THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Richland County

CORDELL J. MADDOX, JR., CIRCUIT COURT JUDGE

ISIAH JAMES, JR., Petitioner,

V.

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES (SCDPPPS), Respondent.

APPENDIX

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State of South Carolina

Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor

SAMUEL B. GLOVER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

March 9, 2005

Mr. Isiah - James,jr. #00096883
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland, SC 29936

Re: NOTICE OF REJECTION

Dear Mr. James,jr.:

It is my responsibility to inform you of the action of the South Carolina Board of Parole and Pardons relative to your recent parole hearing. After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.

You will be notified 30 days prior to your next scheduled parole reconsideration date.

The reason(s) for rejection are:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

Gwendolyn A. Bright

Gwendolyn A. Bright
Director of Parole Board Support Services

State of South Carolina

Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor

SAMUEL B. GLOVER
Director

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www.state.sc.us/ppp

March 14, 2005

Isiah James, Jr., #96883
Ridgeland Correctional Institution
Post Office Box 2039
Ridgeland, SC 29936

Dear Mr. James:

Thank you for your recent letter concerning your request for a reconsideration of parole. The S.C. Board of Probation, Parole and Pardon will hear your request for a rehearing in the near future. You will receive written notification of the Board's decision as to whether or not they will grant you a rehearing.

Sincerely,

Gwendolyn A. Bright

Gwendolyn A. Bright
Director of Parole Board Support Services

GAB:mc

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Isiah James, Jr., #96883, Appellant, v. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	)	Docket No. 03-ALJ-15-00032-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("Court")[1] pursuant to the appeal of Isiah James, Jr. ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections at Ridgeland Correctional Institution in Ridgeland, South Carolina. On March 21, 2001, the South Carolina Department of Probation, Parole and Pardon Services ("Department") notified Appellant that the South Carolina Board of Parole and Pardons ("Board") had rejected him for parole. The reasons given for the rejection were: "Nature And Seriousness Of Current Offense," "Indication of Violence in This Or Previous Offense," and "Use of Deadly Weapon in This Or Previous Offense." Further, on March 5, 2003, the Board once again rejected Appellant for parole based upon his decision not to be considered for parole at that time. Appellant filed this appeal with the Court on August 26, 2003. He challenges the denial of parole by the Board and asserts that the Board's decision was arbitrary and capricious. In addition, Appellant asserts that the Department improperly determined that he is entitled to biannual rather than annual parole hearings, in violation of Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000).

BACKGROUND

Appellant was indicted at the March, 1979 term of the Sumter County grand jury for two counts of murder, for offenses committed on October 25, 1978. He pled guilty to Voluntary

1 Act (no) of 2004, effective April 26, 2004, changed the name of the Administrative Law Judge Division to the...

Manslaughter in both indictments, and was sentenced on June 18, 1979 to 30 years imprisonment on each charge, both running consecutive. Also at the March, 1979 term of the Sumter County grand jury, Appellant was indicted for Armed Robbery for an offense committed on October 25, 1978. He pled guilty to this charge, and was sentenced on June 18, 1979 to a term of 25 years imprisonment, running consecutive to the two 30 year terms on the voluntary manslaughter charges. Appellant now challenges the Board's decision not to grant him parole at his most recent hearing and also challenges the Department's determination that he is eligible for parole hearings on a biannual rather than an annual basis.

DISCUSSION

Claims Regarding Board's Decision Not to Grant Parole

It is fundamental that "every court has the power and duty to determine whether or not it has jurisdiction of a cause presented to it for determination." Bridges v. Wyandotte Worsted Co., 243 S.C. 1, 8, 132 S.E.2d 18, 21 (1962). Accordingly, the "lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court." Lake v. Reeder Const. Co., 330 S.C. 424, 428, 498 S.E.2d 650, 653 (Ct. App. 1998).

The Court's jurisdiction to hear appeals from decisions of the Department is derived from two recent decisions of the South Carolina Supreme Court, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), and Furtick v. S.C. Dep't of Probation, Parole, and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2003). In Al-Shabazz, the Supreme Court created a new avenue by which inmates could seek review of final decisions of the Department of Corrections in "non-collateral" matters, *i.e.*, matters in which an inmate does not challenge the validity of a conviction or sentence, by appealing those decisions to the Court and ultimately to the circuit court pursuant to the Administrative Procedures Act. 338 S.C. at 373, 376, 527 S.E.2d at 752, 754. In Furtick, the Supreme Court addressed an inmate's appeal from a determination by the Department of Probation, Parole and Pardon Services that he was statutorily ineligible for parole as a violent offender under S.C. Code Ann. § 24-1-640. The Court held that, in order to determine whether an inmate's claim against the Department is entitled to review by the Court under the procedures set forth in Al Shabazz, it is first necessary to determine whether the inmate has a "liberty interest in gaining access

to the parole board." 352 S.C. at 598, 576 S.E.2d at 149. The Court further determined that the "*permanent* denial of parole *eligibility*" by the Department "implicates a liberty interest sufficient to require at least minimal due process." Id. (emphasis in original). Therefore, the Court extended the right to appellate review by the Court under Al-Shabazz to encompass claims against the Department involving the permanent denial of parole eligibility. The Supreme Court noted, however, that although an inmate has a liberty interest in parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, the statute creates no such liberty interest in parole itself: "Although [section 24-21-620] creates a liberty interest in parole eligibility, it does not create a liberty interest in parole." Furtick, 352 S.C. at 598, 576 S.E.2d at 149 n.4 (emphasis added). Since no liberty interest is implicated when a potentially eligible inmate is denied parole by the Board, an inmate has no right to appeal the denial of parole to the Court under Furtick, but instead must await his or her next parole hearing. *See* id. ("Section 24-21-620 also provides the procedure to follow when the Board determines not to grant parole for a *potentially eligible* inmate: '[u]pon a negative determination, the prisoner's case shall be reviewed every twelve months thereafter for the purpose of such determination.'")(Emphasis in original). The Supreme Court further explained the nature of the Court's jurisdiction in Sullivan v. S.C. Dept. of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003):

