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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

JAN 13 2017

SC Court of Appeals

Appeal from Administrative Law Court
Ralph King Anderson III, Administrative Law Court
Docket No 16-ALJ-15-0012-IJ

APPELLATE CASE NO. 2016-002100

BASIL W. AKBAR, 065498

APPELLANT

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES.

RESPONDENT.

APPELLANT'S OBJECTIONS TO
RESPONDENT'S INITIAL BRIEF

STATEMENT OF THE CASE

The Appellant filed his initial brief October 31, 2016. On January 3, 2017, the undersigned Pro Se counsel recieved document from Respondent entitled "Initial Brief of Respondent". This document erroneously contain averments/arguments not contemplated in Appellant's pleadings, likewise the Administrative Law Court (ALJ) Order of Dismissal is a misrepresentation of Appellant's initial complaint/issues presented, and should not be relied on as factual. Therefore, Appellant respectfully moves this Honorable Court to strick Respondent's brief from the record, and reverse the ALJ Order. In addition the Appellant adamantly assert once again that he is not challenging a denial of parole and/or routine denial of parole (emphasis added), but rather whether South Carolina Department of Probation, Services (Respondent), actions/non-action was arbitrary capricious regarding procedural application; irregularities in procedures; Ex Post Facto prohibitions; Due Process violations; incomplete parole review process; failure to give notice/promulgate new parole criteria; failure to promulgate

suspect/imaginary policy alleged to govern frequency of parole prior to 1981; failure to provide Final Agency Decision and Notice of Appeal Form pursuant to Rule 57; erroneously denied liberty interest rights to seek parole reconsideration pursuant to Parole and Pardon Operation Manual; rescinding parole votes arbitrary capriciously void justification; unlawfully usurping annual parole hearing to bi-annual, and denying access to parole file via no reply.

STATEMENT OF THE FACTS

On September 23, 2015 Appellant was denied parole, and timely filed Request for Reconsideration from denial of parole. On November 6, 2015 Request for Reconsideration reply was received December 15, 2016, advising Appellant there is no appeal process for a routine denial of parole, See, Exhibit E, contrary to Henry McMaster South Carolina Attorney General Opinion, and Respondent's Board of Paroles and Pardons Operations Manual, See, Exhibits F. On December 2, 2015, via Appellant's Petition Letter [SC Code Ann Sec 1-23-150(a)], did put Respondent on Notice that he was grieve with Agency's communication dated September 24; October 7; November 17; and November 19, 2015, regarding new regulation and criteria derived from Section 24-21-10(F)(1) SC Code of Laws, void promulgation of new amendment; and where Respondent refuse to promulgate policy verification page and date subscribed that it alleges governs the frequency of parole prior to 1981, See, Exhibit B, and furthered requested if Respondent disagreed, then to provide instruction to appeal Final Agency Decision, however, the Respondent fail to provide Notice of Appeal as routinely done. Subsequently, on February 2, 2016 concerns grieved was addressed to SC Dept of Probation, Parole and Pardon Services Director, that designee response was insufficient and incomplete regarding, promulgating new criteria, risk assessment of parole candidate, and family that he made reference too, in addition said designee made furthered reference too, but fail to make accessible a "legible copy" of PPPS's policy... though further asserted that only one page of suspect policy exist that he has access to. The gist of Appellant's Petition/Grievance in part was to attain a legible copy, face page, verification page and date subscribed; completion of pre-parole assessments, procedural violation and irregularities in procedures, bi-annual review void justified authority, and

if the Agency disagreed with any averment of Appellant to state reason(s) and provide instruction and appeal process that I may appeal Final Agency Decision, of which Respondent fail to perform non-discretionary ministerial duties, See, Exhibits A, B, C, D. Appellant was impeded by Respondent dereliction in providing Appeal Form required by ALJ rules. However, the record show that Appellant filed and served Respondent with "Notice of Appeal, and Petitioner's Petition to Advance Grievance to Administrative Law Court for Good Cause Shown", the Respondent fail to defend, and the ALJ Court granted leave to proceed and signed case number 16 PO12 April 19, 2016. The Appellant submits from the inception of his complaint on the whole record that he is not challenging a routine denial of parole, rather whether the Respondent's actions/non-action and procedures were improper. The ALJ oversighted those facts and erroneously assumed routine denial of parole was being challenged.

