IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
Ralph King Anderson III, Administrative Law Judge
Docket No. 16-ALJ-15-0012-IJ

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SC Court of Appeals

APPELLATE CASE NO. 2016-002100

BASIL W. AKBAR, APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES, RESPONDENT.

INITIAL BRIEF OF APPELLANT

RECORD ON APPEAL

BASIL W. AKBAR, #065498
LEE COUNTY INSTITUTION
990 WISACKY HWY, F6B 2213
BISHOPVILLE, SC 29010
PRO SE APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the Administrative Law Judge abuse its discretion, errored in Law, and retard Appellant rights in ruling, (1) It lack Jurisdiction to consider Appeal, (2) Misalleges Appelant missed filing deadline, and (3) Apellant is appealing "Request for Reconsideration/Routing Denial of Parole".

2. Did South Carolina Department of Probation, Parole and Pardon Services (Department), failure to promulgate new objective criteria; and neglect of duty to give formal notice thereto prior to citing provision 24-21-10(F)(1), SCRCP, in Notice Rejection letter denied parole candidate Due Process.

3. Does the Department's arbitrary capricious conduct usurping similar class candidate's annual parole hearing to bi-annual, serving life sentence prior to 1981, void certified administrative policy; law or regulation, denied Due Process, and Equal Protection of the Law.

4. Does Due Process requirement of the Fourteenth Amendment apply to parole release determination proceeding; and are the procedures used by the Department in part constitutionally inadequate, and furthered violates Double Jeopardy Clause/ Rule of Evidence.

5. Does South Carolina Statutory Parole Criteria [SC 1964 Code Sec. 55-612] creates an exception and liberty interest to conditional parole when candidate meet statutory standards for release, despite Department's discretionary function that results in abuse of discretion.

6. Does South Carolina 1964 Code Sections 55-611, and 55-611.1, read in concert mandates ten (10) years paroleable life sentence be treated as thirty (30) years day for day sentence for all purposes including release date.

7. Does the Department's failure to inform Appellant on record what

Department felt in Appellant's file, reasons to rescinding "AYE" votes to "NAY" votes arbitrarily, for impermissible reasons or no reasons denied Due Process.

8. Does the Department's arbitrarily denying Appellant's request for parole reconsideration/re-hearing, denied liberty interest rights and Due Process.

9. Does the Department's failure to advise Appellant of adverse information contain in file upon request; and failure to advise what portion of SC Code 1964 Sec 55-612/24-21-640, and criteria from 1212 that Appellant met, or fail to meet, deny Due Process.

10. Does the Department's classifying Appellant's [1971] offense as violent constitutes Ex Post Facto Clause violation.

11. Does the Department's traditional procedural use of same five "Finding of Fact" elements as the primary rejection reasons fail to concur with legislative intent; offends process Due Process; and for said reasons seeks Injunctive Relief for issues 1-11.

STATEMENT OF THE CASE

On September 1971, the Appellant was sentenced to a ten (10) year paroleable life sentence for murder, then classified as Felony, and statutorily allowed to participate in all programs. Annual parole review hearings were common practice for all prisoners after initial rejection. On April 1981 he was granted conditional parole, and June 1985 his parole was revoked for drug trafficking [1984 & 1985] felony convictions. Subsequently, the Department wrongfully usurp paroleable life sentence to permanently ineligible for parole for 14 years until November 2001 upon extensive litigation, [See, Kerr v State, 574 SE 2d 494 (SC 2001)]. On December 2, 2015, the Appellant Petition the Department concerning unanswered correspondent(s), and copy of Department's Manual or Policy containing section titled "Current Parole Ivestigation", and/or promulate the text . . . and if the Departmet refuse to disclose provide to him instructions to appeal "Agency

Final Decision", to no avail. Appellant's grievance was properly advanced to Administrative Law Court when Department fail to respond, and the Administrative Law Court granted leave to proceed. This mater now comes before this Honorable Court pursuant to a properly filed Administrative Law Court Apeal on April 19, 2016, and Order of Dismissal dated September 23, 2016, and recieved by the Appellant on October 2016. However, the Administrative Law Judge Court erroneously read into his pleadings an accusation/argument outside his pleadings, while failing to address any of Appellant's threshold issues. The Appellant submits herein, hereof, hereby, completely as if verbatim the Appellant's Administrative Law Court Brief, and more specific "Statement of Issues"; and all pleadings and exhibits.

