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ORIGINAL

IN THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Ralph King Anderson III, Administrative Law Judge
Docket No. 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.

RECORD ON APPEAL

RECEIVED
[illegible] 16 [illegible]
SC Court of Appeals

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Basil W. Akbar, #065498	)	
Appellant,	)	Case No.: 16P012
	)	
vs.	)	
	)	APPELLANT'S BRIEF
South Carolina Department of	)	
Probation, Parole, & Pardon	)	
Services	)	
Respondent.	)	
	)	

TO: THE HONORABLE JUDGE ANDERSON, ADMINISTRATIVE LAW COURT

STATEMENT OF ISSUES

1. Does South Carolina Department of Probation, Parole and Pardon Services (Department), failure to promulgate new objective criteria; and neglect of duty to give formal notice thereto prior to citing provision 24-21-10(F)(1), SCRCP, in Notice Rejection letter denied parole candidate Due Process.

2. Does the Department's arbitrary capricious conduct usurping similar class candidate's annual parole hearing to bi-annual, serving life sentence prior to 1981, void certified administrative policy; law or regulation, denied Due Process, and Equal Protection of the Law.

3. Does Due Process requirement of the Fourteenth Amendment apply to parole release determination proceeding; and are the procedures used by the Department in part constitutionally inadequate, and furthered violates Double Jeopardy Clause/ Rule of Evidence.

4. Does South Carolina Statutory Parole Criteria [SC 1964 Code Sec. 55-612] creates an exception and liberty interest to conditional parole when candidate meet statutory standards for release, despite

Department's discretionary function that results in abuse of discretion.

5. Does South Carolina 1964 Code Sections 55-611, and 55-611.1, read in concert mandates ten (10) years paroleable life sentence be treated as thirty (30) years day for day sentence for all purposes including release date.

6. Does the Department's failure to inform Appellant on record what Department felt in Appellant's file, reasons to rescinding "AYE" votes to "NAY" votes arbitrarily, for impermissible reasons or no reasons denied Due Process.

7. Does the Department's arbitrarily denying Appellant's request for parole reconsideration/re-hearing, denied liberty interest rights and Due Process.

8. Does the Department's failure to advise Appellant of adverse information contain in file upon request; and failure to advise what portion of SC Code 1964 Sec 55-612/24-21-640, and criteria from 1212 that Appellant met, or fail to meet, deny Due Process.

9. Does the Department's classifying Appellant's [1971] offense as violent constitutes Ex Post Facto Clause violation.

10. Does the Department's traditional procedural use of same five "Finding of Fact" elements as the primary rejection reasons fail to concur with legislative intent and offends process deny Due Process; and for said reasons seeks Injunctive Relief for issues 1-10.

STATEMENT OF THE CASE

On September 1971, the Appellant was sentenced to a ten (10) year

paroleable life sentence for murder, then classified as Felony, and allowed to participate in programs. Annual parole review hearings were common practice for all prisoners after initial rejection, except for death penalty prisoners. On April 1981 he was granted conditional parole, and June 1985 Appellant's parole was revoked for drug trafficking [1984 & 1985] felony convictions. Subsequently, the Department usurp paroleable life sentence to permanent non-paroleable for 14 years, until November 2001 after extensive litigation.

Appellant submits that he is not challenging a routing denial of parole, but rather whether the Department's actions and procedures were improper; irregularities in procedures; disparate in treatment; ex post facto prohibitions, and due process issues. In addition, the Department's correspondents dated September 24, October 7, November 17, and November 19, 2015; and September 23, 2015 incomplete parole review process; and that the Department must promulgate policy section "Current Parole Investigation"; verification page, and date subscribed, plus provide appeal form on request to appeal Agency final decision. On February 22, 2016, Appellant attempted to file Notice of Appeal in the Administrative Law Court, however it was returned unprocessed pursuant to Memorandum stating, ". . . a copy of the final decision from the Department of Probation, Parole and Pardon Services must be attached to the Notice of Appeal."

This matter now comes before the Court pursuant to "Notice of Appeal, and Petitioner's Petition to Advance Grievance to Administrative Law Court for Good Cause Shown", by Basil W. Akbar (Appellant), an inmate incarcerated with the South Carolina Department of Corrections, and the Department fail to defend. The Parole Board and South Carolina Department of Probation, Parole and Pardon Services (Department), fail to provide Appellant with copy of Final Agency Decision, and copy of required Notice of Appeal form, and the Honorable Court granted leave to proceed. Appellant raise the following issues, and arguments in his appeals:

ARGUMENTS

I.

Does the Department failure to promulgate new objective criteria; and

neglect of duty to give formal notice thereof prior to citing provision 24-21-10(F)(1), SCRCP, in Notice Rejection letter denied parole candidate due process.

The Appellant submits that the Department must promulgate regulations setting forth specific objective criteria that may be used in parole decision making. The Department's failure to promulgate and/or give advance notice of new objective criteria in a timely manner prior to [September 23, 2015] parole hearing that he may prepare totally for parole review hearing, violated State Constitution, rules, regulations, and procedural laws that create protectible liberty interest for advance notice, and right to know what criteria entails. Department's failure to perform required non-discretional legislated ministerial duty resulted in undue prejudice. Appellant submits he was not made aware of amended criteria/SC Code Sec 24-21-10(F)(1) until after citing provision in parole rejection letter. Mere mention of citation in rejection notice and nothing more does not satisfy legislative intent, or minimum due process. The Department did arbitrarily deprived Appellant of entitled information related material, and alluding to something not done, does not meet legislature impose statutory obligation of Sec 24-21-10(F)(1), denied due process, See, Wolf v McDonnell, 418 US 539, 564, 94 SCt 2963 (1974). When Department's decisions are made outside legislative intent, and procedural guidance due process is violated. See, Exhibits 1, 2.

ARGUMENT

II.

Does the Department's arbitrary capricious conduct usurping similar class candidate's annual parole hearings to bi-annual, serving life sentence prior to 1981, void certified administrative policy; law, or regulation, denied due process, and equal protection of the law.

The Appellant submits that he is being denied equal protection of the laws in that he is being treated differently from similarly situated inmates who recieve annual parole hearings. The "Sine Qua Non" of an equal protection claim is a showing that similarly situated persons recieved disparate

treatment. Grant v SC Coastal Council, 319 SC 348, 354, 461 SE 2d 388, 391 (1995). In instant case, the record on Appeal does not contain the documentation necessary to allow for a proper analysis of this claim, despite Appellant's request for concise policy/manual number containing subject, "Current Parole Investigation", verification page and signature; date inscribed; and all additional adjoining and extension of pages, See, SC Codes Sections 19-5-10-220; and Rule 44 (a)(1), SCRCP, that the Department contends support their posture to deny annual parole review hearings to inmates serving 30 years or more convicted prior to 1981. See, Exhibit 3, . . . so vague that a person of common intelligence must guess at its allege application. However, Appellant submit that said document arise/deduce from SC Code Ann Section(s) 16-1-60 and 24-21-645, 1986 Omnibus Crime Bill, and predicate had no existence or authority at time of Appellant's offense . . . nor can Department prove otherwise. In support the Appellant submits, Exhibit 2-A, per legal counsel Tommy Evans, ". . . Policy not preserved." It must be concluded that said policy/manual has been destroyed by the "proponent" in bad faith. In addition, in 1993 said suspect policy had no existence, See, Exhibit 4, where Department argued Sec 24-21-645 applied, instead of suspect policy. This Honorable Court must take judicial notice, that no court of proper jurisdiction has ever judicated this novel issue for authenticity of said document and admissibility, See, State v Rich, 293 SC 172, 359 SE 2d 281 (1987); Also, Rule 901 & 902, SCRE.

The Appellant further submits he is being deliberately treated differently from similarly situated inmates that recieves annual parole hearings [See, SC Code Sec 24-5-90; SC Const Art I, Sec 3], while denying him annual review, See, cases of, Ralph L. Ervin, #051231; Ismail Muhammad, #091408; Larry Logan, #109472, etc.. Furthermore, the Department arbitrary capricious failure to promote uniformity in procedures with respect to those recieving annual review changed to biannual sentence prior to 1981, See, cases of, James McPhall, #056625; Rufus Muldrow, #065743; Nathaniel Sumter, #081695; Kenneth Owen, #083964, etc.. Such irregularities in Department's practice discriminate against a class of inmates of similar class denied equal protection of the law. Prior to 1981, there was no statute that explicitly govern the frequency of parole hearings with explicit instruction, rather annual parole hearings by the Department was so permentent, and well settled as to having the force of law, See, Anela v City of Wildwood, 790 F2d 1063,

1064; Monell v New York City of Social Services, 436 US at 690-91. However, annual parole hearings was a matter of an "application", See, SC 1952 Code Sec 55-611.1, at pertinent parts, ". . . The Board shall review his case, irrespective of whether or not any [application] has been made therefor"; See, SC 1952 Code Sec 55-556, ". . . The Supervisor of parole may conduct survey of the State Penitentiary, County Jail, and Camps and shall obtain such information as will enable the Board to pass intelligently upon all [application] for parole"; See, SC 1952 Code Sec 55-616, ". . . But such prisoner shall be eligible to parole thereafter when the Board thinks such parole would be proper"; See also, SC Code Ann 24-21-960(B), "Any individual who has an [application] for pardon consideration but denied, must wait [one year] from the date of denial before filing another pardon application and fee." The language in those provisions are analogy and agree with one another in some respects, or comparison basis, on application and one year effect. Moreover, annual parole reviews did not become an issue in South Carolina until 1992, See, California Dept of Corrections v Morales, 115 SCt 1597 (1995).

