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**AUG 21 2017**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM RICHLAND COUNTY  
Administrative Law Court

The Honorable H.W. Funderburk, Jr., Administrative Law Judge  
Appellate Case No. 2016-002492

Melissa Burris, #212040,.....Respondent

v.

South Carolina Department of Probation, Parole and  
Pardon Services,.....Petitioner

**PETITION FOR WRIT OF CERTIORARI**

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**ATTORNEY FOR THE PETITIONER**

ATTORNEY FOR RESPONDENT

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**CERTIFICATE OF COUNSEL**

Counsel for the Petitioner hereby certifies that the Petition for Rehearing was timely made on May 8, 2017, and was ruled upon by the Court of Appeals on August 9, 2017.

**QUESTION PRESENTED**

1. Did the Court of Appeals err in deciding that it did not have jurisdiction over this decision due to the ALC's decision not being final?

## STATEMENT OF THE CASE

On September 11, 1993, an officer with the Anderson police department responded to a call at the Respondent's residence. Upon arriving, he witnessed the victim sitting in a chair unresponsive with several gunshot wounds. The officer requested the Respondent to provide him with the weapon which she gave him. The officer then contacted Emergency Medical Services who arrived and made a final determination of death. The Respondent was then taken into custody and charged with the offense of murder and possession of a weapon during the commission of a violent offense.

On January 5, 1994, the Respondent appeared before the Honorable H. Hall for the offenses of murder and possession of a weapon in the commission of a violent crime. Upon the conclusion of this appearance, the Court sentenced the Respondent to a period of incarceration for the remainder of her natural life for murder, and five years for possession of a weapon during the commission of a violent crime.<sup>1</sup> At the time the Respondent committed this offense, South Carolina law allowed an individual serving a life sentence for murder parole eligibility upon the service of twenty years.

On November 6, 2013, the Respondent made her initial appearance before the Parole Board. Upon the conclusion of this hearing the Board denied parole. The Respondent re-appeared before the Board on January 13, 2016. At the conclusion of this hearing the Board decided to award parole conditioned upon a favorable psychological examination. Because the Respondent served more than ten years prior to this hearing date, the law required her to be evaluated as to her mental condition and ability to conduct herself in society. The Respondent had to submit to this evaluation prior to her being released on parole. She was examined and evaluated by Dr. Robin Lyn Moody,

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<sup>1</sup> The Respondent completed this sentence on September 13, 1998.

Ph.D, who determined that the Respondent would not be able to conduct herself in society. After receiving the results of this evaluation the Board decided to rescind the previous conditional parole. In reexamining their decision, the Board decided to deny parole due to: 1) the nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; and, 3) use of a deadly weapon in this or a previous offense.

Upon receiving this denial of parole, the Respondent filed a notice of appeal in the Administrative Law Court (ALC). After submission of the final briefs, the Honorable H.W. Funderburk, Administrative Law Court Judge issued his decision. He determined that Dr. Moody is not a licensed psychologist; and therefore per statute, not qualified to issue a determination as to the Respondent's mental state and ability to function in society. He ordered the case remanded so a licensed psychologist can examine the Respondent and make a determination as to her mental state and ability to function in society. The ALC also ordered that upon this reexamination another hearing be held to determine if the Respondent is to be granted parole.

Upon receiving this decision, the Petitioner filed a notice of appeal before the South Carolina Court of Appeals. On May 4, 2017, the Court of Appeals issued an order deciding that the ALC had not made a final decision; therefore, the court did not have jurisdiction. The Petitioner immediately filed a petition for rehearing, which was denied on August 9, 2017. This Petition for Writ of Certiorari follows.

## ARGUMENT

1. The Court of Appeals did err in deciding that the ALC had not made a final decision; therefore, it does have jurisdiction to decide this matter.

The Petitioner submits that in accordance with rule 242(b), SCACR, there are novel and important reasons for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter.