> In simple terms, this [the holding in Furtick] means that an inmate has a right of review by the [Administrative Law Court] after a *final* decision that he is *ineligible* for parole, but that a parole-eligible inmate does not have the same right of review after a decision denying parole; the parole board is, however, required to review an inmate's case every twelve months after a negative parole determination. S.C. Code Ann. § 24-21-620 (Supp. 2002). This distinction stems from the fact that parole is a privilege, not a right.

Sullivan at n. 4 (emphasis in original).

In this case, insofar as Appellant is arguing that the Parole Board's decision to reject him for parole at his regularly scheduled hearing was arbitrary and capricious, such a claim does not involve a determination by the Department that he is permanently ineligible for parole and is therefore not appealable to the Court under Furtick and Sullivan.

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Frequency of Parole Hearings

Appellant further contends that the Department improperly determined that he was eligible for parole hearings on a biannual rather than an annual basis, in violation of Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). The gist of Appellant's claim is that the Department's action constitutes an *ex post facto* violation.

An *ex post facto* violation occurs when a change in the law *retroactively alters the definition* of a crime or *increases the punishment* for a crime. Lynce v. Mathis, 519 U.S. 433, 117 S.Ct. 891, 137 L.Ed.2d 63 (1997); California Dep't of Corrections v. Morales, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1955); Farris v. State, 334 S.C. 21, 511 S.E.2d 688 (1999). The law existing *at the time of the offense* determines whether an increase of punishment constitutes an *ex post facto* violation. Elmore v. State, 305 S.C. 456, 409 S.E.2d 397 (1991). In Jernigan v. State, the South Carolina Supreme Court held that the retroactive application of S.C. Code Ann. § 24-21-645, which was enacted in 1986 and which changed parole review for violent offenders from annual to biannual, violates the *ex post facto* clause.

The Appellant argues that the Department is retroactively applying Section 24-21-645 to him, because at the time he committed the offenses for which he is incarcerated, that section had not been enacted. At the time of Appellant's crimes in 1978, there was no statute which governed the frequency of parole hearings. Instead, the frequency of parole hearings was a matter committed to the discretion of the Board. According to the Board's procedure manual in effect at the time of Appellant's offense, the relevant portion of which is attached to the Department's brief as Exhibit 1, the Board's policy concerning parole review after an initial denial of parole was to conduct another review every twenty-four months in the case of prisoners who were serving sentences of 30 years or more. Therefore, there is no *ex post facto* violation because the Department is properly applying the law in effect at the time of Appellant's crimes, rather than retroactively applying Section 24-21-645, in determining that Appellant is eligible for parole every two years. Moreover, the amendments to S.C. Code Ann. § 24-21-620, which first provided annual parole review for parole eligible inmates, were not enacted until 1981, several years after Appellant's crimes were committed. See 1981 Act No. 100, § 10. Thus, this case may be distinguished from Jernigan, in which the inmate committed armed robbery after the enactment of Act 100 of 1981 and was entitled to annual parole review at the

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time of his offense. I therefore find that the Department's decision that Appellant is entitled to biannual rather than annual parole hearings must be affirmed.

ORDER

IT IS THEREFORE ORDERED that Appellant's claims regarding the Board's decision not to grant him parole at his parole hearings are dismissed.

IT IS FURTHER ORDERED that the Department's decision to grant Appellant parole hearings every two years is affirmed.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Administrative Law Judge

Columbia, South Carolina
May 19, 2005

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 19th day of May, 2005

By: Elizabeth L. Barnes
Judicial Law Clerk

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FORM 4

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2005-CP-40-1931

Isaiah James, Jr

PLAINTIFF(S)

Administrative Law Judge Anderson, et al.

DEFENDANT(S)

RICHLAND COUNTY FILED
2005 AUG 30 PM 2:38
BARBARA A. SCOTT
C.C.C. & G.S.

CHECK ONE:

[ ] **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

[ ] **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[ ] **ACTION DISMISSED** (*CHECK REASON*): [ ] Rule 12(b), SCRCP; [ ] Rule 41(a), SCRCP (Vol. Nonsuit); [ ] Rule 43(k), SCRCP (Settled); [ ] Other _____.

[ ] **ACTION STRICKEN** (*CHECK REASON*): [ ] Rule 40(j) SCRCP; [ ] Bankruptcy; [ ] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [ ] Other _____.

IT IS ORDERED AND ADJUDGED: [ ] See attached order; [X] Statement of Judgment by the Court:

- Motion to Dismiss Granted as to Administrative Law Judge Anderson and Clerk Administrative Law Judge Division based on Absolute Immunity.
- Motion to Dismiss Granted as to Samuel Glover based on substitution of SC Dept. of Prob, Parole, & Pardon Services as party.

