

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

HONORABLE S. PHILLIP LENSKI
CASE NO. 16-ALJ-15-0052-AP

RECEIVED

MAY 30 2017

SC Court of Appeals

DERRICK B. WOODS # 197161,

APPELLANT

V.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES

RESPONDENT

BRIEF OF APPELLANT

DERRICK B. WOODS, # 197161
EVANS CORRECTIONAL INST.
610 HIGHWAY 9 WEST
BENNETTSVILLE SC 29512

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE ADMINISTRATIVE LAW JUDGE ERRED IN FAILING TO ADDRESS THE ISSUES OF CONSTITUTIONAL AND STATUTORY VIOLATIONS WHICH WERE PROPERLY BEFORE THE COURT?
2. WHETHER THE ADMINISTRATIVE LAW JUDGE ERRED IN FAILING TO FIND THAT THE S. C. DEPT. OF PROBATION, PAROLE AND PARDON SERVICES' FINDINGS AND DECISION WAS CLEARLY ERRONEOUS UNDER STANDARD OF REVIEW?

STATEMENT OF THE CASE

ON NOVEMBER 16, 2016 THE APPELLANT FILED A 'NOTICE OF APPEAL' IN THE ADMINISTRATIVE LAW COURT AND ON NOVEMBER 29, 2016 THE APPELLANT RECEIVED NOTICE THAT HIS APPEAL WAS FILED.

ON FEBRUARY 15, 2017 THE APPELLANT FILED HIS INITIAL BRIEF WITH THE ADMINISTRATIVE LAW COURT AND MR. TOMMY EVANS JR., COUNSEL FOR THE RESPONDENT. ON JANUARY 19, 2017 AND MARCH 8, 2017 COUNSEL FOR THE RESPONDENT FILED AN INCOMPLETE 'RECORD ON APPEAL' EXCLUDING ALL OF APPELLANT'S WRITTEN CORRESPONDENCE TO THE (SCDPPPS) AND FAILED TO PROVIDE A TRANSCRIPTION OF THE HEARING, AUDIO OR OTHERWISE.

ON MARCH 10, 2017 MR. TOMMY EVANS JR. FILED THE 'BRIEF OF RESPONDENT' WITH THE COURT AND ON MARCH 22, 2017 THE APPELLANT FILED A BRIEF IN 'REPLY'.

ON APRIL 18, 2017 THE APPELLANT RECEIVED THE ORDER/JUDGEMENT OF THE ADMINISTRATIVE LAW COURT DISMISSING HIS APPEAL WITH PREJUDICE. THE ORDER IS DATED APRIL 12, 2017 AND SIGNED BY THE HONORABLE S. PHILLIP LENSKI.

ON APRIL 27, 2017 THE APPELLANT FILED A 'NOTICE OF APPEAL' IN THE SOUTH CAROLINA COURT OF APPEALS AND ON MAY 8, 2017 APPELLANT RECEIVED NOTICE THAT HIS APPEAL WAS FILED. THIS BRIEF FOLLOWS:

ARGUMENT I

THE ADMINISTRATIVE LAW JUDGE ERRED IN FAILING TO ADDRESS THE ISSUES OF CONSTITUTIONAL AND STATUTORY VIOLATIONS THAT WERE PROPERLY BEFORE THE COURT.

RELEVANT FACTS

THE APPELLANT IS SENTENCED UNDER S.C. CODE ANN. SEC. 44-53-375(B), THE CHARGE OF POSSESSION WITH INTENT TO DISTRIBUTE OR (PWID) SECOND OFFENSE.

THE APPELLANT HAS BEEN IMPRISONED SINCE SEPTEMBER 5, 2002 AND AT THE TIME OF HIS CONFINEMENT FOR THAT CHARGE (PWID, 2ND) THE OFFENSE WAS CONSIDERED AS A NO PAROLE OFFENSE.

THE OMNIBUS CRIME REDUCTION AND SENTENCING REFORM ACT OF 2010, (ACT NO. 273), WHICH BECAME EFFECTIVE JUNE 2, 2010 AMENDED SECTION 44-53-375(B) EFFECTIVELY RESTRICTING PAROLE AND FURTHER MADE OFFENDERS ELIGIBLE FOR WORK CREDITS, WORK RELEASE, A SUSPENDED SENTENCE AND PROBATION.