ARGUMENTS

I.

Did the Administrative Law Judge abuse its discretion, erred in law, and retard Appellant rights in ruling, (1) It lack Jurisdiction to consider appeal, (2) Misalleges Appellant missed filing deadline, and (3) Appellant is appealing "Request for Reconsideration/Routine Denial of Parole".

The Appellant submits that the ALJ Court erred in Law and abused its discretion; and retard Appellant's rights, to a full and fair review by erroneously ruling namely that, (1) Appelant's is appealing Request for Reconsideration, (2) Routine Denial of Parole, and (3) missed filing deadline. The ALJ Court dismissal explanation/justification are completely misguided/distortion of Appellant's pleadings. In instant matter the ALJ Court did egregiously misrecital of his issues and ignored factual arguments raised from the inception of his complaint constituting a miscarriage of justice, and grossly unfair judicial proceeding resulting in undue prejudice. To the contrary the Apellant argues in brief, (1) Department's procedural and Due Process violations, (2) Jurisdicial issues, (3) Equal Protection Claims, (4) Non-promulgation of new objective parole criteria, (5) Liberty Interest Rights, (6) Irregularity in Department proceedings, and (7) Injunctive Relief. At no time in instant pleadings does Appellant challenge the denial of parole,

nor did he miss filing date. The ALJ Court ruling does not accord with his "Statement of Issues on Appeal", or substantial evidence on the whole record, nor may the ALJ Court consider matters outside the pleadings, Falk v Sadler, 341 SC 281, 533 SE 2d 350 (Ct App 2000) (emphasis added). The ALJ Court abused its discretion in failing to exercise sound consideration of issues/merits raised before the Court. The Appellate Court stands to review such decision that is asserted to be grossly unsound, ungrounded, unreasonable, or illegal, Mins v Coleman, 248 SC 235, 199 SE 2d 623 (1966). The ALJ Court's decision was not reached on the merits/pleadings on the whole record, or information contained in his pleadings, instead on outside matters, (emphasis added). Appellant adamantly submits that he stated with specificity and particularity points of "Department's Procedural Violations", rather than challenging a routine denial of parole. Moreover, the ALJ Court's Order is defective and flawed where the law does not authorize an ALJ Court to render, when the conclusion drawn is unjustified by the facts and evidence, and because the preponderance of the evidence is against the finding of the ALJ Court. Rutherford v Rutherford, 307 SC 199, 414 SE 2d 157 (1992).

II.

Did the South Carolina Department of Probation, Parole and Pardon Services (Department) failure to promulgate new objective criteria; and neglect of duty to give formal notice thereof prior to citing provision 24-21-10(F)(1), SCRCP, in Notice Rejection letter denied parole candidate Due Process.

The Appellant submits that the Department must promulgate regulations setting forth specific objective criteria that may be used in parole decision making. The Department's failure to promulgate and/or give advance notice of new objective criteria in a timely manner prior to [September 23, 2015] parole hearing that he may prepare totally for parole review hearing, violated State Constitution, rules, regulations, and procedural laws that create protectible liberty interest for advance notice, and right to know what criteria entails. Department's failure to perform required non-discretional legislated ministerial duty resulted in undue prejudice. Appellant submits he was not made aware of amended criteria/SC Code Sec 24-21-10(F)(1) until

after citing provision in parole rejection letter. Mere mention of citation in rejection notice and nothing more does not satisfy legislative intent, or minimum Due Process. The Department did arbitrarily deprived Appellant of entitled information related material, then alluded to something not done, does not meet legislature impose statutory obligation of Sec 24-21-10(F)(1), denied Due Process, See, Wolf v McDonnell, 418 US 539, 564, 94 SCt 2963 (1974). When Department's decisions are made outside legislative intent, and procedural guidance Due Process is violated.

