

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
THE HONORABLE JOHN D. McLEOD, ADMINISTRATIVE LAW JUDGE

CASE NO. 16-ALJ-0018-AP

CASE NO. 2016-0002131

Johnny Burton, #213281.....Respondent,

v.

South Carolina Department of Probation

Parole and Pardon Services.....Appellant,

FINAL BRIEF OF RESPONDENT

Johnny Burton, #213281
Respondent
Perry Corr. Inst
430 Oaklawn Rd.
Pelzer, S.C. 29669
REPRESENTATION PROSE

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of issues on appeal.....iii

Statement of the case.....i

Arguments.....2

 1.) Whether respondent was denied due process in not
 being notified of the COMPAS assessment prior to
 the hearing.....2

 2.) Whether the ALJ made an order that can not be
 accomplished due to the notice requirements found
 in South Carolina Law.....5

Conclusion.....6

TABLE OF AUTHORITIES

CASES

Cooper V. S.C. Dept. of Probation, Parole, and Pardon Services,
377 SC 489, 661 SE 2d. 106 (SC 2008.....2

Coran V. Joe Jen Kids Realty INC., 263 SC 332, 334, 210 SE.
2d. 309, 310, (1979.....2

Mortg. Elec. Sys. INC., V. White, 384 SC 606, 616, 682 SE 2d.
498, 503 (CT, APP. 2007.).....3

Mallet V. Mallet 323, SC 141, 147, 473 SE 2d. 804, 808
(CT. APP. 1996).....4

CONSTITUTION

Fourteenth (14th) Amend. U.S.C.A. & S.C. Const. Art. I§3.....2

STATUTES

S.C. CODE ANN. § 24-21-10 (F) (SUPP. 2015.....2

S.C. CODE ANN. § 24-21-640 (SUPP. 2015).....2

STATEMENT OF ISSUE ON APPEAL

- 1.) Was the appellant denied due process when he was not informed of the COMPAS risk assessment?

- 2.) Did the ALJ make an order that can not be accomplished due to the notice requirements found in South Carolina Law?

STATEMENT OF THE CASE

Appellant was indicted at the 1994 term of the Anderson County grand jury of the offence(s) of murder, and pointing a firearm and carrying a pistol. Appellant appeared before the Honorable H. Dean Hall, on April 11, 1994 and proceeded to a jury trial and was sentenced shortly thereafter for the offences and received a life prison term for murder and five years imprisonment for the firearm conviction.

Appellant was seventeen (17) years at the time of his offence conviction and sentence. S.C. law provided that an individual serving a life sentence for murder would become eligible for parole following completion of twenty-years of his sentence. Appellant initially appeared before the Board of Probation, Parole and Pardon Services (the Parole Board) on February 20, 2014, and the Board denied him parole following that hearing.

The reason for denial was due in part to 1) nature and seriousness of current offence; 2) indication of violence in this offence or previous offence; and, 3) use of deadly weapon in this or previous offence. Appellant's most recent appearance before the Board on April 20, 2016, is among the issues here.

Appellant asserts that he is being deprived of liberty interest in parole criteria of 24-21-640 and 24-21-10 (F) (1 of the South Carolina code (Supp. 2014). Appellant also contend he is being denied due process of law by the additional adopted procedures parole criteria.

ARGUMENT

Was respondent denied due process in not being notified of the COMPAS assessment prior to the parole hearing?

The respondent argues that the SC Parole Board failed to give him a COMPAS assessment prior to his most recent parole hearing. In "Cooper V. S.C. Dept. of P.P.P.S.," 377 SC 489, 661 SE 2d. 106 (2008) (Holding an inmate has a Created Liberty interest in requiring the board to adhere to Statutory Criteria in rendering a decision). S.C. CODE ANN. § 24- 21-10 (F) (1) Supp. 2015) mandates "Establishment of a process for adopting a validated 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, including additional objective criteria for determining parole "must be more available to all prisoners at the time of their incarceration and the general public,"....due process violation has been committed if a parole board deviates from or renders it's decision without consideration of the appropriate criteria, it essentially abrogates an inmates right to parole eligibility and this infringes on a stated created liberty interest... See: id. Cooper V. SC Dept. of PPS (SC 2008) deny him due process pursuant to 14th Amend. U.S.C.A. & ART. 1§3 of S.C. Const., S.C. CODE § 24-21-640 (Supp. 2015).