Dated at Columbia, South Carolina, this 30th day of August, 2005.

Alison Renee Lee
PRESIDING JUDGE

This judgment was entered on the ____ day of _____, 20____, and a copy mailed first class this 30 day of Aug, 2005 to attorneys of record or to parties (when appearing pro se) as follows:

Isaiah James #96283

ATTORNEY(S) FOR THE PLAINTIFF(S)

Daniel Ray Settana

ATTORNEY(S) FOR THE DEFENDANT(S)

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s/BARBARA A. SCOTT
CLERK OF COURT

SCRCP APP-24

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ORIGINAL

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	05-CP-40-1931
ISIAH JAMES, JR.,	)	
	)	
PLAINTIFF,	)	
VS.	)	TRANSCRIPT OF RECORD
	)	
SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,	)	
	)	
DEFENDANT,	)	

FEBRUARY 2, 2006
COLUMBIA, SOUTH CAROLINA

BEFORE:

THE HONORABLE ALISON RENEE LEE, JUDGE.

APPEARANCES:

ISIAH JAMES, JR.
APPEARING PRO SE

STEPHEN LAYTON HALL, ESQ.
ATTORNEY FOR THE STATE

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KAREN TRACY
OFFICIAL COURT REPORTER

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INDEX OF EXHIBITS:

(THERE WERE NO EXHIBITS INTRODUCED.)

INDEX OF WITNESSES:

(THERE WERE NO WITNESSES CALLED.)

THE BOARD NOT ONLY HAD THE NUMBER, AND THE APPROPRIATE NUMBER, TO DO BUSINESS AND TO MAKE DECISIONS, BUT THEY ALSO HAVE THE APPROPRIATE INFORMATION BEFORE THEM TO MAKE THAT DETERMINATION. AS IS EVIDENCED IN THE AFFIDAVIT OF TAMMY MOORE, IT IS ALSO SUPPLIED WITH OUR -- I'M SORRY, WITH OUR MOTION FOR SUMMARY JUDGMENT.

YOUR HONOR, FURTHER, AND I GUESS REALLY, ACTUALLY PERHAPS THE MOST SIGNIFICANT ARGUMENT I HAVE TO MAKE TODAY, IS HE, THE PLAINTIFF, ACTUALLY MADE THIS ARGUMENT OR MADE HIS CLAIM IN THE ADMINISTRATIVE LAW JUDGE DIVISION BACK IN AUGUST OF 2003.

JUDGE ANDERSON ISSUED AN ORDER ON MAY 19TH OF LAST YEAR DISMISSING THE PLAINTIFF'S CLAIM WITH REGARD TO NOT ONLY THE DECISION OF THE BOARD FOR A PREVIOUS RENDERING OF THE -- IN EXPLAINING HOW THAT WORKS, BUT A PREVIOUS DETERMINATION OF PAROLE BUT ALSO WITH REGARD TO EX POST FACTO APPLICATION OF THE LAW, DENYING HIM HIS PAROLE HEARING EVERY YEAR AS OPPOSED TO EVERY TWO YEARS. THAT'S VERY CLEARLY EXPLAINED IN THAT ORDER.

I THINK JUDGE ANDERSON DOES A MUCH BETTER JOB THAN I COULD EVER ATTEMPT TO DO FOR THE COURT. I WOULD URGE THE COURT TO VIEW THAT, AS I BELIEVE IT'S EXHIBIT FOUR OF BEN APLIN'S DEPOSITION, EXHIBIT FOUR OF BEN APLIN'S AFFIDAVIT, ESSENTIALLY STATING, HOWEVER, THAT HE -- THERE IS NO EX POST FACTO APPLICATION OF THE LAW THAT THE PLAINTIFF CITES

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, KAREN TRACY, OFFICIAL COURT REPORTER FOR THE 5TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 2 DAY OF FEBRUARY, 2006.

JULY 30TH, 2006

Karen Tracy

KAREN TRACY, COURT REPORTER

MY COMMISSION EXPIRES: 04/01/14

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS CASE NO: 2005-CP-40-1931
Isiah James, Jr., #96883 Plaintiff, v. South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS), Defendant.	**ORDER**

A hearing on Defendant's Motion for Summary Judgment was held before this Court on February 2, 2006 in the Richland County Court of Common Pleas. Stephen L. Hall, Esquire represented the Defendant. Plaintiff appeared *pro se*.

Plaintiff asserts in his Complaint that the Defendant South Carolina Department of Probation, Parole and Pardon Services Parole Board ("Board") improperly denied him parole after a March 9, 2005 parole hearing. Plaintiff alleges that the Parole Board improperly commenced his parole hearing without forming a quorum, and negligently conducted its investigation prior to denying him parole. Plaintiff further contends that the Defendant applied certain laws *ex post facto* which denied him the right to annual parole hearings (as opposed to one hearing every two years). Defendant moved for summary judgment on the following grounds: (1) Plaintiff fails to state facts sufficient to constitute a cause of action; (2) Defendant has not violated any of Plaintiff's constitutionally protected rights; (3) the South Carolina Department of Probation, Parole and Pardon Services is immune from suit under the South Carolina Tort Claims Act, and (4) Plaintiff's claims are barred by res judicata or collateral estoppel.

After hearing oral argument from both parties, reviewing Defendant's motion for summary judgment, and considering the relevant case law, the motion is granted.

