

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from the Administrative Law Court
Ralph King Anderson, III, Administrative Law Court Judge
Case N 16-ALJ-15-0012-IJ

APR 20 2017
SC Court of Appeals

Appellate Case No 2016-002100

Basil W. Akbar, #065498

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services.

Respondent.

APPELLANT'S REBUTTAL BRIEF/EVIDENCE IN SUPPORT

On April 7, 2017, the Appellant received document from Respondent titled, 'Final Brief of Respondent'. Their threshold argument that, "The Appellant failed to file his Notice of Appeal prior to the time allotted pursuant to the Rules of the Administrative Law Court; therefore the ALC was proper in dismissing this appeal." The Appellant objects, and resubmits all pleadings and exhibits herein hereof as if verbatim from inception, in addition submits as follows. That the Respondent's argument is frivolous, sham defense made in bad faith, and done to delay just relief, now rebut and refute by evidence and contrary proof.

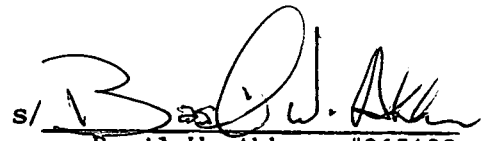
First, the Appellant objects to the Respondent's misconstruing his complaint, that he was challenging a routine denial of parole and/or a denial of reconsideration of his September 2017 actual parole decision, as routing practice, [See Ex. 1, 2, 3, 4]. Appellant discovered on or about February 2017, that Respondent's made a misrepresentation...and there was a Parole

Board Manual governing Inmates/Attorney Request for Reconsideration, not made privy to Inmates, [See Ex. 3], thus, the Appellant exercised due diligence under the circumstances, in filing complaint. Moreover the Appellant submits that complaint araised from Appellant's February 2, 2016 letter to Jerry B. Adger, Director of the South Carolina Department of Probation, Parole and Pardon Services...and Agency failure upon request to provide me instructions and appeal process, that at all times relevant the Respondent(s) fail to do (emphasis added), [See Ex. 1, 2]. On February 22-23, 2016 the Appellant served the Respondent, and the ALJ Court with Notice of Appeal, however, said Notice of Appeal was returned by the ALJ, because it was a South Carolina Department of Corrections Notice of Appeal form that the Appellant subscribed over with Department of Probation, Parole and Pardon Services, and the ALJ subsequently provided the correct form, that was promptly reserved, any delay is directly due to Respondent's delinquent/culpability failing to provide proper form upon numerous request. [See Ex. 4, 5, 6].

Second, the Appellant objects to the ALJ's abuse of discretion for issuing an Order controlled by Error of Fact and/or "Error in Law", forming untrue conclusion about the subject matter due to misrecital of factual matter in Appellant's pleadings. The whole record speaks for itself. The ALJ Court furthered read into his pleadings matters outside of the Appellant's complaint, insinuating that he is to the contrary appealing "from a decision of the South Carolina Department of Probation, Parole and Pardon Services denying him parole," on September 24, 2015. In fact the whole record only speaks to Respondent's procedural violations, due process violations, and denial of protected liberty interest rights, discovered after exercising due diligence in discovering true fact. Thereby the ALJ Court arbitrarily fail to exercise consideration of the issues/merits presented before the

Court. The ALJ's Order is defective and flawed where the conclusion drawn is unjustified by the facts and evidence on the whole record, and where evidence is against the findings of the ALJ Court, Rutherford v Rutherford, 307 SC 199, 414 SE 2d 157. This Honorable Court should reverse the ALJ's Order, for but not limit to..one of the major tasks of the ALJ is to preside over hearings in connection with the promulgation of regulations by a Department, SC Code Ann Sec 1-23-III(A). The Appellant is grieved by the judgement of the ALJ, Bivens v Knight, 254 SC 10, 173 SE 2d 150. The Appellant respectfully request that the ALJ's Order be reversed, and complaint be heard on the merits. [SEE, Ex. 7,8].