DESPITE THESE CHANGES APPELLANT DID NOT RECEIVE A PAROLE HEARING UNTIL OCTOBER 12, 2016 MORE THAN SIX YEARS AFTER THE AMENDMENT, AND PURSUANT TO S.C. CODE ANN. SECTIONS 21-21-610 AND 24-21-610 - 620 UPON COMPLETION OF SERVING ONE-FOURTH OF A NON-VIOLENT SENTENCE A DEFENDANT IS ENTITLED TO PAROLE.

THE APPELLANT PUT THIS ISSUE SQUARELY BEFORE THE COURT IN HIS BRIEF AND ARGUED THAT HE WAS UNLAWFULLY DEPRIVED OF A PAROLE HEARING WHICH PREJUDICED HIS SUBSTANTIAL RIGHTS AND VIOLATED CONSTITUTIONAL AND STATUTORY PROVISIONS.

THE RESPONDENT FAILED TO ADDRESS THE ISSUE WITHIN ITS ARGUMENTS TO THE ADMINISTRATIVE LAW COURT AND FALSELY ALLEGES THAT THE APPELLANT IS IMPRISONED FOR DISTRIBUTION OF DRUGS.

THE ADMINISTRATIVE LAW JUDGE LIKEWISE, AVOIDED ADDRESSING THIS ISSUE AND THUS ERRED BECAUSE CLEAR VIOLATIONS OF STATUTORY AND CONSTITUTIONAL LAW HAVE OCCURED WHICH DO REQUIRE HIGHER JUDICIAL INTERVENTION.

ARGUMENT II

THE ADMINISTRATIVE LAW JUDGE ERRED IN FAILING TO FIND THAT THE S. C. DEPT. OF PROBATION, PAROLE AND PARDON SERVICES' FINDINGS AND DECISION WAS CLEARLY ERRONEOUS UNDER STANDARD OF REVIEW.

RELEVANT FACTS

THE OFFENSES FOR WHICH THE APPELLANT IS SENTENCED ARE NON-VIOLENT AND THE APPELLANT, AT THE TIME OF THE PAROLE HEARING IN QUESTION, HAD BEEN CONFINED FOR MORE THAN FOURTEEN YEARS.

THE APPELLANT IS NOW FORTY-FIVE YEARS OF AGE AND WAS SENTENCED TO AN AGGREGATE PERIOD OF CONFINEMENT OF THIRTY-FIVE YEARS. THE APPELLANT HAS ONLY ONE PRIOR CONVICTION AND/OR SENTENCE WHICH WAS A FIRST OFFENSE (PWID) FROM 1993.

THE OMNIBUS CRIME BILL OF 2010 AS AMENDED MADE DEFENDANTS FOR SECOND OFFENSE (PWID) ELIGIBLE FOR SUSPENDED SENTENCE AND PROBATION, SIGNIFICANTLY REDUCING THE PENALTY WHICH MAY BE IMPOSED.

PURSUANT TO

UPON THE DECISION IN BULIN V. SCDJ, FEBRUARY 24, 2016 PAROLE WAS RESTORED TO DEFENDANTS WHO WERE SENTENCED UNDER (PWID) SECOND OFFENSE. HOWEVER, UNDER THE OMNIBUS CRIME BILL MANY DEFENDANTS SHOULD HAVE HAD PAROLE HEARINGS SINCE 2010.

THE APPELLANT HAS SINCE THEN LEARNED THAT SIMILARLY SITUATED DEFENDANTS WERE GRANTED PAROLE AND RELEASED BUT THE PAROLE BOARD DENIED THE APPELLANT PAROLE FOR FRIVOLUS, FINDINGS OF FACT AND CONCLUSIONS OF LAW.

THE APPELLANT PRESENTED THE ABOVE FACTS TO THE RESPONDENT IN A LETTER DATED OCTOBER 25, 2016 AND FURTHER MADE SEVERAL ARGUMENTS TO SHOW THAT THE DENIAL OF PAROLE WAS UNREASONABLE. (PLEASE SEE THE APPELLANTS BRIEF AND REPLY BRIEF.)

AS THE APPELLANT HAS CONSISTENTLY PUT FORTH, THERE IS A SIGNIFICANT CHANGE IN STATUTORY LAW WHICH ESSENTIALLY MANDATES PAROLE.

