERK
P.O. BOX. 11629
COLUMBIA. S.C.

29211