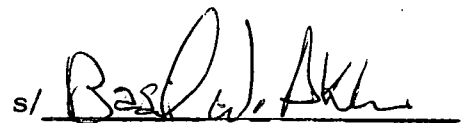
Date: April , 2017

s/ 
Basil W. Akbar, #065498
Lee County Institution
990 Wisacky Hwy, F6B 2213
Bishopville, SC 29010

CERTIFICATE OF SERVICE

I, Basil W. Akbar, #065498, Pro Se hereby certify that copy of same, Appellant's Rebuttal Brief/Evidence in Support; Appellant's Affidavit in Support; and Attachments, was served on Respondent's Counsel of the Record, postage prepaid at: Tommy Evans, General Counsel, 2221 Devine Street, Suite 600, Columbia, SC 29250.

Date: April , 2017

s/ 
Basil W. Akbar, #065498
Lee County Institution
990 Wisacky Hwy, F6B 2213
Bishopville, SC 29010

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Appeal from the Administrative Law Court
Ralph King Anderson, III, Administrative Law Court Judge
Case N 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 AFFIDAVIT IN SUPPORT

The Appellant Basil W. Akbar, #065498, hereby certify under the penalty of perjury that the information given in this Affidavit is true, and correct, and I understand that I will be subject to Civil and/or Criminal penalties if I knowingly furnish false information.

1. I, Basil W. Akbar, is the Pro Se Appellant in the above caption case, and file this action in good faith that he is entitled to relief, and that he is not appealing a routine denial of parole.
2. That the Respondent fail to promulgate and make privy to inmate parole candidates rules, regulations, and policies before enforcement.
3. That he discovered and attain tangible proof that he has a liberty interest right to request parole reconsideration, pursuant to policy.
4. That he is entitled to annual parole consideration, and that there exist no policy and/or effective date of a policy that govern the frequency of parole at time of Appellant's 1971 offense.
5. That the Respondent fail to furnish Notice of Appeal form, despite making numerous requests.
6. That the Respondent impeded his access to the Courts.
7. The Appellant submits that he was not afforded a full and fair parole review hearing, due to procedural violations outline above but not limit to, and
9. That a criteria for parole consideration, is not the same as criteria for the granting of parole, with the intent subscribed by legislature, SC Code Ann Sec 24-21-640.

Respectfully Submitted


Basil W. Akbar, #065498
Lee County Institution
990 Wisacky Hwy, F6B 2213
Bishopville, SC 29010

Sworn To And Subscribed
this 13 day of April 2017.

Notary: Debra Eastri Day
My Commission Expires:
3/3/2026

Basil W. Akbar, 065498
Lee County Institution
990 Wisacky Hwy, F6B
Bishopville, SC 29010

February 2, 2016

JERRY B. ADGER, DIRECTOR
S.C. DEPT. OF PROBATION, PAROLE & PARDON SERVICES
2221 DEVINE STREET, SUITE 600
COLUMBIA, S.C. 29250

1
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APR 20 2017

RE: Sec. 24-21-10 (F)(1)/ Related New Criteria;

SC Court of Appeals

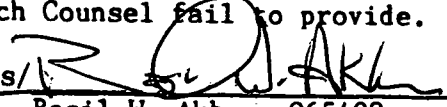
Dear Director Adger:

Per Mr. Tommy Evans letter date November 19, 2015, designated by you to respond to my petition requesting production of document(s) and information. However, Counsel oversights my threshold concerns . . . or maybe I fail to clarify my interest well enough with clarity regarding S.C. Code of Law Ann. Sec. 24-21-10 (F)(1); and matter of a clear authentic copy of the South Carolina Department of Probation, Parole, and Pardon Services (PPPS), original policy manual that encompasses section title "Current Parole Investion", used in error, and given an impression it govern frequency of parole review hearings in existance prior to 1981/1986.