Appellant submits that the Department arbitrarily denied him equal protection of the law; changed annual parole review to biannual void certified authority; and fail to promote uniformity in procedures.

ARGUMENT

III.

Does due process requirement of the Fourteenth Amendment apply to parole release determination proceeding; and are the procedures used by the Department in part Constitutionally inadequate, and furthered violated double jeopardy clause/rule of evidence.

The Appellant submits that the Department's use of "boiler plate" reasons as predicate to deny parole upon immutable aspects of criminal liability facts, and civil infraction not susceptible to change, and nothing more:

* Nature and seriousness of current offense
* Indication of violence in this or previous offense
* Use of deadly weapon in this or previous offense
* Prior criminal record indicates poor community adjustment
* Failure to successfully complete a community supervision program

If the above immutable aspects reasons are allowed as permanent factor for denying parole, would usurp him permanently unsuitable for parole. A tribunal that render conclusion drawn from <u>stale</u> facts [40 years later] that prejudice parole candidate is unfair, and renders procedure Constitutionally inadequate, when Department's decision merely turn on Appellant's past, rather than what he has become. At some point the Department must be estop and barred from alleging inferred finding of fact statements in good conscience and fairness. Probative value of using said facts outweigh its prejudice. South Carolina Rules of Evidence 403 and 609 (SCRE) exclude criminal convictions in civil matters. Prior convictions are used only to impeach credibility, and should not be used to show parole candidates are bad persons, or that they ought to be denied parole. Since there are no dispute regarding "Finding of Facts" statements it only serves to prejudice candidates because it fail to prove/disprove matters already settled, or parole suitability after 40 years. Furthermore, "Finding of Facts" as used appears to violate parole candidates "double jeopardy" rights of the Fifth Amendment conflicting with and deviates from legislative intent for granting parole, and inconsistent with the logic plan of legislature to grant parole. The fact of being twice punish or penalize substantially for the same criminal liability and administrative misconduct violates Fifth Amendment, repeatedly. In view of the South Carolina Statutes (1952/1964 Code Sec 55-612) "Circumstances Warranting Parole", provide for release on parole after:

> "The Probation, Parole, and Pardon Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it shall appear, to the satisfaction of the Board, that the prisoner has shown a disposition to reform that, in the future, he will probably obey the law and lead a correct life, that by his conduct he has merited a lessening of the rigors of his imprisonment, that the interests of society will not be impaired thereby and that suitable employment has been secured for him."

The Department abused its discretion/authority by arbitrarily denying suitable parole candidates unfairly upon immutable aspect not susceptible to change. Due process also requires that the reasons for denying parole be rationally related to the legislative written statute that legislative branch approved, and Department has adopted. <u>See</u>, <u>Greenholtz v Inmates of Nebraska Penal & Correctional Complex</u>, 442 US 1, 99 SCt 2100 (1979).

The Appellant submits that due process does apply to parole release

determination proceedings, and that prisoner's right to consideration for parole is an aspect of liberty to which the Due Process clause applies, since South Carolina has made parole an integral part of the penological system.

ARGUMENT

IV.

Does South Carolina Statutory [SC Code 1964, 55-612] Parole Criteria creates liberty interest to conditional parole when candidate meet statutory standards for release, despite Department's discretionary function that results in abuse of discretion.

The Appellant submits that the statutory language created a protectible expectation of parole, and that the use of the words "shall" and "will" in the statutory criteria [SC Code 1964, 55-612] creates a presumption that a prisoner would be parole unless the statutory designated reasons for parole denial are found to exist:

1. Shown disposition not to conform
2. Shown disposition not to obey the law and lead a correct life
3. Shown by his conduct not to merit lessing of the rigors of imprisonment
4. Shown that the interest of society will be impaired thereby
5. Shown continued vocational training needed to secure employment

SC Code 1964, Sec 55-612, calls for a prisoner to be paroled when the Department determines that there is a reasonable probability that the prisoner can be released without detriment to the community or to himself. Since South Carolina has made parole an integral part of its penological system and provided those eligible for parole are to be released on parole unless one or more of the reasons for denial parole specified in the statute is found to be present. The authority/discretion to deny parole must not be exercised arbitrarily. SC Code 1964, Sec 55-612, provides the prisoner with a justifiable expectation rooted in state law that they will be conditionally released if they meet the statutory criteria/standards.

Abuse of discretion occurred where Department's arbitrary capriciously fail to exercise sound reasonable logical/fair discretion in decision making, using procedure that incorporate immutable aspects in decision making unfairly incompass a aim to accomplish beyond what could be fairly achieved. [See,

Rejection letter(s) "Finding of Facts conclusion, Exhibits 5, 6, 7.] Regulation for denying parole places a substantial obstacle and unachievable burden in the path to achieve parole, which Department routinely/wrongfully uses to restrict granting parole, is completely irrational when statutory criteria does not require overturning judicial/administrative facts to be parole suitable.

Appellant challenge the method/procedure by which the decision is made, not the decision to grant or deny parole, but that decision making was exercised in an arbitrary or capricious manner. Furthermore, though there is no absolute right to parole, there is a right to proper considerating . . . and eligibility for parole cannot be determined on illegal or improper grounds, See, Moore v Florida Parole and Probation Commission, 289 So2d 719.

ARGUMENT

V.

Does South Carolina 1964 Code Sections 55-611., and 55-611.1 read in concert mandates ten (10) years paroleable life sentence be treated as thirty (30) years day for day sentence for all purposes including release date.

The Appellant contends that calculation of sentence related earn work credits (Sec 24-21-635) and actual days served, pursuant to SC Code 1964 Sec 55-611., read in concert with SC Code Sec 55-611.1 mandates ten (10) years paroleable life sentence be treated as thirty (30) years. When Appellant's offense (1971) occurred, South Carolina General Assembly Code of Laws Sections 55-611. and 55-611.1 provided that ten (10) years paroleable life sentence granted statutory right to have life sentence treated as 30 years day for day for all purposes including unconditional release date. South Carolina Codes of Criminal Procedures and Statutory Law provided the following:

Sec 55-611.:
(1). Who, if sentenced for not more than thirty years, shall have served at least one-third of the term for which he was sentenced.
(2). Who, if sentenced to life imprisonment or imprisonment for any period in excess of thirty years, shall have served at least ten years, or
(3). Who, if he is a first offender and is sentenced for an

indeterminate term shall have served the minimum for which he was sentenced, not deducting in any instance any allowance of time for good behavior.

Sec 55-611.1:
After a prisoner has served one-third of his sentence, if such sentence exceed one year, the Board shall review his case, irrespective of whether or not any application has been made therefor, for the purpose of determining whether or not such prisoner is entitled to any of the benefits provided for in this chapter.

South Carolina Office of the Attorney General Opinion No. 23719, February 25, 1966, avers that Sec 55-611.1 of the 1962 Code makes it mandatory that the SC Probation, Parole, and Pardon Board review prisoners record for parole consideration if he has served one-third of sentence. However, since there was no way to calculate a third of life sentence, Sec 55-611.1 defined (ten years paroleable life sentence) as a term of thirty years or more, for parole eligibility after serving the minimum of ten years, and for all purposes including release date. See, State v Bobby E. Bowden, 668 SE 2d 107 (2008) (held, life sentence to be considered as a sentence of 40 years for all purposes including release date.) Although the language of the North Carolina and South Carolina Statutes is not identical, the statutes are similar in crucial aspects, as a results Appellant life sentence has expired.

ARGUMENT
VI.

Does the Department's failure to inform Appellant on record what Department felt in Appellant file reason(s) to rescind "AYE" votes to "NAY" votes, arbitrarily for reason or no reason denied due process right.

The Appellant submits that the Department's [paroling authority] has inherent power to reconsider its grant of parole/votes awarded a prisoner, and rescind their decision for cause (emphasis added), upon the existence of new information sufficient to justify.

However, grant of parole/votes awarded if not void in its inception cannot be rescinded for any cause, because it has passed beyond the control of the Board member(s) granting it, and has become valid and operative act.

(59 AM JUR 2d pardon and parole Sec 42)

The Department's Operations Manual explains that the purpose of the hearing is to determine the facts and to gather any other material that may bear on the parole decision one way or the other and based on all those facts, determine whether or not the grant of parole/AYE vote(s) should be rescinded, amended or stay the same, unless additional material is provided, otherwise there would be nothing to evaluate at subsequent hearing by specific member(s). Appellant submits that the Department may not rescind action later simply because a member(s) desires to change his/her conscious "AYE" vote . . .void subsequent misconduct by the prisoner, etc..

To the contrary the Department's Board Member(s) in May, 2007, majority members voted to reject parole, except for Mr. James Williams. On May 22, 2009, majority members voted to reject parole including [Mr. James Williams], except Mr. Orton Bellamy. On July 19, 2011 all seven members voted to deny parole. "AYE" votes for granting parole was arbitrarily capriciously rescinded on reproduction of identical facts, and additional productive progress (Programs Certificates) reports. Appellant further submits that AYE votes for granting parole was switched to "NAY" votes by same member(s) at subsequent review, void cause/without justification, having been awarding three or more votes for parole suitability void explanation or account for arbitrary capricious decisions founded on whimsical discretion/preference, rather than on reasons and facts, denied due process. SEE, Exhibits 8.

ARGUMENT

VII.

Does Department's arbitrarily denying Appellant's request for reconsideration/re-hearing of parole rejection, denied Liberty Interest rights and Due Process.