ARGUMENT

III.

> Did the Department's arbitrary capricious conduct usurping similar class candidate's annual parole hearings to bi-annual, serving life sentence prior to 1981, void certified administrative policy; law, or regulation, denied Due Process, and equal protection of the law.

The Appellant submits that he is being denied equal protection of the laws in that he is being treated differently from similarly situated inmates who recieve annual parole hearings. The "Sine Qua Non" of an equal protection claim is a showing that similarly situated persons recieved disparate treatment. Grant v SC Coastal Council, 319 SC 348, 354, 461 SE 2d 388, 391 (1995). In instant case, the record on Appeal does not contain the documentation necessary to allow for a proper analysis of this claim, despite Appellant's request for concise policy/manual number containing subject, "Current Parole Investigation", verification page and signature; date inscribed; and all additional adjoining and extension of pages, that the Department contends support their posture to deny annual parole review hearings to inmates serving 30 years or more convicted prior to 1981. However, Appellant submit that said document is the product from SC Code Ann Section(s) 16-1-60 and 24-21-645, 1986 Omnibus Crime Bill, that had no existence or authority at time of Appellant's offense . . . nor can Department prove otherwise. In support the Appellant submits, Exhibit #4, per legal counsel Tommy Evans, ". . . Policy not preserved." It must be concluded that said policy/manual has been destroyed by the "proponent" in bad faith. In

addition, in 1993 said suspect policy had no existence, See, Exhibit 2-A, where Department argued Sec 24-21-645 applied, instead of suspect policy. This Honorable Court must take judicial notice, that no court of proper jurisdiction has ever judicated this novel issue for authenticity of said document and admissibility, See, State v Rich, 293 SC 172, 359 SE 2d 281 (1987); Also, Rule 901 & 902, SCRE.

The Appellant further submits he is being deliberately treated differently from similarly situated inmates that recieves annual parole hearings [See, SC Code Sec 24-5-90; SC Const Art I, Sec 3], while denying him annual review, See, cases of, Ralph L. Ervin, #051231; Ismail Muhammad, #091408; Larry Logan, #109472, etc.. Furthermore, the Department arbitrary capricious failure to promote uniformity in procedures with respect to those recieving annual review changed to biannual sentence prior to 1981, See, cases of, James McPhall, #056625; Rufus Muldrow, #065743; Nathaniel Sumter, #081695; Kenneth Owen, #083964, etc.. Such irregularities in Department's practice discriminate against a class of inmates of similar class denied equal protection of the law. Prior to 1981, there was no statute that explicitly govern the frequency of parole hearings with explicit instruction, rather annual parole hearings by the Department was so permentent, and well settled as to having the force of law, See, Anela v City of Wildwood, 790 F2d 1063, 1064; Monell v New York City of Social Services, 436 US at 690-91. However, annual parole hearings was a matter of an "application", See, SC 1952 Code Sec 55-611.1, at pertinent parts, ". . . The Board shall review his case, irrespective of whether or not any [application] has been made therefor"; See, SC 1952 Code Sec 55-556, ". . . The Supervisor of parole may conduct survey of the State Penitentiary, County Jail, and Camps and shall obtain such information as will enable the Board to pass intelligently upon all [application] for parole"; See, SC 1952 Code Sec 55-616, ". . . But such prisoner shall be eligible to parole thereafter when the Board thinks such parole would be proper"; See also, SC Code Ann 24-21-960(B), "Any individual who has an [application] for pardon consideration but denied, must wait [one year] from the date of denial before filing another pardon application and fee." The language in those provisions are analogy and agree with one another in some respects, or comparison basis, on application and one year effect. Moreover, annual parole reviews did not become an issue in South Carolina until 1992, See, California Dept of Corrections v Morales, 115 SCt 1597

(1995).