Mr. Evans did not answer, nor did he dispute claim that assessment (compass) tool was not used though required; and that September 23, 2015 parole review hearing was incomplete, and thereunder currently stands incomplete, and review subsequently flawed as a results of circumventing mandated procedure, did deprive me of the benefit derived from legislative intent of Section 24-21-10(F)(1) effective date(s) 2010, 2011, and 2012, and furthered fail to explain why advance notice of said proviso/newly amended criteria not disclose prior to appearing in "Rejection Letter", or why the PPPS has yet to promulgate said information. Clearly the South Carolina General Assembly/legislative intent expected that the PPPS would presume the Legislature did not intend a futile act but rather intend its statute(s) to accomplish something. Hereby request distribution/promulgation of Sec. 24-21-10(F)(1), and copy of related expansion of PPPS's criteria.

Second, Counsel made no reference to make accessible a "legible" copy of PPPS's policy containing section titled "Current Parole Investigation" . . . nor return my go to show point of "unlegible" copy. He furthered assert that only one page of suspect policy is in existance . . . or that he has access to. Respectfully, why I initially directed my concerns to you because you are the legal custodian over recorded documents/policy(s) in question, etc. Moreover, said policy encompasses extension pages regarding parole revocation, second and subsequent revocation . . . however reference policy effective date is 1986, and does not govern frequency of parole hearings prior to 1986. The gist of said petition in part is to attain a legible copy, from microfiche/microfilm to include face page, verification page, date inscribed/date incorporated into administrative policy/manual and signature or mark in lieu of, and please provide me with cost, if any.

Moreover, if the Agency disagree with any of the above, please state the Agency's reason(s), then provide to me instruction and appeal process that I may appeal final Agency decision, of which Counsel fail to provide.

s/ 
Basil W. Akbar, 065498

South Carolina Dept of Probation, Parole & Pardon Services,
and Parole Board

EXHIBIT B

2

Basil W. Akbar, #065498
Lee Correctional Institution

December 2, 2015

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APR 20 2017

SC Court of Appeals

PETITION


Under Section 1-23-150 (a), any person may petition an Agency in writing for a Declaratory Ruling as to the applicability of any regulation. The Agency must, within 30 days after receipt of such petition, issue a Declaratory Ruling thereon.

The Petitioner Basil W. Akbar, hereby petition the South Carolina Department of Probation, Parole & Pardon Services, and Parole Board (hereafter, Agency), contesting Agency's correspondence dated September 24, October 7, November 17, and November 19, 2015, more specific for "Final Agency Decision", including discussions regarding application of new regulation and/or policy as to "Actuarial Risk and Needs Assessment Factors pursuant to Section 24-21-10(F)(1) SC Code of Laws". Without wasting words, said assessment (COMPAS) were not done prior to September 23, 2015 parole review hearing. Consequently, my parole review hearing stands currently improper and incomplete, thereby mandate and requires an assessment and new parole hearing as results and promptly held... nor can controversy be viewed as a routine denial of parole, and further requires that the Agency immediately promulgate new amendment to parole criteria policy/regulation pursuant to Section 24-21-10(F)(1). Additionally, that November 12, 2015 information sought pertaining to September 23, 2015 parole hearing be disclosed as always without fee.

Second, unless the SC Dept of PPS/Parole Board produce and promulgate the complete original text, manual or policy containing section "Current Parole Investigation" page #9; original bounding cover, verification

page, and date subscribed, then I intend to seek further relief.

If the Agency disagree with any of the above, state the Agency's reasons, and provide to me instruction to appeal Final Agency Decision, if I so choose to appeal/grieve decision.

s/ 
Basil W. Akbar, #065498

C3



HENRY MCMASTER
ATTORNEY GENERAL

November 4, 2010

The Honorable Chip Huggins
SC House of Representatives, Dist. No. 85
308 Wayworth Court
Columbia, SC 29212

Dear Representative Huggins:

We received your letter requesting an opinion of this Office concerning the South Carolina Board of Pardons and Paroles voting procedures. You asked our Office to advise "what the correct procedures are for the board to re-vote on a case which has already been decided by a previous vote."