The Appellant submits that the Department's [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
b. New criminal charges against the prisoner
c. After-acquired information about prisoner

d. Failure of the prisoner to meet conditions of release

e. Requested by the inmate or the inmate's attorney

Pursuant to Section(e), of "South Carolina Board of Parole and Pardons Operations Manual, Part III, Rehearing of Parole Cases", reads as follows:

> "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 be sent to the inmate's attorney notifying them of the Board's decision."

As a results of denying Appellant an opportunity to appeal parole rejection, See, Exhibits _____, 9-B. The Department did arbitrarily capricious denied him protected liberty interest rights, and rights guaranteed him by the Fourteenth Amendment of the United States Constitution.

ARGUMENT

VIII.

Does Department's failure to advise Appellant of adverse information contain in file upon request; and failure to advise what portion of SC Code 1964 Sec 55-612/24-21-640, and criteria form 1212 that Appellant met, or fail to meet denied Due Process.

The Appellant submits denying parole candidate request to be advised of adverse information contained in parole file denied due process. The Department denied request to given access to parole file prior to his hearing or review that he may correct, rebut, or explain any adverse information in said file. [See, Exhibit(s) _____, 10-C]. Because decision following a review is based solely on the information in the file without input, both the prisoner and society in general have a substantial interest in seeing that a parole release determination is made on the basis of accurate information and informed decision. Minimum due process requires that an inmate in South Carolina seeking parole be advised of information in his file. In order for an inmate to have meaningful consideration of parole application, it is essential that they be advised of such adverse information and given opportunity to rebut or explain the part he believes are incorrect. See, Williams v Missouri Board of Probation and Parole, 585 F 2d 922 (8th Cir);

Greenholtz, 442 US at 13, denied due process rights.

ARGUMENT

IX.

Does the Department's classifying Appellant's [1971] offense as violent constitutes Ex Post Facto Clause violation.

The Appellant submits that when his offense occurred [murder; armed robbery; assault and battery with intent to kill; rape; and kidnapping], was define under statutory proviso as "Felony", See, South Carolina Code Section 16-11; State v King, 150 SC 251, 155 SE 2d 409.

However, violent classifications imply connotation different from felon/felony offender. Violent classifications characterization incompus, but not limit to:

* harsher punishment/sanctions
* restriction enhanced/priviledge limited
* greater quantum of parole votes & larger quorum of Board members
* heighten risk assessment score/security score
* bi-annual parole review if sentence after 1986

The South Carolina Department of Corrections currently classify Appellant's [1971] offense as non-violent equivalent to felony definition, but the term felony were not any express part of sentence, See, Exhibit 11.

Moreover, Appellant submits that nothing in Proviso 16-1-60 implicates that said statute apply retroactive. For a new law to run retroactive it must be procedural or remedial in nature, and it would create new remedies for existing rights or enlarges rights of people. The Department's application of 16-1-60 harms the Appellant, and minimize chance for parole. Application of 16-1-60 in Appellant's case constitute ex post facto clause violation.

ARGUMENT

X.

Does the Department's traditional procedural use of same five "Findings of Fact" elements as the primary rejection reasons fail to concur with legislative intent and offends process and Deny Due Process; and for said reasons seeks Injunctive Relief for issues 1-10.

The Appellant contends that the Department's traditional use of the same five "Findings of Fact" elements primarily to reject parole candidate ~~is~~ are insufficient because it offends the process, and fail to concur with legislative intent, or legislative statutory mandate to establish specific statutory criteria for the granting of parole. Instead the Department merely base reasoning on immutable aspects not susceptible to change. See, United States ex rel Johnson v NY State Bd. of Parole, 419 US 1015 (held, that a denial of parole must contain what in the prisoner's record was felt by the Board to warrant denial and why.)

Relevant evidence may be excluded for needless presentation of cumulative facts . . . not disputed, or in controversy, or at issue . . . and probative value of admitting "Findings of Fact" evidence, substantially outweighs by the danger of unfair prejudicial to the parole candidate, See, Rules of Evidence 403, 404(b), and 609. The Appellant submits that the Department's conduct further violates Fifth, Eighth, and Fourteenth Amendments of the United Sates Constitution.

Finally, the Appellant seeks and Injunction Order to prevent further use in Appellant's case of the same five primary boiler plate reasoning, and conduct outlined in Arguments #2, #3, #6, #7, and #8. The circumstances of this matter, commanding an action which this Honorable Court may regard as essential to justice, restraining action contrary to equity and good conscience shown, that irreparable injury will further result unless the Order is granted.

CONCLUSION

The Appellant beseech this Honorable Court review his claims and exhibits with a practical eye, and grant limited discovery and reserve rights to amend thereupon. Further Order, that violation(s) warrant anew prompt parole review hearing and application of benefits amended in provision 24-21-10(F)(1) and amended criteria; Department's refrain from use of same stale boiler plate evidence; that due process includes private rights to notice/ministerial duties timely perform; that issue of annual parole review be revisit to include prisoners sentence prior to 1981 codified provision and disparate treatment and irregularities in procedures; Order Injunctive Relief; and grant any other relief this Court deems fair and just.

Date: June 9 , 2016

s/ [signature]
Basil W. Akbar, #065498, Pro Se

CERTIFICATE OF SERVICE

I, Basil W. Akbar, hereby certify that copy of Appellant's Brief; Exhibits; Interrogatories, and Production; Admissions; and letter dated June 9 , 2016 to Judge Anderson, was served on Respondent at: Jerry B. Adger, Director, Dept. of P.P.P.S., 2221 Devine Street, Suite 600, Columbia, SC, 29250.

Date: ~~June~~ October 9 , 2016

s/ [signature]
Basil W. Akbar, #065498, Pro Se
Lee County Institution
990 Wisacky Highway, F6B
Bishopville, SC 29010

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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BRIEF OF APPELLANT

RECORD ON APPEAL

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LEE COUNTY INSTITUTION
990 WISACKY HWY, F6B 2213
BISHOPVILLE, SC 29010
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STATEMENT OF ISSUES ON APPEAL

1. Did the Administrative Law Judge abuse its discretion, errored in Law, and retard Appellant rights in ruling, (1) It lack Jurisdiction to consider Appeal, (2) Misalleges Appelant missed filing deadline, and (3) Apellant is appealing "Request for Reconsideration/Routing Denial of Parole".

2. Did South Carolina Department of Probation, Parole and Pardon Services (Department), failure to promulgate new objective criteria; and neglect of duty to give formal notice thereto prior to citing provision 24-21-10(F)(1), SCRCP, in Notice Rejection letter denied parole candidate Due Process.

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7. Does the Department's failure to inform Appellant on record what

Department felt in Appellant's file, reasons to rescinding "AYE" votes to "NAY" votes arbitrarily, for impermissible reasons or no reasons denied Due Process.

8. Does the Department's arbitrarily denying Appellant's request for parole reconsideration/re-hearing, denied liberty interest rights and Due Process.

9. Does the Department's failure to advise Appellant of adverse information contain in file upon request; and failure to advise what portion of SC Code 1964 Sec 55-612/24-21-640, and criteria from 1212 that Appellant met, or fail to meet, deny Due Process.

10. Does the Department's classifying Appellant's [1971] offense as violent constitutes Ex Post Facto Clause violation.

11. Does the Department's traditional procedural use of same five "Finding of Fact" elements as the primary rejection reasons fail to concur with legislative intent; offends process Due Process; and for said reasons seeks Injunctive Relief for issues 1-11.

STATEMENT OF THE CASE

On September 1971, the Appellant was sentenced to a ten (10) year paroleable life sentence for murder, then classified as Felony, and statutorily allowed to participate in all programs. Annual parole review hearings were common practice for all prisoners after initial rejection. On April 1981 he was granted conditional parole, and June 1985 his parole was revoked for drug trafficking [1984 & 1985] felony convictions. Subsequently, the Department wrongfully usurp paroleable life sentence to permanently ineligible for parole for 14 years until November 2001 upon extensive litigation, [See, Kerr v State, 574 SE 2d 494 (SC 2001)]. On December 2, 2015, the Appellant Petition the Department concerning unanswered correspondent(s), and copy of Department's Manual or Policy containing section titled "Current Parole Ivestigation", and/or promulate the text . . . and if the Departmet refuse to disclose provide to him instructions to appeal "Agency

Final Decision", to no avail. Appellant's grievance was properly advanced to Administrative Law Court when Department fail to respond, and the Administrative Law Court granted leave to proceed. This mater now comes before this Honorable Court pursuant to a properly filed Administrative Law Court Apeal on April 19, 2016, and Order of Dismissal dated September 23, 2016, and recieved by the Appellant on October 2016. However, the Administrative Law Judge Court erroneously read into his pleadings an accusation/argument outside his pleadings, while failing to address any of Appellant's threshold issues. The Appellant submits herein, hereof, hereby, completely as if verbatim the Appellant's Administrative Law Court Brief, and more specific "Statement of Issues"; and all pleadings and exhibits.

ARGUMENTS

I.

Did the Administrative Law Judge abuse its discretion, erred in law, and retard Appellant rights in ruling, (1) It lack Jurisdiction to consider appeal, (2) Misalleges Appellant missed filing deadline, and (3) Appellant is appealing "Request for Reconsideration/Routine Denial of Parole".