First, Plaintiff has failed to state facts sufficient to constitute a cause of action. He is alleging a claim for wrongful denial of parole. However, the Plaintiff has no protected right to the granting of parole, only a right to a hearing on parole in the first instance. Plaintiff has no right to bring an action alleging the wrongful decision of the Parole Board in denying him parole. It is fundamental that "every court has the power and duty to determine whether or not it has jurisdiction of a cause presented to it for determination." Bridges v. Wvandotte Worsted Co., 243 S.C. 1, 132 S.E.2d 18, 21 (1962).

The Court's jurisdiction to hear claims involving decisions of the Department is derived from two recent decisions of the South Carolina Supreme Court, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), and Furtick v. S.C. Dep't of Probation, Parole, and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2003). In Al-Shabazz, the Supreme Court created a new avenue by which inmates could seek review of final decisions of the Department of Corrections in "non-collateral" matters, i.e., matters in which an inmate does not challenge the validity of a conviction or sentence, by appealing those decisions to the Administrative Law Court ("ALC") and ultimately to the circuit court pursuant to the Administrative Procedures Act. 338 S.C. at 376, 527 S.E.2d at 754.

In Furtick, the Supreme Court addressed an inmate's appeal to the ALC from a determination by the Department of Probation, Parole and Pardon Services that he was statutorily ineligible for parole as a violent offender under S.C. Code Ann. § 24-1-640. The Court held that, in order to determine whether an inmate's claim against the Department is entitled to review by the ALC under the procedures set forth in Al-Shabazz, it is first necessary to determine whether the inmate has a "liberty interest in gaining access to the parole board." 352 S.C. at 598, 576 S.E.2d at 149. The Court decided that the "*permanent* denial of parole *eligibility*" by the Department "implicates a liberty interest sufficient to require at least minimal due process." Id. (emphasis in original). Therefore, the Court extended the right to appellate review by the ALC under Al-Shabazz to encompass claims against the Department involving the permanent denial of parole eligibility. The Supreme Court noted, however, that although an inmate has a liberty interest in parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, the statute creates no such liberty interest in parole. Furtick, 352 S.C. at 595, 576 S.E.2d at 149 n. 4 (emphasis added).

Since no liberty interest is implicated when a potentially eligible inmate is denied parole by the Board, an inmate has no right to appeal or otherwise complain of the denial of parole to the ALC or ultimately to the circuit court under Furtick, but instead must await his or her next parole hearing. See id. ("Section 24-21-620 also provides the procedure to follow when the Board determines not to grant parole for *a potentially eligible* inmate: [u]pon a negative determination, the prisoner's case shall be reviewed every twelve months thereafter for the purpose of such determination.") (Emphasis in original).

In this case, insofar as Plaintiff is arguing that the Parole Board's decision to reject him for parole at his regularly scheduled hearing was arbitrary and capricious, such a claim does not involve a determination by the Department that he is permanently ineligible for parole and is therefore not a cognizable cause of action under Furtick. Additionally, even if this were a situation involving a

determination that Plaintiff was permanently ineligible, the proper procedure under Al-Shabazz is to initially bring an action to the ALC, and not the circuit court.

Plaintiff also argues that the Defendant applied certain laws *ex post facto* which denied him the right to annual parole hearings (as opposed to one hearing every two years). S.C. Code Ann. § 24-21-645, enacted in 1986, changed parole review for violent offenders from annual to biannual. The Plaintiff argues that the Board is retroactively applying this section to him, because at the time he committed the offenses for which he is incarcerated, that section had not been enacted. The Plaintiff is currently incarcerated for crimes committed in 1978, when there was no statute which governed the frequency of parole hearings. Instead, the frequency of parole hearings was a matter committed to the discretion of the Board. The Board's policy manual in effect at the time of the Plaintiff's offense, the relevant portion of which is attached to the Defendant's motion as Exhibit 6, states that review would be conducted every twenty-four months in the case of prisoners serving sentences of 30 years or more. Therefore, there is no *ex post facto* violation because the Board is properly applying the law in effect at the time of Appellant's crimes, rather than retroactively applying Section 24-21-645. Furthermore, the amendments to S.C. Code Ann. § 24-21-620, which first provided annual parole review for parole eligible inmates, were not enacted until 1981, several years after Plaintiff's crimes were committed.

Second, notwithstanding the holding above regarding Plaintiff's claim concerning the Parole Board's decision, this Court further holds that the Plaintiff's claim is barred by the doctrine of *res judicata*. *Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Plum Creek Development Co., Inc. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106, 109 (1999). Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Id. (internal citation omitted). *Res judicata* requires three elements: (1) the judgment must be final, valid, and on the merits; (2) the parties in the subsequent action must be identical in the first; (3) the second action must involve matters properly included in the first action. As shown in Exhibit 4 to the Affidavit of J. Benjamin Aplin, filed in support of Defendant's motion for summary judgment, a valid judgment decided on the merits, was issued by the Honorable Ralph King Anderson, III in the South Carolina Administrative Law Court, dated May 19, 2005.[1] Such judgment dismissed the identical claim which

[1] Plaintiff filed a claim with the Administrative Law Court on August 23, 2003 asserting that the South Carolina Board of Parole and Pardons had improperly rejected him for parole, and in any event had improperly denied him his right to annual parole hearings, instead providing him with such hearing once every two years.