Appellant submits that the Department arbitrarily denied him equal protection of the law; changed annual parole review to biannual void certified authority; and fail to promote uniformity in procedures.

ARGUMENT

IV.

Does Due Process requirement of the Fourteenth Amendment apply to parole release determination proceeding; and are the procedures used by the Department in part Constitutionally inadequate, and furthered violated double jeopardy clause/rule of evidence.

The Appellant submits that the Department's use of "boiler plate" reasons as predicate to deny parole upon immutable aspects of criminal liability facts, and civil infraction not susceptible to change, and nothing more:

* Nature and seriousness of current offense
* Indication of violence in this or previous offense
* Use of deadly weapon in this or previous offense
* Prior criminal record indicates poor community adjustment
* Failure to successfully complete a community supervision program

If the above immutable aspects reasons are allowed as permanent factor for denying parole, would usurp him permanently unsuitable for parole. A tribunal that render conclusion drawn from stale facts [40 years later] that prejudice parole candidate deny due process, and renders procedure Constitutionally inadequate, when Department's decision merely turn on Appellant's past, rather than whom he has become. At some point the Department must be estop and barred from alleging inferred finding of fact statements in good conscience and fairness. Probative value of using said facts outweigh its prejudice. South Carolina Rules of Evidence 403 and 609 (SCRE) exclude criminal convictions in civil matters. Prior convictions are used only to impeach credibility, and should not be used to show parole candidates are bad persons, or that they ought to be denied parole. Since there are no dispute regarding "Finding of Facts" statements it only serves to prejudice candidates because it fail to prove/disprove matters already settled, or parole suitability after 40 years. Furthermore, "Finding of

Facts" as used appears to violate parole candidates "double jeopardy" rights of the Fifth Amendment conflicting with and deviates from legislative intent for granting parole, and inconsistent with the logic plan of legislature to grant parole. The fact of being twice punish or penalize substantially for the same criminal liability and administrative misconduct violates Fifth Amendment, repeatedly. In view of the South Carolina Statutes (1952/1964 Code Sec 55-612) "Circumstances Warranting Parole", provide for release on parole after:

> "The Probation, Parole, and Pardon Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it shall appear, 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 interests of society will not be impaired thereby and that suitable employment has been secured for him."

The Department abused its discretion/authority by arbitrarily denying suitable parole candidates unfairly upon immutable aspect not susceptible to change. Due process also requires that the reasons for denying parole be rationally related to the legislative written statute that legislative branch approved, and Department has adopted. See, Greenholtz v Inmates of Nebraska Penal & Correctional Complex, 442 US 1, 99 SCt 2100 (1979).

The Appellant submits that Due Process does apply to parole release determination proceedings, and that prisoner's right to consideration for parole is an aspect of liberty to which the Due Process clause applies, since South Carolina has made parole an integral part of the penological system.

ARGUMENT

V.

Does South Carolina Statutory [SC Code 1964, 55-612] Parole Criteria creates liberty interest to conditional parole when candidate meet statutory standards for release, despite Department's discretionary function that results in abuse of discretion.

The Appellant submits that the statutory language created a protectible

expectation of parole, and that the use of the words "shall" and "will" in the statutory criteria [SC Code 1964, 55-612] creates a presumption that a prisoner would be parole unless the statutory designated reasons for parole denial are found to exist:

1. Shown disposition not to conform
2. Shown disposition not to obey the law and lead a correct life
3. Shown by his conduct not to merit lessing of the rigors of imprisonment
4. Shown that the interest of society will be impaired thereby
5. Shown continued vocational training needed to secure employment

SC Code 1964, Sec 55-612, calls for a prisoner to be paroled when the Department determines that there is a reasonable probability that the prisoner can be released without detriment to the community or to himself. Since South Carolina has made parole an integral part of its penological system and provided those eligible for parole are to be released on parole unless one or more of the reasons for denial parole specified in the statute is found to be present. The authority/discretion to deny parole must not be exercised arbitrarily. SC Code 1964, Sec 55-612, provides the prisoner with a justifiable expectation rooted in state law that they will be conditionally released if they meet the statutory criteria/standards.