The Appellant submits that the ALJ Court erred in Law and abused its discretion; and retard Appellant's rights, to a full and fair review by erroneously ruling namely that, (1) Appelant's is appealing Request for Reconsideration, (2) Routine Denial of Parole, and (3) missed filing deadline. The ALJ Court dismissal explanation/justification are completely misguided/distortion of Appellant's pleadings. In instant matter the ALJ Court did egregiously misrecital of his issues and ignored factual arguments raised from the inception of his complaint constituting a miscarriage of justice, and grossly unfair judicial proceeding resulting in undue prejudice. To the contrary the Apellant argues in brief, (1) Department's procedural and Due Process violations, (2) Jurisdicial issues, (3) Equal Protection Claims, (4) Non-promulgation of new objective parole criteria, (5) Liberty Interest Rights, (6) Irregularity in Department proceedings, and (7) Injunctive Relief. At no time in instant pleadings does Appellant challenge the denial of parole,

nor did he miss filing date. The ALJ Court ruling does not accord with his "Statement of Issues on Appeal", or substantial evidence on the whole record, nor may the ALJ Court consider matters outside the pleadings, Falk v Sadler, 341 SC 281, 533 SE 2d 350 (Ct App 2000) (emphasis added). The ALJ Court abused its discretion in failing to exercise sound consideration of issues/merits raised before the Court. The Appellate Court stands to review such decision that is asserted to be grossly unsound, ungrounded, unreasonable, or illegal, Mins v Coleman, 248 SC 235, 199 SE 2d 623 (1966). The ALJ Court's decision was not reached on the merits/pleadings on the whole record, or information contained in his pleadings, instead on outside matters, (emphasis added). Appellant adamantly submits that he stated with specificity and particularity points of "Department's Procedural Violations", rather than challenging a routine denial of parole. Moreover, the ALJ Court's Order is defective and flawed where the law does not authorize an ALJ Court to render, when the conclusion drawn is unjustified by the facts and evidence, and because the preponderance of the evidence is against the finding of the ALJ Court. Rutherford v Rutherford, 307 SC 199, 414 SE 2d 157 (1992).

II.

Did the South Carolina Department of Probation, Parole and Pardon Services (Department) failure to promulgate new objective criteria; and neglect of duty to give formal notice thereof prior to citing provision 24-21-10(F)(1), SCRCP, in Notice Rejection letter denied parole candidate Due Process.

The Appellant submits that the Department must promulgate regulations setting forth specific objective criteria that may be used in parole decision making. The Department's failure to promulgate and/or give advance notice of new objective criteria in a timely manner prior to [September 23, 2015] parole hearing that he may prepare totally for parole review hearing, violated State Constitution, rules, regulations, and procedural laws that create protectible liberty interest for advance notice, and right to know what criteria entails. Department's failure to perform required non-discretional legislated ministerial duty resulted in undue prejudice. Appellant submits he was not made aware of amended criteria/SC Code Sec 24-21-10(F)(1) until

after citing provision in parole rejection letter. Mere mention of citation in rejection notice and nothing more does not satisfy legislative intent, or minimum Due Process. The Department did arbitrarily deprived Appellant of entitled information related material, then alluded to something not done, does not meet legislature impose statutory obligation of Sec 24-21-10(F)(1), denied Due Process, See, Wolf v McDonnell, 418 US 539, 564, 94 SCt 2963 (1974). When Department's decisions are made outside legislative intent, and procedural guidance Due Process is violated.

ARGUMENT

III.

Did the Department's arbitrary capricious conduct usurping similar class candidate's annual parole hearings to bi-annual, serving life sentence prior to 1981, void certified administrative policy; law, or regulation, denied Due Process, and equal protection of the law.

The Appellant submits that he is being denied equal protection of the laws in that he is being treated differently from similarly situated inmates who recieve annual parole hearings. The "Sine Qua Non" of an equal protection claim is a showing that similarly situated persons recieved disparate treatment. Grant v SC Coastal Council, 319 SC 348, 354, 461 SE 2d 388, 391 (1995). In instant case, the record on Appeal does not contain the documentation necessary to allow for a proper analysis of this claim, despite Appellant's request for concise policy/manual number containing subject, "Current Parole Investigation", verification page and signature; date inscribed; and all additional adjoining and extension of pages, that the Department contends support their posture to deny annual parole review hearings to inmates serving 30 years or more convicted prior to 1981. However, Appellant submit that said document is the product from SC Code Ann Section(s) 16-1-60 and 24-21-645, 1986 Omnibus Crime Bill, that had no existence or authority at time of Appellant's offense . . . nor can Department prove otherwise. In support the Appellant submits, Exhibit 4, per legal counsel Tommy Evans, ". . . Policy not preserved." It must be concluded that said policy/manual has been destroyed by the "proponent" in bad faith. In

addition, in 1993 said suspect policy had no existence, See, Exhibit 2-A, where Department argued Sec 24-21-645 applied, instead of suspect policy. This Honorable Court must take judicial notice, that no court of proper jurisdiction has ever judicated this novel issue for authenticity of said document and admissibility, See, State v Rich, 293 SC 172, 359 SE 2d 281 (1987); Also, Rule 901 & 902, SCRE.

The Appellant further submits he is being deliberately treated differently from similarly situated inmates that recieves annual parole hearings [See, SC Code Sec 24-5-90; SC Const Art I, Sec 3], while denying him annual review, See, cases of, Ralph L. Ervin, #051231; Ismail Muhammad, #091408; Larry Logan, #109472, etc.. Furthermore, the Department arbitrary capricious failure to promote uniformity in procedures with respect to those recieving annual review changed to biannual sentence prior to 1981, See, cases of, James McPhall, #056625; Rufus Muldrow, #065743; Nathaniel Sumter, #081695; Kenneth Owen, #083964, etc.. Such irregularities in Department's practice discriminate against a class of inmates of similar class denied equal protection of the law. Prior to 1981, there was no statute that explicitly govern the frequency of parole hearings with explicit instruction, rather annual parole hearings by the Department was so permentent, and well settled as to having the force of law, See, Anela v City of Wildwood, 790 F2d 1063, 1064; Monell v New York City of Social Services, 436 US at 690-91. However, annual parole hearings was a matter of an "application", See, SC 1952 Code Sec 55-611.1, at pertinent parts, ". . . The Board shall review his case, irrespective of whether or not any [application] has been made therefor"; See, SC 1952 Code Sec 55-556, ". . . The Supervisor of parole may conduct survey of the State Penitentiary, County Jail, and Camps and shall obtain such information as will enable the Board to pass intelligently upon all [application] for parole"; See, SC 1952 Code Sec 55-616, ". . . But such prisoner shall be eligible to parole thereafter when the Board thinks such parole would be proper"; See also, SC Code Ann 24-21-960(B), "Any individual who has an [application] for pardon consideration but denied, must wait [one year] from the date of denial before filing another pardon application and fee." The language in those provisions are analogy and agree with one another in some respects, or comparison basis, on application and one year effect. Moreover, annual parole reviews did not become an issue in South Carolina until 1992, See, California Dept of Corrections v Morales, 115 SCt 1597

(1995).

Appellant submits that the Department arbitrarily denied him equal protection of the law; changed annual parole review to biannual void certified authority; and fail to promote uniformity in procedures.

ARGUMENT

IV.

Does Due Process requirement of the Fourteenth Amendment apply to parole release determination proceeding; and are the procedures used by the Department in part Constitutionally inadequate, and furthered violated double jeopardy clause/rule of evidence.

The Appellant submits that the Department's use of "boiler plate" reasons as predicate to deny parole upon immutable aspects of criminal liability facts, and civil infraction not susceptible to change, and nothing more:

* Nature and seriousness of current offense
* Indication of violence in this or previous offense
* Use of deadly weapon in this or previous offense
* Prior criminal record indicates poor community adjustment
* Failure to successfully complete a community supervision program

If the above immutable aspects reasons are allowed as permanent factor for denying parole, would usurp him permanently unsuitable for parole. A tribunal that render conclusion drawn from stale facts [40 years later] that prejudice parole candidate deny due process, and renders procedure Constitutionally inadequate, when Department's decision merely turn on Appellant's past, rather than whom he has become. At some point the Department must be estop and barred from alleging inferred finding of fact statements in good conscience and fairness. Probative value of using said facts outweigh its prejudice. South Carolina Rules of Evidence 403 and 609 (SCRE) exclude criminal convictions in civil matters. Prior convictions are used only to impeach credibility, and should not be used to show parole candidates are bad persons, or that they ought to be denied parole. Since there are no dispute regarding "Finding of Facts" statements it only serves to prejudice candidates because it fail to prove/disprove matters already settled, or parole suitability after 40 years. Furthermore, "Finding of

Facts" as used appears to violate parole candidates "double jeopardy" rights of the Fifth Amendment conflicting with and deviates from legislative intent for granting parole, and inconsistent with the logic plan of legislature to grant parole. The fact of being twice punish or penalize substantially for the same criminal liability and administrative misconduct violates Fifth Amendment, repeatedly. In view of the South Carolina Statutes (1952/1964 Code Sec 55-612) "Circumstances Warranting Parole", provide for release on parole after:

> "The Probation, Parole, and Pardon Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it shall appear, to the satisfaction of the Board, that the prisoner has shown a disposition to reform that, in the future, he will probably obey the law and lead a correct life, that by his conduct he has merited a lessening of the rigors of his imprisonment, that the interests of society will not be impaired thereby and that suitable employment has been secured for him."

The Department abused its discretion/authority by arbitrarily denying suitable parole candidates unfairly upon immutable aspect not susceptible to change. Due process also requires that the reasons for denying parole be rationally related to the legislative written statute that legislative branch approved, and Department has adopted. See, Greenholtz v Inmates of Nebraska Penal & Correctional Complex, 442 US 1, 99 SCt 2100 (1979).

