

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge
Case No. 15-ALJ-15-0068-AP

Thomas Thompson #80681-----Appellant

v.

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

Appellate Case No. 2016-000781

RECORD ON APPEAL

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
Post Office Box 50666
Columbia, South Carolina 29250

ATTORNEY FOR RESPONDENT

Thomas Thompson #80681
TyRCI 10-204
200 Prison Road
Enoree, S.C. 29335

Pro Se Litigant

APPELLANT

TABLE OF CONTENTS

Notice of Rejection dated October 22, 2015-----page 1

Notice of Rejection dated October 3, 2013-----page 2

Final Order of Administrative Law
Court dated March 30, 2016-----pages 3&4

SCDPPPS Form 1212-----page 5


Indictment and Sentencing Sheet 75-GS-11-750-----pages 6&7

Board of Pardon and Parole Policy
and Procedure Manual page 21-----page 8

Appellant's Affidavit of Educational,
Vocational, Program and Employment
activities during incarceration-----pages 9&10

For Court's review-Any Parole Board records
relevant to the resolution of facts in this case.----page 11

Appellant, Thomas Thompson #80681 hereby certifies that this
Record on Appeal contains all materials proposed to be included
by any of the parties and not any other material.

s 
Thomas Thompson #80681

October 24, 2016

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

October 22, 2015

Mr. Thomas Thompson #00080681
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

RE: NOTICE OF REJECTION

Dear Mr. Thompson:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

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

FINDINGS OF FACT:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support Services

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

October 3, 2013

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Mr. Thomas Thompson #00080681
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

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It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

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

FINDINGS OF FACT:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support Services

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas Thompson, #80681,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Probation,)
 Parole and Pardon Services,)
)
 Respondent.)

Docket No. 15-ALJ-15-0068-AP

FINAL ORDER

FILED

MAR 30 2016

STATEMENT OF THE CASE

SC ADMIN. LAW COURT

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of the above named Appellant (Inmate), an inmate incarcerated with the South Carolina Department of Corrections. Inmate appeals from a decision of the South Carolina Department of Probation, Parole and Pardon Services ("Department" or "PPPS") which denied his parole. Appellant states as Issues on Appeal, the following:

1. The Parole Board based its decision on a record which is incomplete and inaccurate, therefore its decision is arbitrary and capricious.
2. The Parole Board continues to apply the 1986 Omnibus Criminal Enhancement Bill to Appellant's sentence in violation of the ex post facto clause.
3. The Parole Board has denied Appellant's right to Equal Protection by denying him parole based on the offense he committed for an excessively longer period than other inmates sentenced for the same offense and to the same sentence.
4. The Parole Board's denial of parole based on Appellant's crime for a period of thirty years has essentially negated the sentencing authority of the Court which made a plea agreement which stated purpose was to give Appellant a chance based on his good behavior.

DISCUSSION

For the following reasons, the Department's decision is affirmed.

The South Carolina Supreme Court has spoken clearly about the jurisdiction of the ALC in cases such as this:

We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors

published in its parole form. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs., 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008).

The Cooper decision was underscored by Compton v. S.C. Dep't of Prob., Parole & Pardon Servs., 385 S.C. 476, 685 S.E.2d 175 (2009), as follows:

In Cooper, we held that if the Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate's right to parole eligibility and infringes on a state-created liberty interest, warranting minimal due process protection. Because the Parole Board in Cooper neither offered an explanation nor indicated it had considered the statutory criteria or the criteria set forth in Form 1212, we had no other choice but to determine the order was defective and the decision was arbitrary and capricious. We emphasized that this result could be avoided in the future if the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212, and that if the Parole Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC will have **limited authority** to review the decision. (Emphasis supplied).

Compton, 385 S.C. at 479, 685 S.E.2d at 177.

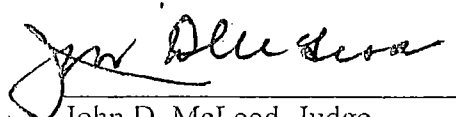
I have reviewed the Record on Appeal, and in particular the Notice of Rejection dated October 22, 2015, and find that the Parole Board followed proper procedure in that it did consider the fifteen factors and S.C. Code Ann. § 24-21-640 (Supp. 2015), mentioned above, and that this is a routine denial of parole.