Abuse of discretion occurred where Department's arbitrary capriciously fail to exercise sound reasonable logical/fair discretion in decision making, using procedure that incorporate immutable aspects in decision making unfairly incompass a aim to accomplish beyond what could be fairly achieved. [See, Rejection letter(s) "Finding of Facts conclusion, Exhibits #5, #6, #7.] Reasons for denying parole places a substantial obstacle and unachievable burden in the path to achieve parole, which Department routinely/wrongfully uses to restrict granting parole, is completely irrational when statutory criteria does not require overturning judicial/administrative facts to be parole suitable.

Appellant challenge the method/procedure by which the decision is made, not the decision to grant or deny parole, but that decision making was exercised in an arbitrary or capricious manner. Furthermore, though there is no absolute right to parole, there is a right to proper considerating . . . and eligibility for parole cannot be determined on illegal or improper grounds, See, Moore v Florida Parole and Probation Commission, 289 So2d 719.

ARGUMENT

VI.

Does South Carolina 1964 Code Sections 55-611., and 55-611.1 read in concert mandates ten (10) years paroleable life sentence be treated as thirty (30) years day for day sentence for all purposes including release date.

The Appellant contends that calculation of sentence related earn work credits (Sec 24-21-635) and actual days served, pursuant to SC Code 1964 Sec 55-611., read in concert with SC Code Sec 55-611.1 mandates ten (10) years paroleable life sentence be treated as thirty (30) years. When Appellant's offense (1971) occurred, South Carolina General Assembly Code of Laws Sections 55-611. and 55-611.1 provided that ten (10) years paroleable life sentence granted statutory right to have life sentence treated as 30 years day for day for all purposes including unconditional release date. South Carolina Codes of Criminal Procedures and Statutory Law provided the following:

> Sec 55-611.:
> (1). Who, if sentenced for not more than thirty years, shall have served at least one-third of the term for which he was sentenced.
> (2). Who, if sentenced to life imprisonment or imprisonment for any period in excess of thirty years, shall have served at least ten years, or
> (3). Who, if he is a first offender and is sentenced for an indeterminate term shall have served the minimum for which he was sentenced, not deducting in any instance any allowance of time for good behavior.
>
> Sec 55-611.1:
> After a prisoner has served one-third of his sentence, if such sentence exceed one year, the Board shall review his case, irrespective of whether or not any application has been made therefor, for the purpose of determining whether or not such prisoner is entitled to any of the benefits provided for in this chapter.

South Carolina Office of the Attorney General Opinion No. 23719, February 25, 1966, avers that Sec 55-611.1 of the 1962 Code makes it mandatory that the SC Probation, Parole, and Pardon Board review prisoners record for parole consideration if he has served one-third of sentence. However, since there was no way to calculate a third of life sentence, Sec 55-611.1 defined (ten

years paroleable life sentence) as a term of thirty years or more, for parole eligibility after serving the minimum of ten years, and for all purposes including release date. See, State v Bobby E. Bowden, 668 SE 2d 107 (2008) (held, life sentence to be considered as a sentence of 40 years for all purposes including release date.) Although the language of the North Carolina and South Carolina Statutes is not identical, the statutes are similar in crucial aspects, as a results Appellant life sentence has expired.

ARGUMENT

VII.

Does the Department's failure to inform Appellant on record what Department felt in Appellant file reason(s) to rescind "AYE" votes to "NAY" votes, arbitrarily for reason or no reason denied due process right.

The Appellant submits that the Department's [paroling authority] has inherent power to reconsider its grant of parole/votes awarded a prisoner, and rescind their decision for cause (emphasis added), upon the existence of new information sufficient to justify.