The Appellant submits that Due Process does apply to parole release determination proceedings, and that prisoner's right to consideration for parole is an aspect of liberty to which the Due Process clause applies, since South Carolina has made parole an integral part of the penological system.

ARGUMENT

V.

Does South Carolina Statutory [SC Code 1964, 55-612] Parole Criteria creates liberty interest to conditional parole when candidate meet statutory standards for release, despite Department's discretionary function that results in abuse of discretion.

The Appellant submits that the statutory language created a protectible

expectation of parole, and that the use of the words "shall" and "will" in the statutory criteria [SC Code 1964, 55-612] creates a presumption that a prisoner would be parole unless the statutory designated reasons for parole denial are found to exist:

1. Shown disposition not to conform
2. Shown disposition not to obey the law and lead a correct life
3. Shown by his conduct not to merit lessing of the rigors of imprisonment
4. Shown that the interest of society will be impaired thereby
5. Shown continued vocational training needed to secure employment

SC Code 1964, Sec 55-612, calls for a prisoner to be paroled when the Department determines that there is a reasonable probability that the prisoner can be released without detriment to the community or to himself. Since South Carolina has made parole an integral part of its penological system and provided those eligible for parole are to be released on parole unless one or more of the reasons for denial parole specified in the statute is found to be present. The authority/discretion to deny parole must not be exercised arbitrarily. SC Code 1964, Sec 55-612, provides the prisoner with a justifiable expectation rooted in state law that they will be conditionally released if they meet the statutory criteria/standards.

Abuse of discretion occurred where Department's arbitrary capriciously fail to exercise sound reasonable logical/fair discretion in decision making, using procedure that incorporate immutable aspects in decision making unfairly incompass a aim to accomplish beyond what could be fairly achieved. [See, Rejection letter(s) "Finding of Facts conclusion, Exhibits 5, 6, 7.] Reasons for denying parole places a substantial obstacle and unachievable burden in the path to achieve parole, which Department routinely/wrongfully uses to restrict granting parole, is completely irrational when statutory criteria does not require overturning judicial/administrative facts to be parole suitable.

Appellant challenge the method/procedure by which the decision is made, not the decision to grant or deny parole, but that decision making was exercised in an arbitrary or capricious manner. Furthermore, though there is no absolute right to parole, there is a right to proper considerating . . . and eligibility for parole cannot be determined on illegal or improper grounds, See, Moore v Florida Parole and Probation Commission, 289 So2d 719.

ARGUMENT

VI.

Does South Carolina 1964 Code Sections 55-611., and 55-611.1 read in concert mandates ten (10) years paroleable life sentence be treated as thirty (30) years day for day sentence for all purposes including release date.

The Appellant contends that calculation of sentence related earn work credits (Sec 24-21-635) and actual days served, pursuant to SC Code 1964 Sec 55-611., read in concert with SC Code Sec 55-611.1 mandates ten (10) years paroleable life sentence be treated as thirty (30) years. When Appellant's offense (1971) occurred, South Carolina General Assembly Code of Laws Sections 55-611. and 55-611.1 provided that ten (10) years paroleable life sentence granted statutory right to have life sentence treated as 30 years day for day for all purposes including unconditional release date. South Carolina Codes of Criminal Procedures and Statutory Law provided the following:

> Sec 55-611.:
> (1). Who, if sentenced for not more than thirty years, shall have served at least one-third of the term for which he was sentenced.
> (2). Who, if sentenced to life imprisonment or imprisonment for any period in excess of thirty years, shall have served at least ten years, or
> (3). Who, if he is a first offender and is sentenced for an indeterminate term shall have served the minimum for which he was sentenced, not deducting in any instance any allowance of time for good behavior.
>
> Sec 55-611.1:
> After a prisoner has served one-third of his sentence, if such sentence exceed one year, the Board shall review his case, irrespective of whether or not any application has been made therefor, for the purpose of determining whether or not such prisoner is entitled to any of the benefits provided for in this chapter.

South Carolina Office of the Attorney General Opinion No. 23719, February 25, 1966, avers that Sec 55-611.1 of the 1962 Code makes it mandatory that the SC Probation, Parole, and Pardon Board review prisoners record for parole consideration if he has served one-third of sentence. However, since there was no way to calculate a third of life sentence, Sec 55-611.1 defined (ten

years paroleable life sentence) as a term of thirty years or more, for parole eligibility after serving the minimum of ten years, and for all purposes including release date. See, State v Bobby E. Bowden, 668 SE 2d 107 (2008) (held, life sentence to be considered as a sentence of 40 years for all purposes including release date.) Although the language of the North Carolina and South Carolina Statutes is not identical, the statutes are similar in crucial aspects, as a results Appellant life sentence has expired.

ARGUMENT

VII.

Does the Department's failure to inform Appellant on record what Department felt in Appellant file reason(s) to rescind "AYE" votes to "NAY" votes, arbitrarily for reason or no reason denied due process right.

The Appellant submits that the Department's [paroling authority] has inherent power to reconsider its grant of parole/votes awarded a prisoner, and rescind their decision for cause (emphasis added), upon the existence of new information sufficient to justify.

However, grant of parole/votes awarded if not void in its inception cannot be rescinded for any cause, **because** it has passed beyond the control of the Board member(s) granting it, and has become valid and operative act. (59 AM JUR 2d pardon and parole Sec 42)

The Department's Operations Manual explains that the purpose of the hearing is to determine the facts and to gather any other material that may bear on the parole decision one way or the other and based on all those facts, determine whether or not the grant of parole/AYE vote(s) should be rescinded, amended or stay the same, unless additional material is provided, otherwise there would be nothing to evaluate at subsequent hearing by specific member(s). Appellant submits that the Department may not rescind action later simply because a member(s) desires to change his/her conscious "AYE" vote . . .void subsequent misconduct by the prisoner, etc..

To the contrary the Department's Board Member(s) in May, 2007, majority members voted to reject parole, except for Mr. James Williams. On May 22, 2009, majority members voted to reject parole including [Mr. James Williams],

except Mr. Orton Bellamy. On July 19, 2011 all seven members voted to deny parole. "AYE" votes for granting parole was arbitrarily capriciously rescinded on reproduction of identical facts, and additional productive progress (Programs Certificates) reports. Appellant further submits that AYE votes for granting parole was switched to "NAY" votes by same member(s) at subsequent review, void cause/without justification, having been awarding three or more votes for parole suitability void explanation or account for arbitrary capricious decisions founded on whimsical discretion/preference, rather than on reasons and facts, denied due process. See, Exhibits 8.

ARGUMENT

VIII.

Does Department's arbitrarily denying Appellant's request for reconsideration/re-hearing of parole rejection, denied Liberty Interest rights and Due Process.

The Appellant submits that the Department's [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
b. New criminal charges against the prisoner
c. After-acquired information about prisoner
d. Failure of the prisoner to meet conditions of release
e. Requested by the inmate or the inmate's attorney

Pursuant to Section(e), of "South Carolina Board of Parole and Pardons Operations Manual, Part III, Rehearing of Parole Cases", reads as follows:

"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 be sent to the inmate's attorney notifying them of the Board's decision."

As a results of denying Appellant an opportunity to appeal parole rejection, See, Exhibits 9-B, ____. The Department did arbitrarily capricious denied him protected liberty interest rights, and rights guaranteed

him by the Fourteenth Amendment of the United States Constitution.

ARGUMENT

IX.

Does Department's failure to advise Appellant of adverse information contain in file upon request; and failure to advise what portion of SC Code 1964 Sec 55-612/24-21-640, and criteria form 1212 that Appellant met, or fail to meet denied Due Process.

The Appellant submits denying parole candidate request to be advised of adverse information contained in parole file denied due process. The Department denied request for access to parole file prior to his hearing or review that he may correct, rebut, or explain any adverse information in said file. [See, Exhibit(s) 15-C, ______]. Because decision following a review is based solely on the information in the file without input, both the prisoner and society in general have a substantial interest in seeing that a parole release determination is made on the basis of accurate information and informed decision. Minimum due process requires that an inmate in South Carolina seeking parole be advised of information in his file. In order for an inmate to have meaningful consideration of parole application, it is essential that they be advised of such adverse information and given opportunity to rebut or explain the part he believes are incorrect. See, Williams v Missouri Board of Probation and Parole, 585 F 2d 922 (8th Cir); Greenholtz, 442 US at 13, denied due process rights.

ARGUMENT

X.

Does the Department's classifying Appellant's [1971] offense as violent constitutes Ex Post Facto Clause violation.

The Appellant submits that when his offense occurred [murder; armed robbery; assault and battery with intent to kill; rape; and kidnapping], was

define under statutory proviso as "Felony", See, South Carolina Code Section 16-11; State v King, 150 SC 251, 155 SE 2d 409.

However, violent classifications imply connotation different from felon/felony offender. Violent classifications characterization incompus, but not limit to:

* harsher punishment/sanctions
* restriction enhanced/priviledge limited
* greater quantum of parole votes & larger quorum of Board members
* heighten risk assessment score/security score
* bi-annual parole review if sentence after 1986

The South Carolina Department of Corrections currently classify Appellant's [1971] offense as non-violent equivalent to felony definition, but the term felony were not any express part of sentence, See, Exhibit M.

Moreover, Appellant submits that nothing in Proviso 16-1-60 implicates that said statute apply retroactive. For a new law to run retroactive it must be procedural or remedial in nature, and it would create new remedies for existing rights or enlarges rights of people. The Department's application of 16-1-60 harms the Appellant, and minimize chance for parole. Application of 16-1-60 in Appellant's case constitute ex post facto clause violation.