Plaintiff attempts herein to reassert against the South Carolina Department of Probation, Parole and Pardon Services. Plaintiff did not appeal that decision and it has become final. This suit involves the same parole hearing as evidence by the ALC and the Honorable Ralph King Anderson being named as parties to this suit. However, they were dismissed as parties based on absolute immunity. Thus, this Court dismisses Plaintiff's claim pursuant to the doctrine of *res judicata.*

Third, this Court holds that the Defendant is immune from suit in this case under S.C. Code Ann. § 15-78-60(1). Under this subsection of the South Carolina Tort Claims Act, a governmental entity is not liable for a loss resulting from judicial or quasi-judicial action. In the case at bar, the Parole Board clearly was performing at least a quasi-judicial act when it convened to consider Plaintiff's parole, making it immune from liability under Section 15-78-60(1). According to the Affidavit of Tammy Moorer, submitted with Defendant's Motion for Summary Judgment, a parole case summary was prepared pursuant to Departmental procedures and practices and duly considered by the Parole Board. Accordingly, this Court finds that the Defendant is immune from suit under the aforementioned provisions of the South Carolina Tort Claims Act.

Finally, and in the alternative to the grounds stated above, this Court holds that Defendant is entitled to immunity pursuant to S.C. Code Ann. § 15-78-60(5). Under Section 15-78-60(5), the Defendant is immune from suit for the exercise of discretion within the course and scope of the employment of its employees. Discretionary immunity is applicable when the government entity, when faced with alternatives, made a conscious choice utilizing professionally accepted standards appropriate to resolve the issue before it. Strange v. South Carolina Department of Highways and Public Transportation, 314 S.C. 427, 445 S.E.2d 439 (1994). Court holdings have read discretionary immunity in conjunction with this section and its gross negligence standard. Gross negligence has been interpreted by the South Carolina Supreme Court as the "failure to give slight care." Jackson v. South Carolina Department of Corrections, 301 S.C. 125, 390 S.E.2d 467 (Ct. App. 1989), certiorari granted, affirmed 302 S.C. 519, 397 S.E.2d 377 (1990); Etheredge v. Richland School District 1, 341 S.C. 307, 534 S.E.2d 275 (2000).

In this case, the Board properly considered the relevant information concerning Plaintiff's parole, and made an informed discretionary decision to deny Plaintiff's parole. See Affidavit of J. Benjamin Aplin, including Exhibit 5. The Board applied the applicable state statutes, and Departmental policy and procedure in making its decision, and clearly explained to Plaintiff in writing the grounds for its decision. Id. Further, while the review or consideration for parole is a right granted by statute, parole is only a privilege. Steele v. Benjamin, 363 S.C. 66, 606 S.E.2d 499 (Ct. App. 2004).

The Plaintiff has presented no evidence that the Defendant in this case failed to meet the "slight care" standard established in Jackson. The Defendant on the other hand has provided affidavits stating that Departmental policy and procedure were followed at all times, and the proper discretion was utilized while considering Plaintiff's parole. Defendant has clearly met the "slight care" standard and is entitled to discretionary immunity.

While discretionary immunity and gross negligence are normally questions of fact for a jury, the Court may grant summary judgment when there is no genuine issue of any material fact. The non-moving party may not rest upon mere allegations or denial of the adverse party's pleadings. See Rule 56(c) and (e), SCRCP; see also SSI Medical Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990). This Court finds that the Department of Probation, Parole and Pardon Services gave at least slight care to the Plaintiff in considering his parole, and exercised its discretion in an appropriate manner to make a conscious choice utilizing professionally accepted standards. Therefore, summary judgment in favor of the Defendant is appropriate.

IT IS THEREFORE ORDERED for all the reasons stated above that the Defendant's Motion for Summary Judgment is granted.

AND IT IS SO ORDERED.

ALISON RENEE LEE
Circuit Court Judge

Columbia, South Carolina
March 29, 2006

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS 2005-CP-40-1931
ISIAH JAMES, JR., Plaintiff, -versus- SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES (SCDPPPS), Defendant(s).	MOTION UNDER RULE 60(b)(5) OF SOUTH CAROLINA RULES OF CIVIL PROCEDURE (SCRCP)

TO: J. Eric Kaufmann
Daniel R. Settana, Jr.
McKay, Cauthen, Settana & Stubley, P.A.
1301 Gervais Street, Suite 901
P. O. Drawer 7217
Columbia, S. C. 29202

Levee McKinney Watts
P. O. Box 50566
Columbia, S. C. 29250

YOU WILL PLEASE TAKE NOTICE the undersigned will move before the Circuit Court and/or Administrative Judge of the Court of Common Pleas for Richland County of the Fifth Judicial Circuit on the Fourth (4th) day thereafter this motion under rule 60(b)(5) of SCRCP is filed or as soon as he may be heard for a hearing or Order which will be entertaining or granting him relief from the (entered 10-20-06) and 9-28-06 Order of this Court (annexed hereto). The grounds are set forth below herein for said motion:

1. Rule 60(b)(5) of SCRCP provides "a prior judgment upon which it is based has been reversed or otherwise vacated"

2. The undersigned has annexed hereto his 'Memorandum', attachment(s) and etc. which supports his motion herein.

WHEREFORE, James respectfully requests that this Court grants him appropriate relief herein.

Respectfully submitted this 10 day of July 2008.

/s/ Isiah James, II
In Propria Personam
Isiah James, Jr.