To better illustrate your question, you provided a hypothetical situation:

"The board voted to reject a parole request for an offender incarcerated for murder with four board members in favor and two members voting not to parole (the board procedures require violent offenders to receive five votes in order to be paroled. The board is composed of seven members, but there were only six board members present.) After the decision was made and the hearing was closed on this case, one of the board members voting not to parole the offender requested the case be reconsidered. The board member making the request stated the reason was he wanted to change his vote, there was no new evidence. A motion was made to reconsider the case and it passed 5 to 1. The board then voted to parole the offender with a 5 to 1 vote." In this case, neither the victims nor the offender was notified that the case was being reconsidered.

This Office will address prior opinions, relevant statutes, caselaw and the SC Board of Pardons and Pardons' Operations Manual to determine the proper way to conduct a re-vote.

Law/Analysis

The South Carolina Department of Probation, Parole and Pardon Services was created by S.C. Code § 24-21-10. The Department includes the Board of Pardons and Paroles, as explained in S.C. Code § 24-21-10(B). The enabling statute reads in relevant part as follows:

South Carolina Jurisprudence summarizes the procedure of the board's parole hearings as follows:

At the parole hearing the prisoner himself has the right to appear and present evidence in his own behalf; but if he fails to appear, the Board has the right to decide the case in his absence. He may, if the Board allows it, have up to three witnesses, of his own choosing, appear in his behalf. In addition, the prisoner may at his own expense have an attorney represent him at his hearing. Under the Victim's and Witness's Bill of Rights, victims and their families and prosecution witnesses also have the right to appear at parole hearings if they wish to be heard on the question of a prisoner's release. **After the hearing itself has concluded and all the people, both for and against parole, have been heard, the Board votes to grant or deny parole.** If the Board decides to deny parole, the prisoner is given written notice of the Board's reasons for rejecting him. If the Board decides to grant parole, the prisoner will be released from the custody of the Department of Corrections into the custody of the parole authorities, under certain standards, and often under certain special conditions of supervision.

26 S.C. Jur. Probation, Parole, & Pardon § 18 (emphasis added).

Because of the offender's right to appear, certain notice requirements are set in place. The Director of Parole Board Support Services is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the offender. Additionally, the Director of Victims Services is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the victim or, if deceased, the victim's immediate family; the solicitor in jurisdiction where offender was prosecuted; law enforcement agency that made arrest; and the judge of court in which offender was convicted and sentenced. See, SC Board of Pardons and Paroles, Operations Manual, Part II, Notice Requirements, p. 20. See also, 26 S.C. Jur. Probation, Parole, & Pardon § 18.

South Carolina law gives the Board sole and exclusive power to grant or deny paroles; however, this power is not unlimited. In making its parole decisions, "the Board is required by law to carefully consider the record of the prisoner before, during and after imprisonment." SC Board of Pardons and Paroles, Operations Manual, Part II, Absolute Discretion of the Board, p. 28.

Rehearing Requirements:

The full Board or one of its panels may consider re-hearing in a case if one or more of the following reasons apply:

- a. Subsequent Misconduct by the Prisoner. In those cases where the Board has granted parole conditioned on the satisfaction of some pre-release requirement, and the prisoner has committed some violation of prison rules before the actual release from prison, the case will be presented to the Board or panel in order to deal with the subsequent misconduct.

- b. New Criminal Charges Against the Prisoner. This is similar to the situation just described above - subsequent misconduct by the prisoner; only the misconduct here is more serious than the violation of a prison disciplinary rule. Here, the misconduct rises to the level of being a violation of the criminal law.
- c. After-Acquired Information About the Prisoner. In this situation, the Board or panel may have acquired some new material and information after it has made its final decision. The information about the prisoner's case appears, in the Board's or panel's judgment, to be so important as to require an immediate reconsideration of the case. In that event, the case will be presented to the Board or panel to review its decision in light of the new information.
- d. Failure of the Prisoner to Meet Conditions of Release. Finally, in the case where the Board has granted parole or provisional parole conditioned on the satisfaction of some requirement, and the prisoner has failed to satisfy that requirement, the Board or panel might want to review the matter in order to look into the facts and circumstances surrounding the prisoner's failure to do what was required.
- e. Requested by the inmate or the inmate's attorney. In these cases, the inmate or the inmate's attorney must submit in writing, within 30 days of the notice of rejection letter, a letter stating why he/she feels that the Parole Board should re-hear this case. The Parole Board will review this information and decide whether or not to grant a re-hearing. A letter will be sent to the inmate or the inmate's attorney notifying them of the Board's decision.