"SUBSTANTIAL EVIDENCE" AS REQUIRED TO SUPPORT AN AGENCY'S FINDINGS OF FACT, IS NOT A MERE SCINTILLA OF EVIDENCE, BUT EVIDENCE WHICH, CONSIDERING THE RECORD AS A WHOLE WOULD ALLOW REASONABLE MINDS TO REACH THE CONCLUSION THE AGENCY REACHED;

ADMINISTRATIVE DECISION IS 'ARBITRARY' IF IT IS WITHOUT RATIONAL BASIS, IS BASED ALONE ON ONE'S WILL AND NOT UPON ANY COURSE OF REASONING AND EXERCISE OF JUDGEMENT, IS MADE AT PLEASURE, WITHOUT ADEQUATE DETERMINING PRINCIPLES OR IS GOVERNED BY NO FIXED RULES OR STANDARDS.

CONVERSE POWER CORP. V. SOUTH CAROLINA DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL (S.C. APP. 2002) 350 S.C. 39, 564 S.E. 2d 341

THE APPELLANT ALSO CONTENDS THAT THE DENIAL WAS NOT A ROUTINE DENIAL OF PAROLE SINCE THE DECISION IN BOLIN V. SCDC FORCED THE PAROLE BOARD TO GIVE A PAROLE HEARING TO THE APPELLANT WHICH IT HAD WITHHELD UNLAWFULLY FOR MORE THAN SIX YEARS.

WHILE THE RESPONDENT CAN MAKE THE CLAIM THAT IT LAWFULLY DENIED THE APPELLANT PAROLE AND POSIT THAT PAROLE IS A PRIVILEGE NOT A RIGHT, IT CANNOT DENY THE FACT THAT IT UNLAWFULLY DEPRIVED THE APPELLANT OF HIS PROTECTED RIGHT TO A PAROLE HEARING FOR MORE THAN SIX YEARS.

INMATES HAVE NO PROTECTED RIGHT TO PAROLE... ONLY THE RIGHT TO A PAROLE HEARING. JAMES V. SOUTH CAROLINA DEPT. OF PROBATION, PAROLE AND PARDON SERVICES, 376 S.C. 392, 656 S.E. 2d 399 (2008)

CONCLUSION

BASED ON THE FOREGOING REASONS THE APPELLANT RESPECTFULLY REQUESTS THAT THIS COURT REVERSE THE DECISION OF THE ADMINISTRATIVE LAW JUDGE PURSUANT TO S. C. CODE ANN. SECTION 1-23-380(10) AND THE ADMINISTRATIVE PROCEDURES ACT (APA), WHERE THE FINDINGS AND CONCLUSIONS OF THE JUDGE ARE "CLEARLY ERRONEOUS" IN VIEW OF RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

RESPECTFULLY SUBMITTED,

D B Woods

DERRICK B. WOODS
EVANS CORRECTIONAL INST.
610 HIGHWAY 9 WEST
BENNETTSVILLE, SC 29512

BENNETTSVILLE, SOUTH CAROLINA
MAY 26, 2017

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SOUTH CAROLINA DEPARTMENT OF
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RESPONDENT

CERTIFICATE OF PROOF

I, DERRICK B. WOODS CERTIFY UNDER PENALTY OF PERJURY THAT I HAVE ON THE DATE LISTED BELOW SERVED THE FOREGOING 'BRIEF OF APPELLANT' ON THE OFFICES ALSO LISTED BELOW BY PLACING A COPY OF SAID BRIEF IN THE U. S. MAIL VIA THE PRISON MAIL ROOM POSTAGE PREPAID ADDRESSED TO:

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES
2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250

SOUTH CAROLINA COURT OF APPEALS
OFFICE OF THE CLERK
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

D B Woods

DERRICK B. WOODS
EVANS CORRECTIONAL INST.
610 HIGHWAY 9 WEST
BENNETTSVILLE SC 29512

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 26 DAY OF MAY 2017


S. O'Dell

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2/17/24

DERRICK B. WOODS, 197161
EVANS CORRECTIONAL INSTITUTION
610 HIGHWAY 9 WEST, FB B 119
BENNETTSVILLE, SOUTH CAROLINA 29512

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