Moreover, S.C. Code Ann. § 1-23-600 (D) (Supp. 2015) provides “[a]n administrative law judge shall not hear an appeal...involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.”

ORDER

For the foregoing reasons, the Department’s determination that Inmate’s appeal should be and hereby is, **DISMISSED**, with prejudice.

AND IT IS SO ORDERED.



John D. McLeod, Judge
South Carolina Administrative Law Court

Columbia, S.C.
March 30, 2016

CERTIFICATE OF SERVICE
I hereby certify that the undersigned has this day served this order in the above entitled matter on all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the telegraphic mail service addressed to the party(ies) or their attorney(s).
Date: 30 day of March, 2016
By: J. D. McLeod
Deputy Clerk

10-21-15

South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration

SC Board of Probation, Parole and Pardon Services
P. O. Box 50688
Columbia, SC 29250

Inmate Name <i>Thomas N. Thompson</i>	SCDC # <i>80681</i>
--	------------------------

Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counselling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature <i>Thomas N. Thompson</i>	Date <i>7-7-15</i>	Witness <i>Ushley Burch</i>	Date <i>7/7/15</i>
---	-----------------------	--------------------------------	-----------------------

75-G.S.-11-520

The State of South Carolina

County of CHEROKEE

COURT OF GENERAL SESSIONS

DECEMBER Term, 19 75

THE STATE

VS.

A THOMAS N. THOMPSON

B BEN HOLMES

C WALTER EDGAR GORDON

INDICTMENT FOR

MURDER

and

ACCESSORIES BEFORE THE FACT TO MURDER

Foreman of Grand Jury

McGAW PRINTERS, 2610 DEVINE ST., COLUMBIA, S. C. 29205

Page 9
Witnesses
E. Harrington
Otis Spencer
Joe Wallace
Donald Hodge

Foreman

Date 12/10/75
the sentence of the Court is that the Defendant
be confined at hard labor upon the public works
of Cherokee County for the term of years
of that he be confined in a like manner for a
the term in the State Penitentiary, or that he
pay a fine of Sec. 16-52 of the Code

Walter Edgar Gordon hereby
appear in my own proper person and plead guilty
to accessory before the fact to
the murder of George Upchurch
count on the within indictment

Walter Edgar Gordon
WITNESS:
Rob K. Clary

Rob K. Clary
C.C.P. & G.S.
I, Thomas N. Thompson, hereby appear in my own
proper person and plead guilty to murder under other
circumstances than those set forth in Sub-paragraphs
(1), (2), (3), (4), and (5) of Section 16-52 of the

25
27
19
I, Ben Holmes, hereby appear in my
own proper person and plead guilty to
accessory after the fact to the murder of
George Upchurch on the within indict-
ment.

Ben Holmes
Witness:
Rob K. Clary
C.C.C.P. & G.S.

The State of South Carolina

INDICTMENT FOR

County of CHEROKEE

MURDER AND ACCESSORIES BEFORE THE FACT TO MURDER

At a Court of General Sessions, convened on the 8th day of December

19 75, the Grand Jurors of CHEROKEE County present upon their oath:

COUNT ONE

That Thomas N. Thompson

did in CHEROKEE County on or about the 4th day of October

19 75, with malice aforethought kill one George Upchurch while in the process of robbing him while armed with a deadly weapon, to wit, a pistol, and did shoot him with the said pistol and that the said George Upchurch did die in Cherokee County as a proximate result thereof on or about the 4th day of October, 1975, in violation of Section 16-52 of the 1974 Cumulative Supplement to the Code of Laws of S. C., 1962.

COUNT TWO

That Ben Holmes and Walter Edgar Gordon

did in CHEROKEE County on or about the 4th day of October

19 75 did feloniously, willfully and unlawfully become and be accessories before the fact to the murder of George Upchurch, which murder was done and committed by Thomas N. Thompson on the 4th day of October, 1975, in the County of Cherokee and State aforesaid, in that they the said Ben Holmes and Walter Edgar Gordon on the 4th day of October, 1975, in the County of Cherokee and the State of South Carolina, before the commission of the felony by Thomas N. Thompson did feloniously, willfully and unlawfully advise or procure and aid the said Thomas N. Thompson to commit the murder of the said George Upchurch,

C. Notice of Rejection. The Board Support Services Director of is responsible for providing to offenders who are denied parole a written notice of rejection stating the reasons for that decision and giving the date of the offender's next parole hearing.