CERTIFICATE OF SERVIGE

The undersigned hereby certifies that he has caused true and correct copies of the 'MOTION UNDER RULE 60(b)(5) OF SCRCP', 'Memorandum' and attachment(s) to be mailed, postage prepaid, to SGDPPPS's attorney(s) whose name(s) and address(es) are set forth above herein this ____ day of July 2008.

S/ Isiah James, II

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
Isiah James, Jr. SCDC# 96883,)	**C/A No.: 2005-CP-40-02795**
)	
Plaintiff,)	
)	
v.)	**ORDER**
)	
South Carolina Department of Probation, Parole, and Pardon Services,)	
)	
Defendant.)	

This matter comes before this Court on an order of remand from the South Carolina Supreme Court. The case was remanded for a decision by this Court on Appellant's appeal of a denial by the Parole Board and subsequent dismissal by the Administrative Law Court (ALC). Appellant contends that the South Carolina Department of Probation, Parole, and Pardon Services (SCDPPPS) arbitrarily and capriciously denied his parole, in violation of the due process clause, and that the ALC erred in dismissing his appeal.

Statement of Facts/History

In 1979, Isiah James was indicted by the Sumter County Grand Jury for two counts of murder and one count of armed robbery committed on October 25, 1978. On June 18, 1979, James pled guilty to two counts of voluntary manslaughter and one count of armed robbery. He was sentenced to a total of 85 years—30 years for the first manslaughter, 30 years for the second manslaughter, and 25 years for armed robbery, all running consecutively.

Appellant first became eligible for parole in 1988, when he was denied parole for the first time. Since that denial, Appellant has had several subsequent parole hearings, and his parole has been denied each time. The Parole Board gives three reasons for his denying parole: (1) the

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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.

In the instant case, Appellant argues that the Parole Board's denial of his parole was arbitrary and capricious. This appeal was first filed with the ALC on June 26, 2003. On May 19, 2005, the ALC found that Appellant has no right to an appeal from a Parole Board's decision to deny parole at a regular parole hearing. Appellant then filed an appeal with the circuit court on June 13, 2005. In 2011, the Department of Probation, Parole, and Pardon Services (SCDPPPS) filed a motion to dismiss, arguing the circuit court does not have subject matter jurisdiction over a decision of the ALC, and a hearing was held before the Honorable DeAndrea Gist Benjamin. On April 11, 2011, Judge Benjamin granted the motion to dismiss, finding that the Court of Appeals had jurisdiction over appeals from the ALC, and the Court of Appeals affirmed.

By Memorandum Opinion No. 2014-MO-012, the Supreme Court reversed the Court of Appeals' dismissal and remanded the case to the Circuit Court. The Supreme Court found that Appellant's appeal was filed in 2005, prior to the enactment of a statutory amendment which gives the Court of Appeals jurisdiction over appeals from the ALC. Because the appeal predates the statutory change, the Supreme Court held that the circuit court has jurisdiction over Appellant's case and remanded the case to this Court for a decision on Appellant's appeal.

Discussion

Appellant argues the Parole Board denied his parole arbitrarily and capriciously, violating his rights under the due process clause. Specifically, he argues the Parole Board failed to properly consider the list of criteria provided by the Department and the statutory requirements of S.C. Code § 24-21-640. In response, the SCDPPPS argues that Appellant's due process rights

have not been violated and that Appellant has no right to appeal the outcome of a routine hearing before the Parole Board.

The facts at issue in Appellant's case closely mirror the facts of *Cooper v. South Carolina Department of Probation, Parole, and Pardon Services*. 377 S.C. 489, 661 S.E.2d 106 (2008). In the instant case and in *Cooper*, parole was denied for the same three reasons: (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. *Id.* at 499, 661 S.E.2d at 111. As Appellant does here, Cooper argued the Parole Board's decision was arbitrary and capricious and in violation of the due process clause. *Id.* at 494-95, 661 S.E.2d at 109. Cooper's appeal was also summarily dismissed by the ALC on the ground that "the ALC did not have jurisdiction to review an appeal from the denial of parole." *Id.* at 493, 661 S.E.2d at 108.

In *Cooper*, the Supreme Court concluded that "the Parole Board's decision was arbitrary and capricious" and the Parole Board's order denying Cooper's parole was defective. *Id.* at 500, 661 S.E.2d at 112. The Court found the Parole Board only considered three limited reasons in denying Cooper's parole, and those reasons were permanently established by the nature of the underlying offense. *Id.* The Parole Board's failure to consider the statutorily required criteria essentially nullified Cooper's parole eligibility, infringing on a state-created liberty interest and triggering due process. *Id.* at 499, 661 S.E.2d at 112.

Based on *Cooper*, this Court finds that Appellant's state-created liberty interest in parole eligibility was infringed upon by the Parole Board's failure to consider the appropriate criteria. Further, this Court finds that the Parole Board's decision was arbitrary and capricious, and the limited reasons given for denying Appellant's parole were defective.

At the hearing, the SCDPPPS also argued that Appellant has been up for parole again, after this appeal was filed and after the Supreme Court's ruling in *Cooper*, and Appellant was once again denied parole. The SCDPPPS argues this subsequent denial of parole should be effective. This Court disagrees.