SC Board of Pardons and Paroles, Operations Manual, Part III, Re-hearings of Parole Cases, p. 44.

American Jurisprudence explains that the parole board has inherent power to reconsider a case if there is newly discovered evidence:

The paroling authority has inherent power to reconsider its grant of parole to a prisoner, and to rescind the grant for cause. Thus, a parole board acts properly in rescinding its vote on a parole where, after having initially voted to release the parolee, **the parole board discovered that it had failed to avail the victims of the parolee's crime of their statutory right to address the parole board prior to its vote;** after reopening the matter to allow such testimony, and after hearing from the parolee and his or her counsel, the board could rescind its earlier vote.

Until a prisoner is actually released, a parole board has the power to reopen and advance, postpone, or deny a parole which has been granted. **Reopening of a parole determination may be made to depend on the existence of "new information," either on behalf of, or in opposition to, the granting of parole, even if the new information was in existence,**

The Honorable Chip Huggins

Page 7

November 4, 2010

Conclusion

It is the opinion of this Office that a court would likely find that the SC Board of Pardons and Paroles may not conduct a re-hearing and re-vote simply because a member of the board desires to change his or her original vote. The board may only conduct a re-hearing if one of the following occur: 1) subsequent misconduct by the prisoner; 2) new criminal charges against the prisoner; 3) after-acquired information about the prisoner; 4) failure of the prisoner to meet conditions of release; 5) requested by the inmate of the inmate's authority. See, SC Board of Pardons and Paroles, Operations Manual, Part III, Re-hearings of Parole Cases, p. 44; 59 Am. Jur. 2d Pardon and Parole § 101.

Finality is important to maintain a healthy legal system. Therefore, public policy restrains the Board from rehearing a case for no reason other than a member of the board wants to change his or her decision.¹

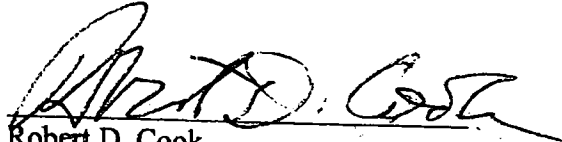
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

¹ If a member of the Board simply needs to correct an error, America Jurisprudence explains that "a parole board has the authority, as an agency performing quasi-judicial functions, to correct a clerical mistake in a parole order which mistakenly reflects the wrong parole release date or release information." 59 Am. Jur. 2d Pardon and Parole § 102. However, it is unlikely that correcting such an error would cause the Board to call a rehearing nor is there any indication in the hypothetical that the board member wishes to change his vote because of a clerical error.

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

4

MARK SANFORD
Governor



JIM McCLAIN
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440

May 2, 2003

Basil W. Akbar, #65498
Evans Correctional Institution
P.O. Box 29512-02
Bennettsville, South Carolina 29512

Dear Mr. Akbar:

I am writing this letter on behalf of the S.C. Board of Probation, Parole and Pardon.

The Parole Board heard your request for a rehearing on April 29, 2003. After thorough consideration, and after having re-examined the parole file, the Parole Board decided that the reasons stated in your request did not affect the decision of the Parole Board, and would not affect the decision of the Parole Board if they were to rehear your case. Your request for a rehearing was denied by the Parole Board.

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Director of Parole Board Support Services

GAB:mc

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

June 2, 2005

Basil W. Akbar, #65498
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Akbar:

I am writing this letter on behalf of the S.C. Board of Probation, Parole and Pardon.

The Parole Board heard your request for a rehearing on June 1, 2005. After thorough consideration, and after having re-examined the parole file, the Parole Board decided that the reasons stated in your request did not affect the decision of the Parole Board, and would not affect the decision of the Parole Board if they were to rehear your case. Your request for a rehearing was denied by the Parole Board. The Board's decision is final.