However, grant of parole/votes awarded if not void in its inception cannot be rescinded for any cause, because it has passed beyond the control of the Board member(s) granting it, and has become valid and operative act. (59 AM JUR 2d pardon and parole Sec 42)

The Department's Operations Manual explains that the purpose of the hearing is to determine the facts and to gather any other material that may bear on the parole decision one way or the other and based on all those facts, determine whether or not the grant of parole/AYE vote(s) should be rescinded, amended or stay the same, unless additional material is provided, otherwise there would be nothing to evaluate at subsequent hearing by specific member(s). Appellant submits that the Department may not rescind action later simply because a member(s) desires to change his/her conscious "AYE" vote . . .void subsequent misconduct by the prisoner, etc..

To the contrary the Department's Board Member(s) in May, 2007, majority members voted to reject parole, except for Mr. James Williams. On May 22, 2009, majority members voted to reject parole including [Mr. James Williams],

except Mr. Orton Bellamy. On July 19, 2011 all seven members voted to deny parole. "AYE" votes for granting parole was arbitrarily capriciously rescinded on reproduction of identical facts, and additional productive progress (Programs Certificates) reports. Appellant further submits that AYE votes for granting parole was switched to "NAY" votes by same member(s) at subsequent review, void cause/without justification, having been awarding three or more votes for parole suitability void explanation or account for arbitrary capricious decisions founded on whimsical discretion/preference, rather than on reasons and facts, denied due process. See, Exhibits 8.

ARGUMENT

VIII.

Does Department's arbitrarily denying Appellant's request for reconsideration/re-hearing of parole rejection, denied Liberty Interest rights and Due Process.

The Appellant submits that the Department's [full Board or one of its panels may consider re-hearing in a case if one or more of the following reasons apply:

a. Subsequent misconduct by the prisoner

b. New criminal charges against the prisoner

c. After-acquired information about prisoner

d. Failure of the prisoner to meet conditions of release

e. Requested by the inmate or the inmate's attorney

Pursuant to Section(e), of "South Carolina Board of Parole and Pardons Operations Manual, Part III, Rehearing of Parole Cases", reads as follows:

> "In these cases, the inmate or the inmate's attorney must submit in writing, within 30 days of the Notice of Rejection letter, a letter stating why he/she feels that the Parole Board should re-hear this case. The Parole Board will be sent to the inmate's attorney notifying them of the Board's decision."

As a results of denying Appellant an opportunity to appeal parole rejection, See, Exhibits 9-B, ____. The Department did arbitrarily capricious denied him protected liberty interest rights, and rights guaranteed

him by the Fourteenth Amendment of the United States Constitution.

ARGUMENT

IX.

Does Department's failure to advise Appellant of adverse information contain in file upon request; and failure to advise what portion of SC Code 1964 Sec 55-612/24-21-640, and criteria form 1212 that Appellant met, or fail to meet denied Due Process.

The Appellant submits denying parole candidate request to be advised of adverse information contained in parole file denied due process. The Department denied request for access to parole file prior to his hearing or review that he may correct, rebut, or explain any adverse information in said file. [See, Exhibit(s) 10-C, _____]. Because decision following a review is based solely on the information in the file without input, both the prisoner and society in general have a substantial interest in seeing that a parole release determination is made on the basis of accurate information and informed decision. Minimum due process requires that an inmate in South Carolina seeking parole be advised of information in his file. In order for an inmate to have meaningful consideration of parole application, it is essential that they be advised of such adverse information and given opportunity to rebut or explain the part he believes are incorrect. See, Williams v Missouri Board of Probation and Parole, 585 F 2d 922 (8th Cir); Greenholtz, 442 US at 13, denied due process rights.

ARGUMENT

X.

Does the Department's classifying Appellant's [1971] offense as violent constitutes Ex Post Facto Clause violation.

The Appellant submits that when his offense occurred [murder; armed robbery; assault and battery with intent to kill; rape; and kidnapping], was

define under statutory proviso as "Felony", See, South Carolina Code Section 16-11; State v King, 150 SC 251, 155 SE 2d 409.