ARGUMENT

XI.

Does the Department's traditional procedural use of same five "Finding of Fact" elements as the primary rejection reasons fail to concur with legislative intent and offends process and Deny Due Process; and for said reasons seeks Injunctive Relief for issues 1-11.

The Appellant contends that the Department's traditional use of the same five "Finding of Fact" elements primarily to reject parole candidate is insufficient because it offends the process, and fail to concur with legislative intent, or legislative statutory mandate to establish specific statutory criteria for the granting of parole. Instead the Department merely base reasoning on immutable aspects not susceptible to change. See, United States ex rel Johnson v NY State Bd. of Parole, 419 US 1015 (held, that a denial of parole must contain what in the prisoner's record was felt by the

Board to warrant denial and why.)

Relevant evidence may be excluded for needless presentation of cumulative facts . . . not disputed, or in controversy, or at issue . . . and probative value of admitting "Finding of Fact" evidence, substantially outweighs by the danger of unfair prejudicial to the parole candidate, See, Rules of Evidence 403, 404(b), and 609. The Appellant submits that the Department's conduct further violates Fifth, Eighth, and Fourteenth Amendments of the United Sates Constitution.

Finally, the Appellant seeks and Injunction Order to prevent further use in Appellant's case of the same five primary boiler plate reasoning, and conduct outlined in Arguments #3, #4, #7, #8, and #9. The circumstances of this matter, commanding an action which this Honorable Court may regard as essential to justice, restraining action contrary to equity and good conscience shown, that irreparable injury will further result unless the Order is granted.

CONCLUSION

The Appellant beseech this Honorable Court review his claims and exhibits with a practical eye, and grant limited discovery and reserve rights to amend thereupon. Further Order, that violation(s) warrant anew prompt parole review hearing and application of benefits amended in provision 24-21-10(F)(1) and amended criteria; Department's refrain from use of same stale boiler plate evidence; that due process includes private rights to notice/ministerial duties timely perform; that issue of annual parole review be revisit to include prisoners sentence prior to 1981 codified provision and disparate treatment and irregularities in procedures; that upon Request that inmates be advised of any adverse information in file; Order Injunctive Relief; and grant any other relief this Court deems fair and just.

Date: October 31, 2016

s/[signature]
Basil W. Akbar, #065498, Pro Se

CERTIFICATE OF SERVICE

I, Basil W. Akbar, hereby certify that copy of Appellant's Brief; and Exhibits; was served on Respondent at: Tommy Evans, Jr., Attorney, Dept. of

P.P.P.S., 2221 Devine Street, Suite 600, Columbia, SC, 29250.

Date: October 31, 2016

s/ [signature]

Basil W. Akbar, #065498, Pro Se
Lee County Institution
990 Wisacky Highway, F6B
Bishopville, SC 29010

EXHIBIT # 10-C

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

TO: Jerry B. Adger, Director of Dept. PPPS
Larry R. Patton, Director of Support Services

May 23, 2016

Dear Sir:

I, Basil W. Akbar, Petitioner hereby certify request that he be given access to his parole file prior to his hearing or review so that he may correct, rebut, or explain any adverse information in file. Therefore, stipulates that the parole file contains such things as the present report; psychological report; information concerning any previous periods spent on parole or probation while under the supervision of the Board; prison disciplinary reports; and list of previous arrests. Also, stipulate that the parole file may contain comments and/or information submitted by law enforcement officials; sentencing judge; grievances; complaints; institutional classification reports; or by anyone else who wishes to send their comments or material to the Board, or newspaper articles pertaining to an inmate's trial or conviction may also be maintained in parole file.

It is obvious from the above list that my files more likely than not contains erroneous or misleading information which could or may have previously flawed the parole decision process, and may in the future if left unverified and unrebutted. The decision following review is based solely on the information in the file without input from myself as parole candidate.

I understand that exceptions may be made to excluded from portions of the file, any information deem to be legitimate privacy interests of such person(s) under the Privacy Act of 1974. If the exception is invoked, then the file may contain a summary of the basic contents of the material to be withheld.

Thank you in advance for your time and effort, and I look forward to hearing from you in the very near future.

Respectfully submitted,

s/ Basil W. Akbar
Basil W. Akbar

RE: Request that erroneous information be expunged from file.

cc: Courts

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Basil W. Akbar, #065498	)	
Appellant,	)	Case No.: 16 P 012
	)	
vs.	)	
	)	APPELLANT'S FIRST SET OF
South Carolina Department of	)	INTERROGATORIES, AND PRODUCTION
Probation, Parole, & Pardon	)	
Services,	)	
Respondent.	)	
	)	

TO: RESPONDENT/COUNSEL OF RECORDS:

The Appellant Basil W. Akbar, Pro Se, hereby request that Respondent answer the following interrogatories, and production of documents pursuant to Rules 33 and 34, SCRCP, hereby request Respondent/Counsel respond within thirty (30) days to the undersigned address. Appellant further seeks release of records pursuant to SC Code Sec 24-21-290, and that Interrogatories and Production of documents shall be deem to continue from time completion of discovery/evidentiary hearing, and specifically reserve the right to supplement and amend complaint:

1. Complete copies of any and all documents identified in response to all Interrogatories served on the Respondent in the answers.

2. State concisely what type/class of parole review panel does Appellant appear before:

a. Felony panel
b. Non-violent panel
c. Violent panel
d. Two of three votes . . . or three of five . . . or five of seven, for granting parole.

3. State concisely what portion of SC Codes Section 55-612/24-21-640 criteria that Appellant:

a. met
b. failed to meet

4. State concisely the Title and Policy number that the Department contends support their posture to deny annual parole review hearings to prisoners serving 30 years or more convicted prior to 1981.

5. Complete copy of Appellant's parole files to include but not limited to:

a. any and all adverse information
b. risk assessment score
c. Examiner's recommendation
d. Institution adjustment
e. Attitude of community report toward parole

6. Complete copy of Department's, "South Carolina Board of Parole and Pardons, Operations Manual", parts I-VII.

7. Complete copy of Department's original Policy/Manual containing <u>title section</u> "Current Parole Investigation", allegedly existing prior to codified Parole Statute of [1981], governing frequency of parole review at time of Appellant's offense in 1970, to include but not limited to:

a. original binding cover/face sheet
b. verification page, and
c. signature, or mark in lieu of, on instrument for legal effect, as confirmation on authenticity of pages.
d. inscribed/effective date incorporated into administrative policy
e. page #9 [of, "Current Parole Investigation"], and all additional adjoining, annex and extension of pages.

8. Complete list of Parole Board Members names in attendance at Appellant's parole review hearing(s) between 2000 and 2016, and how each member voted for granting or denial parole.

9. Complete list of prisoners names and SCDC numbers, currently on parole or incarcerated serving 10 and 20 years paroleable life sentence, whom was sentence prior to 1981 that recieved or currently recieving annual parole review hearings.

10. Complete copy of any and all Department's pre-parole investigation reports; and Parole Board's reports with regards to Appellant.

Date: June 9 , 2016

s/ [signature]
Basil W. Akbar, 065498, Pro Se
Lee County Institution
990 Wisacky Highway, F6B
Bishopville, SC 29010

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Basil W. Akbar, #065498 Appellant, vs. South Carolina Department of Probation, Parole, & Pardon Services, Respondent.	))))))))))	Case No.: 16 P 012 APPELLANT'S REQUEST FOR ADMISSION

TO: RESPONDENT/COUNSEL OF RECORDS:

The Appellant Basil W. Akbar, Pro Se, pursuant to Rule 36, SCRCP, that the Respondent either admit or deny the Request for Admissions set forth herein. If any request is denied, Appellant will conduct discovery to prove the truth of the request against Respondent. As provided by the South Carolina Rule of Civil Procedure, a response to the request for admission must be filed within thirty (30) days, failing which the mater contained in this request will be deemed admitted, and Appellant will rely upon the admissions in preparing and presenting its case in this action:

1. Admit that Appellant's 10 years paroleable life sentence, and 1985 convictions are statutorial classified at time of offenses as "Felonies", and not "Violent."

2. Admit that the Department erred in determining that Appellant as permanently ineligible for parole, and not afforded parole review hearings between 1986 thru 2000.

3. Admit that Ralph L. Erwin, #051231; Ismail Muhammad, #091408; and Larry Logan, #109472, sentenced to life terms prior to 1981 provision recieves annual parole review hearings.

4. Admit that Ralph L. Erwin, #051231, recieved a life sentence in 1960, and on appeal the SC Supreme Court ordered that change from annual parole to bi-annual constituted ex post facto clause violation, filed August 20, 1993.

5. Admit that the following Inmate recieved annual parole review previously:

* James McPhall, #056625; Jan 13, 1993; Jul 20, 1994; Jul 25, 1995
* Nathaniel Sumter, #081659; Jul 31, 1985; Jul 3, 1986; Jul 6, 1994; and Jul 5, 1995
* Kenneth Owens, #083964, 1984 and 1985

6. Admit that the Department's reexamine same set of facts to award parole suitability on several occasion, to later reverse decision upon same facts void infraction or new offense.

7. Admit that some inmates convicted prior to 1981, serving 30 years or more, currently recieves annual parole review hearings.