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

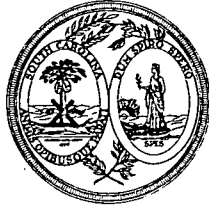
Gwendolyn A. Bright
Director of Parole Board Support Services

GAB:ym

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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

September 14, 2007

Basil W. Akbar, # 065498
Lee County Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Dear Mr. Akbar:

I am writing this letter on behalf of the S.C. Board of Probation, Parole and Pardon.

The Parole Board heard your request for a rehearing on September 12, 2007. After thorough consideration, and after having reexamined the parole file, the Parole Board decided that the reasons stated in your request did not affect the decision of the Parole Board, and would not affect the decision of the Parole Board if they were to rehear your case. Your request for a rehearing was denied by the Parole Board. The Board's decision is final.

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Director of Parole Board Support Services

GAB:pf

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

July 17, 2009

Mr. Basil Akbar, # 065498
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Dear Mr. Akbar:

I am writing this letter on behalf of the S.C. Board of Probation, Parole and Pardon.

The Parole Board heard your request for a rehearing on July 15, 2009. After thorough consideration, and after having reexamined the parole file, the Parole Board decided that the reasons stated in your request did not affect the decision of the Parole Board, and would not affect the decision of the Parole Board if they were to rehear your case. Your request for a rehearing was denied by the Parole Board. The Board's decision is final.

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
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

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

September 8, 2011

Mr. Basil W. Akbar(SCDC#65498)
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Akbar:

I am writing this letter on behalf of the S.C. Board of Probation, Parole and Pardon Services.

The Parole Board heard your request for a rehearing on September 7, 2011. After thorough consideration, and after having reexamined the parole file, the Parole Board decided that the reasons stated in your request did not affect the decision of the Parole Board, and would not affect the decision of the Parole Board if they were to rehear this case. Your request for a rehearing was denied by the Parole Board. The Board's decision is final.

Sincerely,

A handwritten signature in cursive script that reads "Heyward A. Hinton".

Heyward A. Hinton
Director of Hearings & Parole Board Support

HAH/eaw

and denied due process rights guarantees by State and Federal Constitution.

4. The Departments' violated its standard of review by rescinding its earlier vote(s) granting parole suitability void sufficient justification [no violation on prison rule/subsequent misconduct], votes cannot be revoked for any cause, for then it has passed beyond the control of the officer(s) granting it, and has become valid and operative act, (59 Am Jur 2d Pardon and Parole; SC Board of Paroles and Pardons, Operations manual, violated Appellant's liberty interest rights; arbitrary capriciously denied due process rights guarantees by Constitution.

5. The Department's arbitrary capriciously denial of annual parole review hearings in Appellant's case void of written controlling authority/operations manual, constituting conspiracy and fraud upon the Court; and further deny equal protection of the law when giving annual parole hearings to some parole candidates of same class, while denying others of same class.

6. The Department's arbitrarily and capricious deliberate hindered and impeded Appellant's access to the Courts by failure to adhere to Administrative Procedure Act when refusing to provide Court-ordered mandatory "forms" pursuant to "V. Special Appeal", applicability rules in this section that apply exclusively in matters heard on appeal from final decisions pursuant to Al-Shabazz v State, 527 SE 2d 742 (2000).

7. The Department's failure to perform non-discretionary legislative mandated ministerial duties to create an objective standard criteria for granting parole [SC Code Sec. 24-21-640]; and failure to create a validated risk and needs assessment tool, and establishment of procedures [SC Code Sec. 24-21-10(F)(1)], denied Appellant and/or caste of parole candidates protected liberty interest rights, by failing to meet mandatory statutory requirements.

s/ 
Basil W. Akbar, #065498

Basil W. Akbar 063498, F-6 B, Rm. 2213
Lee County Institution
990 Wiscoy Highway
Bishopville, S.C. 29010

ENTER-DEPARTMENTAL MAIL SYSTEM

RECEIVED

FEB 25 2016

SC ADMIN. LAW COURT

CLERK'S OFFICE
SOUTH CAROLINA ADMINISTRATIVE LAW COURT
POST OFFICE BOX 11667
COLUMBIA, S.C. 29211-1667

ENTER-DEPARTMENTAL MAIL SYSTEM

THE DEPARTMENT OF CORRECTIONS HAS NOT CENSORED
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS WRITTEN CONTENTS
LEE COUNTY INSTITUTION
STATE DEPARTMENT OF CORRECTIONS