D. Notice of Release. In certain cases, the Department's Director of Victims' Services is required by law to provide notice to victims and witnesses of the release of an offender on parole.

3. PREPARATION OF CASES FOR THE BOARD'S REVIEW

The Department, through its Division of Field Operations and Office of Board Support Services, prepares cases for the Board's review. Before every hearing of the Board or a panel of the Board, all members receive a list of offenders who will be appearing for a parole hearing, together with the respective parole file on each prisoner. Members will receive these files no less than two weeks before the actual date of the hearing.

4. CONTENTS OF THE PAROLE CASE SUMMARY REPORT

Every file that the department prepares for the Board's review includes, though it is not limited to, the following information:

- The criminal offense and a description of it;
- The sentencing date, the "max-out" date, the parole eligibility date, the date of any previous parole hearings, the names of any co-defendants;
- The offender's criminal record;
- The offender's prison and disciplinary records;
- Risk classification reports;
- A medical history and psychological reports, if any;
- A history of the offender's supervision on probation or parole, if any;
- A proposed place of residence and employment;
- The parole examiner's recommendation;
- Any statements from law enforcement;
- Any statement from the prosecuting witness or the prosecuting witness's next of kin, if the witness is deceased;
- Any statement from the solicitor or his successor;
- Any statement from the sentencing judge;
- The offender's social history;
- The offender's employment experience.

5. STANDARD PROCEDURE FOR CONDUCTING HEARINGS

Parole hearings are informal proceedings, and the Board or its panels may properly conduct them with a fairly free hand. What follows here is a model plan for conducting hearings. In the experience of

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge
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Thomas Thompson #80681-----Appellant

v.

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

Appellate Case 2016-000781

AFFIDAVIT

I, Thomas Thompson, Appellant do hereby swear under oath that
the following facts are true and accurate:

1. EDUCATION

- 1. GED - June 1976
- 2. Associate Degree in Business in Management from Midlands
Technical College - May 1982

VOCATIONAL

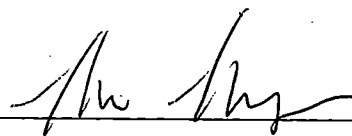
- 1. Electricity - December 1978
- 2. Carpentry - June 1986
- 3. HVAC and Refrigeration - (no certificate) 1988-89

PROGRAMS

- 1. Stress Management - approx. 1986-87
- 2. Anger Management - approx. 1986-87
- 3. Managing Aggressive Behavior - approx. 1986-87
- 4. Narcotics and Alcoholics Anonymous - approx. 1987-88
- 5. Kairos - May 2008
- 6. Alpha Class - September 2009

SIGNIFICANT JOB ASSIGNMENTS

1. Classification Clerk - Manning CI - 1976-77
2. Utilities, City of Blacksburg - Northside CI - 1982
3. Fork Lift Operator, Carolina Canadian Lumber LTD - Livesay Wrok Release Center - 1984 & 85
4. Upholstery, Sewing Machine Operator - McCormick CI Prison Industries - 1990 -1995
5. Horticulture and Grounds Maintenance, McCormick CI - 1996-2007
6. Wood Scraper, RM Design - PIE Program Kershaw CI 2009-2016

s 

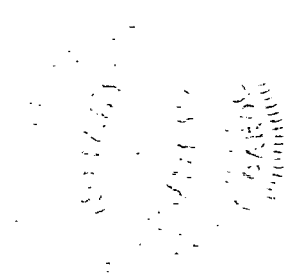
Thomas Thompson #80681
 Pro Se Litigant
 Tyger River CI U-10-204-A
 200 Prison Road
 Enoree, S.C. 29335

May 19, 2016

Date: 5-19-16

NOTARY: Paul Omer C...

EXPIRATION DEC. 10, 2014



This blank page represents the Parole Board records which are denied to Appellant either by Parole Board rules or the limited resources of his incarceration. These records include but are not limited to the Case Summary Reports submitted to the Board for review prior to his parole hearings and the historical record of the Parole Board in regard to frequency of hearings for similarly situated persons and the granting of parole to such persons.