The Appellant hereby, herein, hereof, repeats as if verbatim the Appellant's (ALJ) Brief, Initial Brief of Appellant; Appellant's Objection to Respondent's Brief in its Entirety and Motion to Strike Respondent's Brief; Appellant's Motion to Challenge Respondent's Record on Appeal as submitted, and all Exhibits.


APPELLANT'S OBJECTIONS

The Appellant resubmits the above, and submits additionally that the ALJ Court properly granted leave to proceed when a valid grievance has been filed and the State's time for responding thereto has expired, Powe v. Ennis, 177 F 3d 393. The grievance system automatically advance grievance to the appellate level, Appellant need only wait until the time limit for final action has passed, Pellum v. Burt, 2008 WL 759084 at * 16 (DSC Mar 20, 2008). A prisoner who was prevented from appealing lack of decision at intermediate stage, and was later afforded an opportunity to appeal has exhausted when he was prevented from appealing, Daker v. Ferrero, 2004 WL 5459957 at * 2 (ND Ga Nov 24, 2004). Furthermore, Grievant is not required to file a grievance about the failure to respond to a grievance absent a regulation to that effect, Maraglia v. Maloney, 499 F Supp 2d 93, 97 (2007), after taking all necessary steps, Dole v. Chandle, 438 F 3d 804 (2006), and he recieved no instruction as to what if anything to do about it. Subsequently, the ALJ Court provide Appeal Form, recieved on or about April

12, 2016, after fail attempt February 22, 2016, See, Exhibits G, H.
Moreover, pursuant to ALJ Rule 71, the Appellant had 70 days to correct defect, and pursuant to Rule 59, 30 days from receipt of Appeal Form (emphasis added). For the sake of argument, assuming arguendo that appeal notice was late it was directly due to Respondent's impeding by failure to carry out ministerial not discretionary duties required pursuant to ALJ's Rules 57 and 59 that Respondent customarily provide Form upon request, See, Exhibit A, B, C, D. Appeal Form must be served pursuant to grievance procedure proscribed by the ALJ Court, otherwise Respondent are complicitous to late filing, said Rules must be applied with an even hand, Myers v Ylst, 897 F 2d 417 (1990). During the course of pleadings Appellant mentioned arguendo that the Respondent and ALJ Court misconstrued the predicate facts/issues arise. Furthermore, newly discovery predicate was discovered from reply correspondence that PPPS's policy governing frequency of parole does not exist; and that assessment to be done on parole candidates, plus their family [not done], See, Exhibit I, arises additional grounds to grieve. The Circuit Court made it clear that claims regarding an inmate declared permanently ineligible for parole is reviewable, and that the proper procedure is under Al-Shabazz v State, 527 SE 2d 742 (2000). The Court stated further in Sullivan v SCDC, 355 SC 437, 443 & n.4, that an inmate has a right of review by the ALJ Court that he is ineligible for parole, whereby the use of boiler plate reasoning as predicate to deny parole on immutable aspects of criminal liability factors/administrative infractions not susceptible to change, and nothing more, unconstitutionally usurp Appellant permanently ineligible for parole, See, Exhibits J, K, L, M.

At all times relevant the Appellant submits that he exercised due diligence, and the ALJ Court erroneous assessment deviates from the law and created a Jurisdictional defect, and the improper application of law can be corrected by this Honorable Court. The ALJ Court erred in granting the Respondent's Motion to Dismiss for all the above reasons, and Appellant's appeal was properly filed.


Date: January 11, 2017


s/ Basil W. Akbar, 065498, ProSe
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CERTIFICATE OF SERVICE

I, Basil W. Akbar, Pro Se hereby certify that a copy of Appellant's Objections; and Exhibits was served on Respondent's Counsel of Record at, Tommy Evans, SC Department of Probation, Parole, and Pardon Services, 2221 Devine Street, Suite 600, Columbia, SC 29250.

Date: January 11, 2017

s/ 
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SC Court of Appeals

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