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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

On Appeal from; The final order of the
Administrative law court, and SCPPPSB.

Honorable, John D McLeod, ALJ

Docket # 2016-ALJ-15-0022-AP

Joseph Gibbs #185709 - - - - Appellate

V

South Carolina Department of Probation, Parole, And

Pardon Services - - - - Respondent

Appellate Case NO. 2016-002153

INITIAL BRIEF OF APPELLATE

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Table of Authority

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SC. Code §24-21-610 - - - - - p.1,2,3
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STATEMENT OF ISSUES ON APPEAL

I: WHETHER THE ADMINISTRATIVE LAW COURT (ALC) ERRED, IN SUMMARILY DISMISSING THE APPEAL, WITHOUT ADJUDICATING THE MERITS OF THE ISSUES RAISED; UNDER COOPER V SCPPPS 661 SE.2D 106, 112, AND COMPTON V SCPPPS 685 SE.2D 175: WHEN THE PLEADINGS AND EVIDENCE BEFORE THE COURT, DID NOT SUPPORT A ROUTINE DENIAL OF PAROLE, NOR THE FINDING OF FACT AND CONCLUSION OF LAW THAT THE DENIAL WAS BASED UPON; AND THE PETITION FOR RECONSIDERATION SHOULD HAVE BEEN SUBMITTED TO THE BOARD ITSELF; AND THE ELEMENTS OF LAW UNDER §§24-21-610 & 640 IS SUPPORTED BY THE RECORD OF MYSELF UNDER AN EVIDENCE BASED SYSTEM.?

STATEMENT OF THE CASE

I, appellant pro se, am an inmate in the SCDC at Bennettsville SC, upon conviction of a jury on March/10-11/1992, for offence of Murder & Burglary on 10/18/1991, id (Respondent Record on Appeal) [R.ROA @ pp 6-11]² in Jasper County.

I was initially eligible for parole in June/1999 based on the sentence of the trial judge, (Appellant Appendix 1) [A.App.1], however this was changed to Nov/3/2011 by the SCDC on 3/13/1997, id (A.App.2). My 1st hearing was on 1/4/2012, my 2nd was on 4/8/2014, and the last now in question was on May/18/2016.

I went to a video hearing on 5/18/16, @ 3.30 pm. I testified on my record, and was asked several questions, and my sponsor spoke on my living and job arrangements. We were asked to step out, and a few seconds later, informed that parole was denied. On 5/26/16, I received the written order dated 5/19/16. [R.Roa @ p4]. I then filed a petition for rehearing / reconsideration [R.Roa @ p.1] dated 5/31/16 to the director and board members. By order from respondent counsel dated 6/7/16 the

petition was denied, [R.Roa @ p.3] for process unavailable under absolute discretion. I filed a timely Notice of Appeal [NOA] to the [ALC] dated 6/15/16, assigned to Judge Mcleod on June/22/2016, docketed as 16PO022. The respondent filed there [R.Roa] dated Aug/12/2016. I filed my Brief on appeal dated Sept/5'th/2016. No brief or motions were filed by respondent.

The Order of the (ALC) dismissing the appeal dated 9/20/16 was received by me on Sept/26/2016. I filed a timely (NOA) to this court dated 10/16/2016, and served all parties on Oct/19'th/2016, along with a Motion for In Forma Paupris, and Motion to modify case law. Appellant case # 2016-002153.

The nature of my appeal is that the denial of parole was not routine, and the nature of respondent initial orders are form order and letter on unavailable process, and absolute discretion. No hearing was had in the ALC.

ARGUMENT

I: THAT THE ADMINISTRATIVE LAW COURT (ALC) ERRED, IN SUMMARILY DISMISSING THE APPEAL, WITHOUT ADJUDICATING THE MERITS OF THE ISSUES RAISED; UNDER COOPER V SCPPPS 661 SE.2D 106, 112, AND COMPTON V SCPPPS 685 SE.2D 175: WHEN THE PLEADINGS AND EVIDENCE BEFORE THE COURT, DID NOT SUPPORT A ROUTINE DENIAL OF PAROLE, NOR THE FINDING OF FACT AND CONCLUSION OF LAW THAT THE DENIAL WAS BASED UPON; AND THE PETITION FOR RECONSIDERATION SHOULD HAVE BEEN SUBMITTED TO THE BOARD ITSELF; AND THE ELEMENTS OF LAW UNDER §§24-21-61D & 640 IS SUPPORTED BY THE RECORD OF MYSELF UNDER AN EVIDENCE BASED SYSTEM.?