In *Cooper*, the Supreme Court provides instructions for the Parole Board to avoid future defective denials of parole. *Id.* at 500, 661 S.E.2d at 112. The Court states that Parole Board decisions should be "sufficiently detailed for the [courts] to conduct appellate review, limited to the Board's adherence to section 24-21-640, of decisions denying parole." *Id.* The further states the Parole Board "shall include findings of fact and conclusions of law," and the findings "shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." *Id.* (quoting S.C. Code Ann. § 1-23-350 (2005)).

As to Appellant's most recent denial of parole, this Court finds the Parole Board failed to issue a sufficiently detailed order. The Parole Board's most recent denial does include a brief additional paragraph referencing the requirements of § 24-21-640, but it is not "sufficiently detailed." Despite the language of the additional paragraph, the Parole Board continues to give the same three, limited reasons for denying Appellant's parole. Further, the decision does not include any "explicit statement of underlying facts supporting the finding," as is required § 1-23-350. Based on these deficiencies, this Court finds that Appellant's subsequent denial of parole is also arbitrary and capricious.

Conclusion

For the reasons stated above, this Court finds that Appellant's state-created liberty interest in parole eligibility has been infringed upon by the Parole Board's failure to adequately consider the appropriate criteria for parole determinations. Further, the reasons given for

denying Appellant's parole were arbitrary and capricious. The Parole Board's stated reasons are based on fixed factors that can never be remedied by Appellant, and the same reasons were previously rejected in *Cooper*. This case shall be remanded to the Parole Board for a new determination regarding Appellant's parole. The Parole Board shall consider all the required criteria and issue a sufficiently detailed order that shall include the Parole Board's findings and explicit statements of underlying facts supporting those findings.

REVERSED AND REMANDED.

James R. Barber, III
Circuit Court Judge

Columbia, South Carolina
November 5, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	**Indictment No.: 05-CP-40-1931**
Isiah James, Jr.,	)	
	)	
Plaintiff,	)	
	)	**ORDER**
v.	)	
	)	
South Carolina Department of Probation, Parole and Pardon Services,	)	
	)	
Defendant.	)	
	)	

This matter comes before me upon motion of Summary Judgment filed by the Defendant dated October 30, 2015. The Defendant requested this Court dismiss the Plaintiff's motion pursuant to Rule 60(b) of the South Carolina Ruled of Civil Procedure, and a previously filed petition for writ of habeas corpus. This Court grants the Defendant's motion to dismiss, regarding both matters.

PROCEDURL HISTORY

On June 18, 1979, the Plaintiff appeared before the Honorable Dan F. Laney for two counts of voluntary manslaughter and one count of armed robbery. The Plaintiff was sentenced to a thirty (30) year period of incarceration for each count of voluntary manslaughter; and twenty-five (25) years imprisonment for armed robbery. The sentencing Court ordered that each of these offenses were to be served consecutively. The Plaintiff initially became eligible for parole on February 17, 1988, upon conclusion of his initial appearance he was denied parole. Since this initial appearance the Appellant has appeared before the Board numerous times each resulting in a denial of parole.

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The Plaintiff later filed a summons and complaint against the Defendant. Within this complaint the Plaintiff alleged that only allowing him biannual appearances before the Board denied his Constitutional rights, and, violated ex post facto. The Defendant later filed a motion for summary judgment. On March 29, 2006, the Honorable Alison Renee Lee issued an order granting the Defendant's motion for summary judgment. The Plaintiff later filed a notice of appeal before the South Carolina Court of Appeals. In the case of *James v. S.C. Dept. of Probation, Parole and Pardon Services,* 376 S.C. 392, 656 S.E.2d 399 (2008) the Court of Appeals decided that subjecting the Plaintiff to biannual hearings was the law at the time the Plaintiff committed the offense, so there exist no violation of ex post facto.

Upon being denied this avenue of relief, the Plaintiff later filed a petition for writ of habeas corpus in United States District Court. Another motion for summary judgment was filed and granted by the Honorable Terry L. Wooten, United States District Court Judge.

The Plaintiff have since filed a motion for relief under rule 60(b)(5) of the South Carolina rules of Civil Procedure, and another petition for habeas corpus. The Plaintiff argues that he is entitled relief pursuant to rule 60; he further argues that the Sumter Court of General Sessions did not have jurisdiction over his case at the time of his conviction. This Court disagrees.

ARGUMENTS

The Defendant has shown that there exist no facts presented by the Plaintiff that will constitute a cause of action. The Plaintiff argues that he is entitled relief pursuant to Rule 60(b)(5) of the South Carolina Rules of Civil Procedure, which states:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, proceeding for the following reasons...(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b)(5)SCRCP

The Plaintiff argues that he should be relieved from judgment due to a prior decision of the Supreme Court. The decision that the Plaintiff is referring does not pertain to the instant case. The South Carolina Supreme Court never granted certiorari, and the Court of Appeals affirmed the decision of Judge Lee. This rule does not apply due to the decision of Judge Lee never being reversed or discharged. So this Court respectfully grants the Defendant's motion.

The Plaintiff is also not entitled relief pursuant to Rule 60 due to the length of time expired from the Court's decision to the filing of the motion. Pursuant to rule 60, the "motion shall be made within a reasonable time." Rule 60 SCRCP. Nine years have elapsed, this cannot be considered reasonable when seeking relief.