The Petitioner submits that the Court of Appeals misapprehended its determination that the ALC had not made a final decision regarding these proceedings. The ALC determined that the Petitioner erred in not allowing a duly qualified psychiatrist or psychologist to conduct the examination. The denial of parole was overturned and the case remanded for another evaluation to be completed by a psychiatrist or psychologist. The ALC also ordered that a re-hearing be conducted to determine parole. The Court of Appeals seems to believe there is an opportunity for an appeal after this re-hearing. However, any appeal after this re-hearing will be moot, and have no value regarding the matter originally brought before the Court.

The Respondent is currently serving a life sentence for murder. At the time she committed this offense, South Carolina law allowed a person serving a life sentence for murder parole eligibility upon the service of twenty years. Upon the conclusion of her second appearance she was granted parole conditionally. Parole was granted on the condition that she be mentally evaluated pursuant to South Carolina law, *see*, S.C. Code Ann. §24-21-610 (2015). She was evaluated and determined unable to have the ability to adjust to life in society; therefore, her parole was rescinded, and she was ultimately denied parole.

This decision was appealed to the ALC who decided that pursuant to South Carolina law this evaluation must be completed by *a licensed* psychiatrist or psychologist. The statute however

does not mention licensed but only *duly qualified*, which Dr. Moody's qualifications reveal she is duly qualified to make this evaluation. The Petitioner wishes to appeal this final decision of the ALC that "duly qualified" can only mean "licensed," which Petitioner feels is an error in law, which the Court of Appeals has the authority to review.

The ALC determined that the Parole Board's decision was a reversible error and ordered a new examination and re-hearing. After this decision, the Petitioner immediately filed a notice of appeal before the Court of Appeals. The Petitioner argued that the ALC erred in the interpretation of this statute. The Petitioner argued that Dr. Moody falls under an accepted person who is exempted from requiring a license to perform psychological evaluations, *see*, S.C. Code Ann. §40-55-90(A)(1)(c)(2015). The Court of Appeals ultimately decided that the ALC did not make a final decision, so it did not have jurisdiction over this cause of action. The Petitioner disagrees.

The Court of Appeals decided it did not have the jurisdiction to make a decision so it dismissed this appeal. Within its decision the Court of Appeals cited Section 1-23-610 of the South Carolina Code of Law which states:

(A)(1) for judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party received the final decision and order of the administrative law judge. Appeal in these matters is by right. (2) except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge's decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions from which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine or alcoholic liquor. Upon motion the administrative law judge may grant, or the court of appeals may order, a stay upon appropriate terms.

S.C. Code Ann. §1-23-610(A)(1-2)(2016)

The Court of Appeals ruled that it is not allowed to rule on interlocutory decisions. In the absence of a statute or rule that permits the immediate appeal of an interlocutory order, only final orders are generally appealable. *Culbertson v. Clemens*, 322 S.C. 20, 471 S.E.2d 163 (1996). An order is interlocutory and not final when “there is some further act which must be done by the court prior to a determination of the rights of parties.” *Mid-State Distribs., Inc. v. Century Imps. Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993). The Petitioner submits that the order of the ALC is final. The ALC remanded this case for another evaluation to be completed and another hearing held. The initial subject of appeal that was raised by the Appellant, was whether or not it was lawful for Dr. Moody to give her opinion regarding the ability of the Respondent to function outside of prison. The decision of the ALC was that Dr. Moody was not qualified to make this determination. That decision was final, so the Court of Appeals does have jurisdiction to review the decision of the ALC.