When the respondent filed the [R.Roa] it did not include any evidence relied on by the order of 5/19/16 denying parole as a "Must". SC.ALC Rules 58(B)(D)(F), 61 make it incumbent upon respondent as a state agency, to file evidence; and as an inmate I do not have access to transcribe any compact disk of the hearing, as we if received can only listen once then it must be mailed out or destroyed, by SADC.

The laws have changed and some how the respondent is

now a department of SCDC.? by amendments to Chapters 1,2,21 of Title 24 SC. Code. Actuarial Assessment and Risk needs factors are done and reported to the Board by the county agent under §24-21-280(c). And parole criteria has to be based upon the elements of law in §24-21-640. Here the "fixed immutable criteria" relied upon as a finding of fact, is not evidence based facts, but legislative facts. I argued these and more in my initial brief on appeal to ALC.

I believe that the case had merit, and that the Courts holding in Cooper supra that board only has to state its findings, and not actually provide a fair and reasonable hearing on the facts and evidence is arbitrary and capricious, and denies due process and equal protection to a fair hearing on parole when parole was provided for by the people in the 1895 const after reconstruction, and is still in law and art 4 §14.

I submit that the ALC erred in summarily dismissing the appeal under Cooper Supra and underscoring same under Compton, and if the last sentence to §1-23-600(D) is a barr then judicial review should be had on issues in question on orders of respondent. Also I have worked hard to maintain a good record, and §24-21-610 allows for parole for good behavior, yet it was not addressed at any level.

In my petition to the board itself I requested answers to several issues and questions on procedures and law on the facts the board considers under an evidence based system, but received no answer.

CONCLUSION

Wherefor having pleaded my appeal, I pray that this court will reverse the ALC order, or conduct a judicial review of issues raised in the Pleadings, or grant other relief as it deems proper.

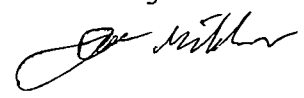
November/14'th/2016

Rule 11 SCRCF =>

Respectfully

Joseph H. Gibbs
Joseph Gibbs H.

² i have a challenge pending to the trial and conviction, and subject matter jurisdiction in Jasper County before Judge Mullen, in Gibbs V Eagleton, 2012-CP-27-0691, Habeas Corpus. These legal and constitutional issues have not been adjudicated on the merits by the judicial branch. the indictments filed by the respondent in ROA, have never been submitted to any court, in any record, and do not contain the clerks filing and clock stamp. they were returned after trial. All filing fees were paid. No hearing or order has been made.



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On Appeal from the; Administrative law court, and SCPPPSB.

Honorable: John D Mcleod, ALJ

Docket # 16-ALJ-15-0022-AP

Joseph Gibbs, #185709 - - - - Appellant

Vs

South Carolina Probation, Parole, Pardon Services. - - - -

Respondent .

Appellate Case # 2016-002153

Certificate of Appellate

I the undersigned appellate, certifies that this initial brief on appeal, meets the requirments of Rule 208 SCACR, to the best of my ability and resources, and has merit.

Respectfully

Rule 11 SCRPC =>

1st Joseph H. Gibbs

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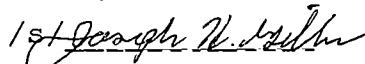
PROOF OF SERVICE

I the undersigned appellate, certifies that I have on this /15th/
/ day of /November/ 2016, served one true copy of my initial
brief on appeal, with designation of matter, and certificate of
appellate, w/filing letter and proof of service to counsel, Mr.
Tommy Evans, Jr, as addressed below, by depositing same in the
Evans Mail room, postage prepaid, and proper.

November/14'th/2016

Respectfully

Rule 11 SCRCP =>



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TO: Honorable; Jenny A. Kitchings
Clerk: SC. Court of Appeals
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November/14/2016

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On Appeal from the ALC, Judge John D. Mcleod.

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Court,

Please find enclosed for filing in the above case my;

1. Certificate of appellant.
2. Proof of Service.
3. Designation of Matter.
4. Initial Brief of Appellate.
5. Filing letter.

Please let me know if I need to do any thing, prior to order on in forma
pauperis motion ect. Thanks for your service.

CC:


Mr. Tommy Evans, Jr *ts/ev*
Counsel for Respondent

Sincerely
Joseph Gibbs
Appellate Pro Se

Joseph H. Gibbs

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