LEE CI MAIL ROOM

FEB 23 2016

RECEIVED

EX. 6

(7)

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Basil W. Akbar, #065498,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Probation,)
 Parole and Pardon Services,)
)
 Respondent.)
 _____)

Docket No. 16-ALJ-15-0012-IJ

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Basil Akbar (Appellant) from a decision of the South Carolina Department of Probation, Parole and Pardon Services (Department or PPPS) denying him parole.

The Parole Board denied Appellant parole on September 24, 2015, the day after the parole hearing. Appellant requested reconsideration of the decision. However, the Department informed Appellant in a letter dated November 17, 2015 that his request for reconsideration was denied because "there is no appeal process for the routine denial of parole." Appellant filed his Notice of Appeal with this Court on April 19, 2016, later filing his brief on June 13, 2016.¹

DISCUSSION

Rule 59 of the Rules of Procedure for the Administrative Law Court (SCALC Rules) states in pertinent part that "[t]he notice of appeal from the final decision to be heard by the Administrative Law Court **shall be filed with the Court** and a copy served on each party,

¹ The Department misstated the date of Appellant's filing date at February 22, 2016. Appellant attempted to file a document entitled "Notice of Appeal," on which the date "February 22, 2016" appears. However, this document did not comply with SCALC Rules 57 and 59 (requiring a Notice of Appeal to be on the form prescribed by the Court pursuant to SCALC Rule 57) and was, therefore, not filed. Appellant did not file a proper Notice of Appeal until April 19, 2016. Additionally, even had Appellant filed the Notice of Appeal on February 22, 2016, it would still have been late.

Appellant also drafted documents entitled "Appellant's Request for Admission" and "Appellant's First Set of Interrogatories, and Production." Also, on August 2, 2016, Appellant filed a Notice of Motion and Motion to Compel, seeking the Court to require the Department to answer the aforementioned documents. However, these documents were never, nor could ever have been, filed in this Court, because such documents are appropriate only in contested cases, whereas this case involved an appeal. Moreover, Appellant has cited no authority that would allow such documents to be filed in an appeal before this Court. Therefore, the Department was not required to respond to Appellant's discovery requests, and Appellant's Motion to Compel is denied.

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including the agency, **within thirty (30) days of receipt of the decision from which the appeal is taken. . . .**” (emphasis added). *See also* S.C. Code Ann. § 1-23-600(E) and -380(1) (Supp. 2015) (authorizing appellate review by the ALC and requiring the filing and service of the notice of appeal within thirty days after a final agency decision or, if there was a request for rehearing, thirty days from the date after a decision as to that request). Thus, “[t]he requirement of [filing and] service of the notice of appeal is jurisdictional , *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for [filing and] service of the notice.” *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 413 S.C. 642, 647, 413 S.E.2d 575, 578 (Ct. App. 2015) (quoting *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008)).²

In this case, Appellant requested a reconsideration of his parole denial, and the Department denied his request on November 17, 2015. Appellant argues that the thirty-day filing period did not begin to run until after he received a final letter from the Department denying his request for the release of records relating to information upon which the Board relied in rendering its final decision denying Appellant parole. However, pursuant to SCALC Rule 59 and S.C. Code Ann. § 1-23-380(1), the thirty-day filing period begins thirty days after receipt of the final decision from which the appeal is taken. Because there was a request for reconsideration below, the Department’s November 17, 2015 denial of that request became the final decision from which the appeal was taken. Therefore, the thirty days began to run from the date of Appellant’s receipt of that letter denying his request for reconsideration.³