Cited within the order of dismissal is the South Carolina Supreme Court case of *Charlotte-Mecklenburg Hospital Authority v. S.C. Dept. of Health and Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010). In *Charlotte-Mecklenburg*, this court decided that the decision was interlocutory and not final so the appeal was subject to dismissal. This case is not identical to *Charlotte-Mecklenburg*. In that case the issue before the Court was whether or not the Department of Health Environmental Control (DHEC) made the proper determination of which party was entitled a certificate of need. The ALC remanded the case for DHEC to make a decision. Once DHEC made the decision as to which party was entitled this certification, that decision was once again appealable. In the present case, the issue brought before the lower court was decided. There is no further determination that could be made concerning the qualifications of Dr. Moody. The

ALC determined that she was not qualified and ordered a new parole hearing. For this decision to be interlocutory the Department would have to be able to make a decision on the merits of Dr. Moody's qualifications, which would be re-heard by the ALC. The decision made by the ALC is not reversible by the Board; only the Court of Appeals or this Court can reverse a final decision of the ALC. The Court of Appeals has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree in the circuit court, family court, a final decision of an agency, a final decision of an administrative law judge, or the final decision of the Worker's Compensation Commission. S.C. Code Ann. §14-8-200(2016)

There is no further act that can be made regarding this decision. Once the ALC made this decision the Petitioner only had two actions: one, to have the Respondent evaluated by another doctor; or, two, appeal this decision to the Court of Appeals. This issue cannot be brought again before the ALC; therefore, the decision made on this issue was final. In *Good v. Hartford Accident & Indemnity Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942), this Court decided what makes a decision final, in *Good* it states:

“A judgment order of decree to be final for purposes of an appeal or error, must dispose of the cause, or a distinct branch thereof, as to all parties, reserving no further questions or directions for future determination. It must be finally dispose of the whole subject – matter or be a termination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined. In other words, a final judgment is one which operates to divest some right in such a manner as to put it beyond the power of the Court making the order to place the parties in their original condition after the expiration of the term; that is, it must put the case out of Court, and must be final in all matters within the pleadings.”

*Good*, at 212, quoting, 2 Am.Jur 860, Section 22.

In South Carolina, an immediate appeal may be taken where the rights of the State would be substantially impaired if the appeal is not heard. When error in the decision or ruling cannot be

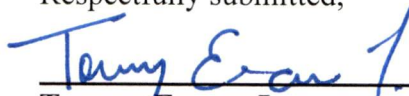
vindicated on appeal, a substantial right is involved. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000). It is clear by the decision of the ALC that the right of the Appellant would be dramatically impaired due to the fact there are limited number of psychiatrists or psychologists available within the State, many of whom are not willing to perform such evaluations within the state's prison system. This decision caused a substantial delay in the final decision of many individuals who are awaiting the chance to be released on parole. The Petitioner should be allowed to appeal the ALC's determination that Dr. Moody was not "duly qualified." A remand for a new evaluation by a different doctor and new hearing makes this decision final, and moot if appealed again before the ALC. This decision can only be reviewed by a higher court.

There is also the question of individuals who have been given a positive evaluation by Dr. Moody, and who as a result have been released on parole. If this evaluation was done in error, each evaluation completed by Dr. Moody was also done in error, which makes it subject to remand. The ALC remanded the case back to the Board for a future evaluation and another parole hearing; however, the decision regarding the qualifications of Dr. Moody was the only issue raised before the ALC. This is a final decision which cannot be brought again before the ALC. The Court of Appeals erred in its decision not to recognize this as a final decision. The Court of Appeals should have proceeded with this appeal.

**CONCLUSION**

The Court of Appeals did have jurisdiction to hear this case due to the fact the decision of the ALC was final. We respectfully request this Court to grant this writ of certiorari and review the decision of the Court of Appeals.

Respectfully submitted,

  
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**Tommy Evans, Jr.**  
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Columbia, South Carolina  
August 17, 2017

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**CERTIFICATE OF SERVICE**

I, Dawn K. Nichols, Executive Assistant, hereby certify that this 17<sup>th</sup> day of August, 2017, I served the following documents by first class mail, postage prepaid as follows:

1. Petition for Certiorari; and
2. Certificate of Service;

I further certify that all parties required by Rule to be served have been served

Tommy Thomas, Esquire  
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