However, violent classifications imply connotation different from felon/felony offender. Violent classifications characterization incompus, but not limit to:

* harsher punishment/sanctions
* restriction enhanced/priviledge limited
* greater quantum of parole votes & larger quorum of Board members
* heighten risk assessment score/security score
* bi-annual parole review if sentence after 1986

The South Carolina Department of Corrections currently classify Appellant's [1971] offense as non-violent equivalent to felony definition, but the term felony were not any express part of sentence, See, Exhibit 11.

Moreover, Appellant submits that nothing in Proviso 16-1-60 implicates that said statute apply retroactive. For a new law to run retroactive it must be procedural or remedial in nature, and it would create new remedies for existing rights or enlarges rights of people. The Department's application of 16-1-60 harms the Appellant, and minimize chance for parole. Application of 16-1-60 in Appellant's case constitute ex post facto clause violation.

ARGUMENT

XI.

Does the Department's traditional procedural use of same five "Finding of Fact" elements as the primary rejection reasons fail to concur with legislative intent and offends process and Deny Due Process; and for said reasons seeks Injunctive Relief for issues 1-11.

The Appellant contends that the Department's traditional use of the same five "Finding of Fact" elements primarily to reject parole candidate is insufficient because it offends the process, and fail to concur with legislative intent, or legislative statutory mandate to establish specific statutory criteria for the granting of parole. Instead the Department merely base reasoning on immutable aspects not susceptible to change. See, United States ex rel Johnson v NY State Bd. of Parole, 419 US 1015 (held, that a denial of parole must contain what in the prisoner's record was felt by the

Board to warrant denial and why.)

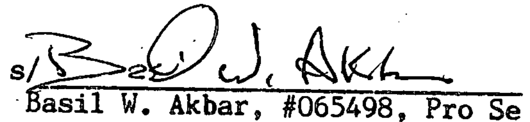
Relevant evidence may be excluded for needless presentation of cumulative facts . . . not disputed, or in controversy, or at issue . . . and probative value of admitting "Finding of Fact" evidence, substantially outweighs by the danger of unfair prejudicial to the parole candidate, See, Rules of Evidence 403, 404(b), and 609. The Appellant submits that the Department's conduct further violates Fifth, Eighth, and Fourteenth Amendments of the United Sates Constitution.

Finally, the Appellant seeks and Injunction Order to prevent further use in Appellant's case of the same five primary boiler plate reasoning, and conduct outlined in Arguments #3, #4, #7, #8, and #9. The circumstances of this matter, commanding an action which this Honorable Court may regard as essential to justice, restraining action contrary to equity and good conscience shown, that irreparable injury will further result unless the Order is granted.

CONCLUSION

The Appellant beseech this Honorable Court review his claims and exhibits with a practical eye, and grant limited discovery and reserve rights to amend thereupon. Further Order, that violation(s) warrant anew prompt parole review hearing and application of benefits amended in provision 24-21-10(F)(1) and amended criteria; Department's refrain from use of same stale boiler plate evidence; that due process includes private rights to notice/ministerial duties timely perform; that issue of annual parole review be revisit to include prisoners sentence prior to 1981 codified provision and disparate treatment and irregularities in procedures; that upon Request that inmates be advised of any adverse information in file; Order Injunctive Relief; and grant any other relief this Court deems fair and just.

Date: October 31, 2016



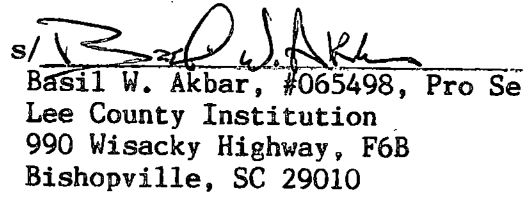
s/ Basil W. Akbar, #065498, Pro Se

CERTIFICATE OF SERVICE

I, Basil W. Akbar, hereby certify that copy of Appellant's Brief; and Exhibits; was served on Respondent at: Tommy Evans, Jr., Attorney, Dept. of

P.P.P.S., 2221 Devine Street, Suite 600, Columbia, SC, 29250.

Date: October 31, 2016



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INTER-DEPARTMENTAL MAIL SYSTEM

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