Date: June 9 , 2016

s/ [signature]
Basil W. Akbar, 065498, Pro Se
Lee County Institution
990 Wisacky Highway, F6B
Bishopville, SC 29010

CERTIFICATE OF SERVICE

I, Basil W. Akbar, hereby certify that copy of Appellant's First Set of Interrogatories and Production; and Request for Admission, at: Jerry B. Adger, Director, SC Dept of Probation, Parole, and Pardon Services, 2221 Devine Street, Suite 600, Columbia, SC, 29250.

Date: June 9 , 2016

s/ [signature]
Basil W. Akbar, 065498, Pro Se
Lee County Institution
990 Wisacky Highway, F6B
Bishopville, SC 29010

The Herald
Rock Hill, SC. 3-14-2000

High court rejects some parole hearing limits

The Associated Press

COLUMBIA — Inmates convicted before a 1986 law that limited parole hearings for violent crimes still are entitled to annual hearings, says the South Carolina Supreme Court.

The justices Monday said Circuit Judge Marc Westbrook was wrong to dismiss an appeal by Darryl Vincent Jernigan, who pleaded guilty to armed robbery in Lexington County in 1983.

Jernigan had complained in 1996 that he was restricted to one parole hearing every two years, instead of annually.

The justices said the 1986 law limiting parole hearings to once every two years for violent criminals could not be applied to inmates convicted before the law took effect.

3/14-00

Justices dismiss parole case; law already amended

By RICHARD CARELLI
The Associated Press

WASHINGTON

The Supreme Court on Tuesday backed out of a South Carolina case in which it was expected to decide whether states may increase the time between parole hearings for all prison inmates.

The court, in a one-sentence, unsigned decision, dismissed the case as "improvidently granted."

That outcome was predictable after questions arose during a high court oral-argument session earlier this month about the continued legal relevancy of the South Carolina dispute.

The state amended its invalidated parole law in June, but no one told the justices until the day before the argument session. The court had agreed to review the case in March.

Chief Justice William H. Rehnquist began the Nov. 8 argument session by asking lawyers for both sides about the "mootness problems" raised by the amendment.

Under South Carolina's revised parole law, inmates will be entitled to a parole hearing each year unless the crime they committed was classified as a violent crime at the time of the offense. The General Assembly approved the revision in June, and it will take effect Jan. 1.

Violent criminals are entitled to a parole hearing every two years in South Carolina. The Legislature classified crimes as violent and nonviolent in the Omnibus Crime Bill passed in 1986.

There are 13 violent crimes: murder; first-degree criminal sexual conduct; second-degree criminal sexual conduct; assault and battery with intent to kill; kidnapping; voluntary manslaughter; armed robbery; drug trafficking; first-degree arson; first-degree burglary; second-degree burglary; criminal sexual conduct with a minor; and assault with intent to commit criminal sexual conduct.

> Under South Carolina's revised parole law, inmates will be entitled to a parole hearing each year unless the crime they committed was classified as a violent crime at the time of the offense. The General Assembly approved the revision in June, and it will take effect Jan. 1.

The 4th U.S. Circuit Court of Appeals had ruled that a 1986 South Carolina law that requires parole reconsideration hearings every two years instead of every 12 months cannot be applied to inmates who committed their crimes before the 1986 law took effect.

The appeals court said applying the law to some inmates would represent an unconstitutional after-the-fact punishment.

The 1986 law had been challenged by Gary Lee Roller, convicted in 1983 of voluntary manslaughter and grand larceny.

Roller was sentenced to 35 years in prison, but was eligible for parole in 1990. The state parole board refused to parole him, however. He was told that he would receive another parole hearing in 1992.

Roller sued, contending he was entitled to a hearing in 1991.

The change in South Carolina law, the justices were told at the Nov. 8 session, meant that whatever the court decided would have no effect on Roller.

The case is Cavanaugh vs. Roller, 92-150.

Attached Exhibit

4.

M.S.N.

8/8/93

EXHIBIT #5

State of South Carolina

Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor

STEPHEN G. BIRNIE
Interim 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

March 11, 2003

Mr. Basil Wali Akbar #00065498
Evans Correctional Institution
P.O. Box 2951202
Bennettsville, SC 295125202

Re: NOTICE OF REJECTION

Dear Mr. Akbar:

It is my responsibility to inform you of the action of the South Carolina Board of Parole and Pardons relative to your recent parole hearing. After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.

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

The reason(s) for rejection are:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Prior Criminal Record Indicates Poor Community Adjustment
Failure To Successfully Complete A Community Supervision Program

Sincerely,

Gwendolyn A. Bright

Gwendolyn A. Bright
Director of Parole Board Support Services

EXHIBIT # 6

State of South Carolina

Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor

SAMUEL B. GLOVER
Director

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Facsimile: (803) 734-9440
www.state.sc.us/ppp

March 21, 2007

Mr. Basil Wali Akbar #00065498
Lee Correctional Institution
990 Wisaky Hwy.
Bishopville, SC 29010

Re: NOTICE OF REJECTION

Dear Mr. Akbar:

It is my responsibility to inform you of the action of the South Carolina Board of Parole and Pardons relative to your recent parole hearing. After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.

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

The reason(s) for rejection are:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Prior Criminal Record Indicates Poor Community Adjustment
Failure To Successfully Complete A Community Supervision Program

Sincerely,

Gwendolyn A. Bright

Gwendolyn A. Bright
Director of Parole Board Support Services

EXHIBIT #7

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

MARK SANFORD
Governor

SAMUEL B. GLOVER
Director

2221 Devine Street, Suite 600
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Columbia, South Carolina 29250
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Fax: (803) 734-9440
www.dppps.sc.gov

May 20, 2009

Mr. Basil Akbar #00065498
Lee Correctional Institution
990 Wisaky Hwy.
Bishopville, SC 29010

RE: NOTICE OF REJECTION

Dear Mr. Akbar:

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
Prior Criminal Record Indicates Poor Community Adjustment
Failure To Successfully Complete A Community Supervision Program

Sincerely,

Gwendolyn A. Bright

Gwendolyn A. Bright
Director of Parole Board Support Services

EXHIBIT #7

State of South Carolina

Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

KELA E. THOMAS
Director

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Fax: (803) 734-9440
www.dppps.sc.gov

July 14, 2011

Mr. Basil Akbar #00065498
Lee Correctional Institution
990 Wisaky Hwy.
Bishopville, SC 29010

RE: NOTICE OF REJECTION

Dear Mr. Akbar:

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
Prior Criminal Record Indicates Poor Community Adjustment
Failure To Successfully Complete A Community Supervision Program

Sincerely,

Heyward A. Hinton

Heyward A. Hinton
Director of Hearings & Parole Board Support

Rec'd 2/14/05

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: TITLE:	DATE:
Mr. Dubose Classification Caseworker	2/13/05
INMATE'S NAME:	SCDC #:
James Frank McPhall Sr.	056625
INSTITUTION:	LIVING QUARTERS:
Lee. Corr. Inst.	Sumter south Room 1163

I Am writing To Ask. Please will you pull up my Parole Hearing DATE'S From (1992) Through out (1995) On your Computer I AM In need FOR This.

1/13/93
7/20/94
7/25/95
8/6/97
1/5/00
1/23/02
1/13/04

Thank you
James F. McPhall SR.

DISPOSITION BY STAFF MEMBER: McPhall: Listed below are your parole hearing dates from 1993 to 2004: Jan 13, 1993; July 20, 1994; July 25, 1995; Aug 6, 1997; Jan 5, 2000; Jan 23, 2002; and Jan 13, 2004

DATE:	SIGNATURE:
2/14/05	[signature]

EXHIBIT #11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: Mr. Dubose	TITLE: Case Worker	DATE: May 25, 2005
INMATE'S NAME: Basil W. Akbar		SCDC #: 63498
INSTITUTION: Lee County		LIVING QUARTERS: Sumter 2111

SIR:

How am I technically classified with regards to my 1971 murder conviction:

1. a felony conviction
2. an offender
3. Non-violent
4. Violent
5. Neither non-violent, nor violent

Initially, when my crime occurred, I was classified as an Felon, and subsequently I was classified as an OFFENDER, so which of the above am I currently classified as.

DISPOSITION BY STAFF MEMBER:

You are classified by SCDC as non-violent. Statue wise this offense is unclassifie

DATE: 5/25/05 | SIGNATURE: [signature]

SCDC FORM 19-11 (REV.FEB 2001)

EXHIBIT #3

must be confirmed by the Parole Officer, must state reputation of prospective employer, type of employment offered, is it of permanent nature, wages to be paid and suitability for subject in the opinion of the investigating officer.

9 — Family Background: Name of parents, how many brothers and sisters. Place of birth of subject, is subject married and if so to whom (give full maiden name, not just Jane Smith, but Jane Marie Jones Smith) status of marriage at present, where and when married. How many children born to subject and spouse and their names and ages. Where the children now reside. Source of wife's income and amount and her present address and are they re-uniting upon subject's release. Type of community subject came from, type of community and residence he will return to.

Names and addresses of brothers and sisters and whether any member of the family has a record.

Educational Background of subject and his family as well as their general reputation in the community and if residence program is acceptable.

10 — Parole Officer's Recommendation:

(1) Refrain from personal opinions, reflections or injections in your recommendation.

(2) Base your recommendation solely upon the Facts and Merit as disclosed by your investigation.

(3) Refrain from any criticism or adverse comment which could be a reflection upon the Court or its officials.

(4) Be concise, explicit and professional.

NOTE: NEVER QUOTE THE SOLICITOR, SHERIFF OR POLICE IN A MANNER THAT WOULD/OR COULD BE CRITICAL OF A JUDGE'S SENTENCE.