The ALJ held "There is nothing in the record before the court to substantiate that the inmate was ever notified or made aware of the COMPAS assessment. "In it's brief. PPS argues that inmate was informed of the criteria because he was given a copy of the criteria prior to his hearing. See: Coran V. Joe Jenkins Reality INC." 263 SC 332, 334, 210 SE 2d. 309, 310 (1974) (The Burden of Proof is on the appellant to

convince [An Appellant Court] that the lower court was in error
....The criteria for parole consideration in Burton's case
at hand, the record before the ALJ does not substantiate that
the inmate was informed of the COMPAS assessment....See; "Mortg.
Elec. Sys. INC. V. White.," 384 SC 606, 616, 682 SE 2d. 498,
503 (CT APP. 2009) It is not sufficient for party....to simply
allege bias or prejudice, (internal quotation marks omitted).

As a result the ALJ held that the inmate was denied due process because he was not informed of the COMPAS assessment, which is a mandatory criteria for determining parole.

The ALJ ruled that the inmate is entitled to a new parole hearing. And that the SCDPPP's shall inform inmate of all criteria that will be considered by the parole board, including the COMPAS assessment also to enter proof in the record that inmate was informed of the COMPAS assessment See: "Mallet V. Mallet," 323 SC 141, 147, 473 SE 2d. 804, 808 (CT. APP. 1996) [The fact a court] ultimately rules against a litigant is not proof of prejudice by the court.

The ALJ ruled in favor of the inmate and reversed and remanded to the parole board to hold a hearing within thirty (30) days of the date of the order which was October 12, 2016 and it is so ordered by John D. Mcleod, judge of the South Carolina administration law court.

The respondent agrees with the administrative law court did not error in it's ruling that the South Carolina Dept. of Probation, Parole, and Pardon Services did violate his due process rights (14th Amend. U.S.C.A.) by failing to give him notice of the COMPAS assessment prior to his most recent parole hearing as mandated by S.C. CODE ANN. § 24-21-10 (F) (1) (Supp. 2015).

The respondent respectfully ask the SC court of appeals to affirm the decision and uphold the ruling of the SC administrative law court and remand to the SC Parole board with instruction's to hold a hearing within thirty (30) days of his order which was October 12, 2016.

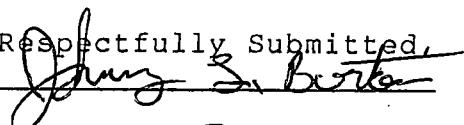
2.) Did the ALJ make an order that can not be accomplished due to the notice requirements found in South Carolina Law?

The respondent argues that the ALJ did not error in it's decision and order that South Carolina Dept. of Parole Board give inmate a new parole hearing within thirty (30) days of his order, which is October 12, 2016 and also ordered that they give him a COMPAS assessment within the thirty (30) days prior to the actual hearing.

The respondent respectfully ask the SC court of appeals to affirm the decision and uphold the ruling of the administrative law court, reverse and remand to the parole board with instructions to hold a hearing within thirty (30) days of the court of appeals ruling and to order that a notice be given of a COMPAS assessment prior to the hearing..

CONCLUSION

Based on the foregoing reason's the ALJ did not error in correctly remanding the final decision of the parole board, therefore the respondent respectfully request the final decision of the administrative law court be affirmed.

Respectfully Submitted,
S/ 
Johnny Burton, #213281
Perry Corr. Inst.
430 Oaklawn Road
Pelzer, S.C. 29669
REPRESENTATION PROSE.

Greenville, South Carolina
September 20th, 2017

CC: Tommy Evans Jr. Assistant General Counsel

Johnny Burton, Pro se