² These cases are based on Rule 203(b)(6) of the South Carolina Appellate Court Rules (SCACR). However, the same requirement under that rule is found in ALC Rule 59 with respect to a thirty-day filing and service requirement, the only difference being that in DEW cases, the thirty days starts from the date of mailing of the final agency decision instead of from the receipt thereof. Moreover, Section 1-23-380(1) requires “serving and filing notice of appeal [in the ALC] as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered.” (emphasis added). *Cf. Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 96, 668 S.E.2d 795, 797-798 (2008) (recognizing the jurisdictional nature of the service requirement in the revised version S.C. Code Ann. § 1-23-380(A)(1)). *See also S.C. Coastal Conservation League v. S.C. Dep’t of Health and Envtl. Control*, 380 S.C. 349, 377-378, 669 S.E.2d 899, 914 (Ct. App. 2008) (finding that the ALC was deprived of jurisdiction where the party failed to comply with the filing deadlines for requesting a review before the DHEC Board pursuant to S.C. Code Ann. § 44-1-60(E)), *overruled on other grounds by S.C. Coastal Conservation League v. S.C. Dep’t of Health and Envtl. Control*, 390 S.C. 418, 702 S.E.2d 246 (2010).

³ It is also noteworthy that Appellant’s request for documents that he may use in substantiating his appeal are not required or necessary for the filing of a notice of appeal.

Here, Appellant filed his Notice of Appeal on April 19, 2016, well beyond the thirty-day deadline, which expired on or around December 17, 2015. According to SCALC Rule 62, an Administrative Law Judge may dismiss an inmate's appeal for failure to comply with the rules of procedure for appeals or for failure to comply with any time limits set forth in an appeal. Appellant's delay is well beyond the time period set forth in the SCALC Rules. Since Appellant was afforded ample time to file his brief, failed to do so, and did not set forth any extenuating circumstances regarding his failure to do so, I conclude that this matter should be dismissed.⁴ Accordingly,

IT IS HEREBY ORDERED that Appellant's appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

September 23, 2016
Columbia, South Carolina

⁴ Appellant's brief included ten separate issues on appeal. However, in light of the Court's disposition of Appellant's appeal, the Court need not address these issues. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that an appellate court need not address remaining issues when disposition of a prior issue is dispositive). Similarly, in light of the Court's disposition of Appellant's appeal, the Court hereby denies Appellant's "Motion to Challenge Respondent's Record on Appeal as Submitted" filed on August 25, 2016 and his "Objections to Respondent's Brief in its Entirety and Motion to Strike Respondent's Brief" filed August 30, 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
Facsimile: (803) 734-9440
www.dppps.sc.gov/

November 19, 2015

Mr. Basil W. Akbar #065498 F-6, B
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

RE: S.C. Code Ann. §24-21-10(F)(1)

Dear Mr. Akbar:

I have been instructed by our Director Mr. Jerry B. Adger to respond to your letter dated November 2. Within your letter you are inquiring about the above referenced statute, which requires a risk and needs assessment be completed by the Department prior to your parole hearing.

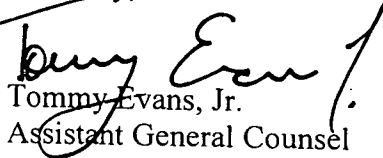
Pursuant to South Carolina law, the Department must develop a plan that includes, "a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the Parole Board shall use in making parole decisions." The risk and needs assessment used by the Department is called, the Correctional Offender Management Profiling for Alternative Sanctions or COMPAS. This assessment is completed by the Parole examiner through the process of questions asked to you and your family. Once completed, the information is place in a computer which will generate a report which assess your risk and needs if released on parole. This report is provided to the Board, which considers the results prior to a parole determination. This report is confidential and cannot be released pursuant to South Carolina law.

This is just an assessment, it does not affect parole if released, it is considered but will not make it more difficult to be granted parole, it does not change your parole status, and it does not involve a test being taken by yourself, nor is the final result is in a form of a guess.

As for your exhibit, that is a page from our old policy handbook which determines when you will be allowed to appear after being denied parole. This is the only page that in existence. This was preserved due to the fact it applies to all individuals convicted prior to 1981, which allows a two year wait before they can reappear before the board upon denial.

I hope this has answered any inquiries you may have regarding these matters. Good luck in all of your future endeavors. With kind regards I remain,

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

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