

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATION LAW COURT

THE HONORABLE SHIRLEY C. ROBINSON, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE No.: 2015-001028

JIMMY LONG, #197708 APPELLANT,

v.

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DEC 28 2016

SC Court of Appeals

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICE RESPONDENT.

FINAL BRIEF OF APPELLANT

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INDEX

INDEX 1

Statement of the Issues on Appeal2

Statement of The Case 3

Argument 1 4

Argument 2 6

Conclusion 8

STATEMENT OF THE ISSUES ON APPEAL

(1) WHETHER THE A.L.C. ERRED IN RULING THAT BRADFORD V. WEINSTEIN DOES NOT APPLY TO APPELLANT'S CASE.

(2) WHETHER THE A.L.C. ERRED IN ADDRESSING THE EX-POST FACTO INSTEAD OF THE NUMBERS OF THE AFFIRMATIVE AND NONE AFFIRMATIVE MEMBERS VOTES IN HIS CASE.

STATEMENT OF THE CASE

Appellant is presently confined within the South Carolina Department of Corrections at the McCormick Correctional Institution pursuant to order of commitment of the Florence County Clerk of Court. The Appellant was indicted for murder and assault with intent to commit first degree criminal sexual conduct by the Florence County Grand Jury. The Court of General Sessions for Florence County sentenced the Appellant to life imprisonment for murder and a concurrent ten (10) years for assault with intent to commit first degree criminal sexual conduct.

On November 6, 2014, the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) notified Appellant that the Board denied him parole. Appellant appealed this denial to the Administrative Law Court. On April 30, 2015, the Administrative Law Court denied Appellant's appeal. On May 6, 2015, the Appellant filed his appeal, the Appellant now seeks review of the Administrative Law Court's decision.

ARGUMENT (1)

The Appellant argues that the Administrative Law Court erred in ruling that Bradford v. Weinstein, 519 F.2d 728 (4th Cir.) does not apply to his case. Here, the Appellant argues that the Cooper case, see Cooper v. S.C.D.P.P.P.S., 661 S.E.2d 106 and S.C. Code Ann. §21-24-640. The fifteen (15) Department's criteria does not satisfy the Bradford criteria when the S.C.D.P.P.P.S. and the fifteen (15) Department's criteria does not inform Appellant of what changes in attitude, habits and the requirements to be successful in obtaining parole. See Bradford at 732.

The Respondent did not follow the mandates by the South Carolina Supreme Court in the Cooper opinion, where the Bradford criteria is not given to him. See Bradford v. Weinstein 519 F.2d 728. When the S.C.D.P.P.P.S. does not inform him of what changes in attitude, habits and the requirements to be successful in obtaining parole. Bradford, at 732.

It is clear that "what changes in attitude, habits and the requirements to be successful in obtaining parole is not revealed within the fifteenth (15) Department's criteria, which is proof that Appellant parole was denied unlawfully where the above Bradford criteria does apply to Appellant's case, thus, the Respondent's reliance on Cooper v. S.C.D.P.P.P.S. is misplaced.

Here, the Board is not carefully considering Appellant when

the Respondent admitted that they denied his parole due to factors that occurred **prior** to his conviction only where the South Carolina code of law specifically states:

The board must carefully consider the record of the prisoner **Before, during** and **after** imprisonment and no such prisoner may be paroled until it appears 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 imprisonment, that the interest of society will not be impaired thereby, and that suitable employment has been secured for him.

Here, the Appellant contends that he met all the above, but the Board did not apply the Bradford criteria, nor did it apply section 24-21-640 and Cooper, at 112. And, if this Court does not find that the Board did apply the Cooper criteria, then the Cooper and the fifteen (15) Department criteria does not satisfy the Bradford criteria.

ARGUMENT (2)

The Appellant argues that the Respondent has erroneously argued that because he wishes to receive the vote count, that any release of a vote count is irrelevant. Where at the time the Appellant committed his offense, the law allowed a two-thirds affirmative vote in order to be released on parole for all violent offenses...

It should be obvious that he failed to receive the proper amount of votes to the fact he was denied parole. And that the fact the Board followed the criteria and voiced this within the denial letter was sufficient. There was no need for the Administrative Law Court to make another ruling in an irrelevant matter.

The Appellant argues that the Respondent did not make this argument before the Administrative Law Court, nor was this issue itself ruled on by the Administrative Law Court, thus, the Respondent waived any argument they may have had.

Thereby, the Court of Appeals can in fact address the issue.

The Appellant argues that his case is unlike Barton v. S.C.D.P.P.P.S, 745 S.E.2d 110. But, in Barton she never had to appeal to this Court to find out the number of affirmative votes.

The Appellant argues that he has a liberty interest in knowing the affirmative and non affirmative votes for which due process

is required for all persons are entitled to know whether they make parole or not, plus, for any appeal rights one may have..

The Appellant further argues that just because he was denied parole does mean he is not entitled to know the affirmative and non affirmative votes.

CONCLUSION

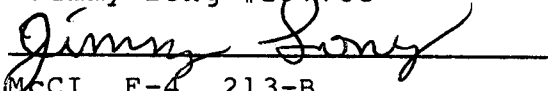
Based on all the foregoing argument this Honorable Court must remand Appellant's case back before the Parole Board for a full and fair hearing according to Bradford to inform him of what changes in attitude, habits and the requirements to be successful in obtaining parole.

Further, Appellant is entitled to know the affirmative and non affirmative votes where Appellant has a liberty interest to know.

December 22, 2016

Respectfully submitted,

Jimmy Long #197708



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v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICE RESPONDENT.

AFFIDAVIT OF SERVICE

I certify that I have served the Final Brief of Appellant on the Respondent by delivering a copy of it to the McCormick Correctional Institution mail room for deposit in the United States Mail, with postage prepaid and addressed the Attorney of record, Tommy Evans, Jr., Post Office Box 50666, Columbia, South Carolina 29250.

December 22, 2016

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DECEMBER 22, 2016

THE HONORABLE JENNY A KITCHINGS, CLERK
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SC Court of Appeals

RE: JIMMY LONG v. S.C.D.P.P.P.S.
FINAL BRIEF OF APPELLANT
APPELLATE CASE NUMBER: 2015-001028

DEAR CLERK:

PLEASE FIND ENCLOSED FOR FILING THE FINAL BRIEF OF APPELLANT, ALONG WITH THE AFFIDAVIT OF SERVICE, ALL IN REFERENCE TO THE ABOVE ENTITLED MATTER.

PLEASE RETURN TO ME A CLOCK-STAMPED COPY OF THE ENCLOSED DOCUMENTS AT YOUR EARLIEST CONVENIENCE..

THANK YOU FOR YOUR ATTENTION AND ASSISTANCE IN THIS VERY IMPORTANT MATTER.

SINCERELY,

Jimmy Long

CC: ATTORNEY TOMMY EVANS, JR.
PERSONAL FILE

JIMMY LONG, 197708

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2-41