The Plaintiff also seeks habeas corpus relief. He alleges that the Sumter County Court of General Sessions did not have jurisdiction of his criminal offense at the time of his conviction. The Plaintiff was indicted by the Sumter County Grand Jury for the offenses of armed robbery, and murder, this gives the Circuit Court jurisdiction over the prosecution of this case. All cases in which bills of indictment are so found shall stand for trial by the county court as though found by the grand jury while in attendance upon the county court. S.C. Code Ann. §14-9-210 (Supp. 1962)

The Plaintiff has not revealed any injustice committed upon his final verdict or sentence. The Court sitting in its original jurisdiction will grant habeas corpus to correct only infractions which in the setting constitute a denial of fundamental fairness shocking to the universal sense of justice. *Wilson v. Moore*, 178 F.3d 266 (1999). There exist no unfairness or violation of law in the prosecution, conviction or sentence of the Plaintiff in Sumter County.

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As previously stated, the Plaintiff made the identical motion in United States District Court, which has been resolved by the Honorable Terry Wooten, United States District Court Judge. Due to this matter being resolved previously the Plaintiff's petition is also subject to res judicata.

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. *Plum Creek Dev. Co. v. City of Conway,* 334 S.C. 30, 512 S.E.2d 106 (1999); *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 417 S.E.2d 569 (1992). Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Plum Creek supra* (quoting, *Hilton Head Center of South Carolina, Inc. v. Public Service Comm'n of South Carolina,* 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). To establish res judicata, the Defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Plum Creek, supra Riedman Corp. v. Greenville Steel Structures, Inc.,* 308 S.C. 467, 419 S.E.2d 217 (1992); *Sealy v. Dodge,* 289 S.C. 543, 347 S.E.2d 504 (1986). This issue was heard in United States District Court between these identical parties and ultimately resolved.

This Court finds that the petitioner has failed to reveal that he is entitled a judgment as a matter of law. A summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions to file, together with affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56 SCRCP.

This Court finds that the Defendant's motion for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure is hereby **granted.**

AND IT IS SO ORDERED this 29 day of March, 2016

The Honorable Cordell J. Maddox, Jr.
Circuit Court Judge

The South Carolina Court of Appeals

Isiah James, Jr., Appellant,

v.

South Carolina Department of Probation, Parole and Pardon Services, Respondent.

Appellate Case No. 2016-000945

ORDER

The motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). The filing fee must be paid within fifteen days of the date of this order.

Appellant has also filed a request for "prisoner pro se status." This Court construes the motion as a motion to relax the appellate court filing requirements and grants the motion. Appellant is permitted to file only one copy of the initial brief, record on appeal, and final brief with this court. Appellant, however, is still required to serve Respondent with the copies of all filings, including the record on appeal and briefs, as well as all mailings to this court. The covers may be of any material and in any color, and must contain only the caption. *See* Rules 208, 210, 211, 240, SCACR.

James E. Lockemy

FOR THE COURT

Columbia, South Carolina

FILED

June 24, 2016

cc:
Isiah James, Jr., 096883
Tommy Evans, Jr., Esquire

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The South Carolina Court of Appeals

Isiah James, Jr., Appellant,

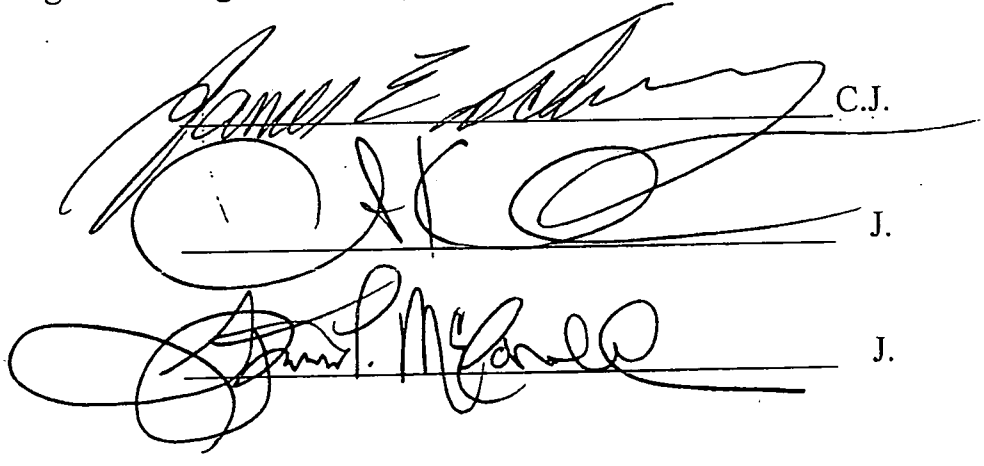
v.

South Carolina Department of Probation, Parole and Pardon Services, Respondent.

Appellate Case No. 2016-000945

ORDER

After careful consideration of the motion for "reconsideration, rehearing, and reinstatement," the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for reinstating or for granting a rehearing. Accordingly, the motion is denied.



C.J.

J.

J.

Columbia, South Carolina

FILED

November 7, 2016

cc:
Isiah James, Jr., 096883
Tommy Evans, Jr., Esquire

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 16, 2016

Isiah James, Jr., 096883
Goodman C.I.
B 2, 39B
4556 Broad River Road
Columbia SC 29210

Re: Isiah James, Jr. v. SCDPPPS(9)
Appellate Case No. 2016-000945

Dear Mr. James:

In response to your letter dated November 20, 2016, we are sending another copy of the Court's November 7, 2016, Order regarding the motion for "reconsideration, rehearing, and reinstatement." The timelines remain the same.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Tommy Evans, Jr., Esquire

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