REMEMBER — A COPY OF YOUR INVESTIGATION GOES TO THE JUDGES INVOLVED.

SIGN YOUR REPORT!!!!!

CURRENT PAROLE INVESTIGATIONS

These investigations will be made according to the following outline:

1. Type of Residence: The officer should investigate and give his opinion as to the type of neighborhood, family situation and general environment. State if residence is acceptable in your opinion.

2. Employment Offer: The employment offer must be of work, general reputation of employer. The ficer should state whether he thinks the offer is sidered suitable and satisfactory.

3. Prison Record: List all infractions of pri rules since last investigation and give the rec mendation of the Prison Officials as to parole.

4. Parole Officer's Recommendation: Your rec mendation should be based on the complete investi tion, including the original Ten Point and Curr Investigation.

A. The following computation is to be used in investigating all cases previously rejected un otherwise specified by our Board.

Less than 10 years re-investigate after servi 12 months

10 years sentence re-investigate after servi 12 months

15 years sentence re-investigate after servi 15 months

20 years sentence re-investigate after servi 18 months

25 years sentence re-investigate after servi 21 months

30 years sentence or more re-investigate aft serving 24 months

If a sentence falls in between the periods liste begin your investigation as if the sentence were th lesser number of years. For Example: A 14 year sen tence will be investigated as if it were a 10 yea sentence. A 19 year sentence will be investigated a if it were a 15 year sentence.

These investigations are to be done automaticall without further notice from the Central Office an you will need to check your Public Works Lists at leas monthly to keep up with those who are about to becom eligible.

You should start the 4 Point Investigation (Current three (3) months prior to his new eligibility date, so the investigation will be in the Central Office two (2 months prior to his new eligibility date.

All re-investigations are to be made regardless of whether they have employment or suitable program of residence. The only exception will be when a person declines interview and signs a statement that he prefers to serve his sentence.

B. Prior Parole Revocations:

1. If parole has been revoked by our Board, only once, the prisoner involved shall be eligible for current investigation and further review of his case after service of one (1) year from date of revocation.
2. When a parolee has been revoked on two (2) or more occasions he shall be required to serve a minimum of two (2) years before be-

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

JIM HODGES
Governor

JOAN B. MEACHAM
Director

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www.state.sc.us/ppp

December 3, 2001

Mr. Basil W. Akbar (65498)
Allendale C.I.
F1 B - 40
P.O. Box 1151
Fairfax, S.C. 29827

Dear Mr. Akbar:

Your letter of November 29, 2001 has been received. You asked about your next parole hearing date.

Your last parole hearing was on November 29, 2000. Your next hearing should occur on-or-about November 29, 2002. Because of the Murder sentence in 1971, your offenses do not meet the criteria for an annual hearing under the "Jernigan" decision. A review of your status was made by our Legal Section and the above determination was made. You indicated that you had previously been on an annual cycle for review. Several changes in the law have occurred since your previous parole and the law which currently governs the hearing frequency requires a two year cycle in your case.

You will probably be interviewed some 4 or 5 months before the above date and you will receive a letter 30 days before the final scheduled date for the next hearing.

Sincerely,

Robert A. Ogletree
Program Manager I

State of South Carolina

Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor

SAMUEL B. GLOVER
Director

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May 24, 2007

Basil Akbar, #65498
Lee Correctional Institution
990 Wisacky Highway, Richland C-119
Bishopville, South Carolina 29010

Dear Mr. Akbar:

I am responding to your Freedom of Information request dated May 18, 2007, in which you are requested the names of the Board members present at your March 21, 2007, hearing and how they voted. The Board members present on this date were J.P. Hodges, John McCarroll, James Williams, Orton Bellamy, Karen Walto and Jim Gordon. According to the record, all Board members present at your hearing voted to reject you for parole except for Mr. Williams.

Thank you for your inquiry.

Sincerely,

J. Benjamin Aplin
Assistant Chief Legal Counsel

JBA:dn

State of South Carolina

Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor

SAMUEL B. GLOVER
Director

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May 26, 2009

Basil Akbar, #65498
Lee Correctional Institution
990 Wisacky Highway, Richland C-119
Bishopville, South Carolina 29010

Dear Mr. Akbar:

I am responding to your letter of May 22, 2009, in which you have requested the names of the Parole Board members in attendance at your hearing on May 20, 2009, and how each member voted. Please find this information below.

Jim Gordon-	Reject
Dwayne Green-	Reject
Karen Walto-	Reject
David Baxter-	Reject
James Williams-	Reject
Orton Bellamy-	Parole
J.P. Hodges -	Reject

Thank you for your inquiry.

Sincerely,

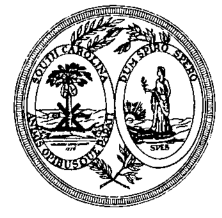
J. Benjamin Aplin
Assistant Chief Legal Counsel

JBA:dkn

State of South Carolina

Department of Probation, Parole and Pardon Services

Nikki R. Haley
Governor



Kela E. Thomas
Director

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www.dppps.sc.gov/

Basil W. Akbar 065498
Lee Correctional Institution
99 Wisacky Highway
Bishopville, SC 29010

July 22, 2011

Dear Mr. Akbar:

I am responding to your letter dated July 19, 2011 regarding your parole hearing on July 13, 2011. Your case was unanimously denied by the seven member Parole Board. Your case will be reconsidered in 2013. The members of the Parole Board are listed below.

Honorable Karen Walto
Honorable C. David Baxter
Honorable Orton Bellamy
Honorable Beverly McAdams
Honorable Marvin Stevenson
Honorable Alan Gardner
Honorable Norris Ashford

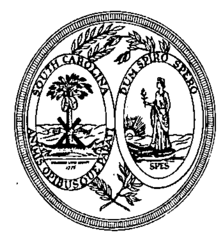
If you have any additional questions, please feel free to contact me.

Sincerely,

Gwendolyn A. Bright
Parole Board Liaison

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

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 DEVINE STREET, SUITE 600
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COLUMBIA, SOUTH CAROLINA 29250
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September 20, 2013

Basil Akbar, #065498
Lee Correctional Institution
990 Wisacky Highway-Flo-2213-S
Bishopville, South Carolina 29010

Dear Mr. Akbar:

I am responding to your letter of September 9, 2013, in which you have asked the names of the Parole Board members and how they voted at your hearing on September 4, 2013. They were Norris Ashford, Marvin Stevenson, Karen Walto, Orton Bellamy, Henry Eldridge and David Baxter. All members present voted to reject you for parole.

Sincerely,

Tommy Evans, Jr.
Assistant General Counsel

TE:dn

EXHIBIT #9-B

State of South Carolina

Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
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COLUMBIA, SOUTH CAROLINA 29250
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Facsimile: (803) 734-9440
www.state.sc.us/ppp

November 17, 2015

Basil Akbar, #65498
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

Dear Mr. Akbar:

I am responding to your Request for Reconsideration from your recent parole denial. Please be advised that there is no appeal process for the routine denial of parole. Also, keep in mind that the Board is an independent body and makes its decisions in its absolute discretion. However, in an effort to assist you, I am forwarding your letter to our office of Board Support Services to be placed in your parole file for review by the Board at any future hearings.

Thank you for your letter.

Sincerely,

Matthew C. Buchanan
General Counsel

MCB:dn

cc: Larry Barton, Director of Board Support Services

P 9 14

Exhibit #4

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ralph Leroy Erwin, Petitioner,

v.

State of South Carolina, Respondent.

ON WRIT OF CERTIORARI

Appeal From York County
Thomas J. Ervin, Post-Conviction Relief Judge

Memorandum Opinion No. 93-MO-286
Submitted July 30, 1993 - Filed August 20, 1993

REVERSED

Assistant Appellate Defender Robert M. Pachak, of S.C. Office of Appellate Defense, of Columbia, for petitioner.

Attorney General T. Travis Medlock, Chief Deputy Attorney General Joseph D. Shine, and Assistant Attorneys General Delbert H. Singleton, Jr., and Lisa G. Jefferson, all of Columbia, for respondent.

PER CURIAM: Petitioner seeks a writ of certiorari from the denial of his application for post-conviction relief (PCR). We grant the writ, dispense with further briefing and reverse.

Petitioner pled guilty in 1960. He contends that the application of S.C. Code Ann. § 24-21-645 (Supp. 1989), which changed parole eligibility consideration to every two years, to him constitutes an _ex post facto_ violation. The PCR judge relied

23 1993

on this Court's opinion in Gunter v. State[1] in denying petitioner relief. This Court recently overruled Gunter and held that the change in the frequency of consideration for parole did constitute an ex post facto violation. Griffin v. State, Op. No. 23909 (S.C. Sup. Ct. filed July 19, 1993)(Davis Adv. Sh. No. 20 at 22). Accordingly, the PCR judge's finding that petitioner was not suffering an ex post facto violation is reversed.

REVERSED.

[signature] C.J.

[signature] A.J.

[signature] A.J.

[signature] A.J.

[signature] A.J.

[1] 298 S.C. 113, 378 S.E.2d 443 (1989).

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 Paroles and Pardons 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 Paroles 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 Paroles and Pardons, as explained in S.C. Code § 24-21-10(B). The enabling statute reads in relevant part as follows:

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

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 Paroles and Pardons, 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 Paroles and Pardons, 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 Paroles and Pardons, 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,**

Conclusion

It is the opinion of this Office that a court would likely find that the SC Board of Paroles and Pardons 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 Paroles and Pardons, 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

NIKKI R. HALEY
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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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