

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT  
S.C. Department of Probation, Parole and Pardon Services

Ralph K. Anderson, III, Chief Administrative Law Judge

Case No. 2017-001904

**RECEIVED**

OCT 18 2017

SC Court of Appeals

Bernard Bagley, #175851,

Appellant,

v.

South Carolina Department of Probation,  
Parole and Pardon Services,

Respondent.

BRIEF OF APPELLANT

Bernard Bagley  
#175851/HD133/KER.CI  
4848 Goldmine Hwy.  
Kershaw, SC 29067

Pro Se

## TABLE OF CONTENTS

	Pages;
Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	1
Facts	2
Arguments	
I. THE APPELLANT'S PRIOR RECORD WAS A FACTOR THAT INFLUENCE THE PAROLE BOARD WHEN THEY DECIDED ON PAROLE.	2-3
II. THE PAROLE BOARD CONSIDERATION OF CERTAIN VARIABLES ARE A DIRECT VIOLATION OF DUE PROCESS AND EQUAL PROTECTION CLAUSE.	3-4
III. THE APPELLANT'S COMPETENCY EVALUATION IN STATE V. BAGLEY, CH901-3472, DATED SEPTEMBER 26, 1990, IS A FACTOR THAT INFLUENCE THE PAROLE BOARD WHEN THEY DECIDED HIS PAROLE.	4-5
Conclusion	6
Designation of Matter	7
Certificate of Counsel	8
Proof of Service	9

## TABLE OF AUTHORITIES

Cases:	Page:
Compton v. SCDPPPS, 685 S.E.2d 175 (2009)	3
Cooper v. SCDPPPS, 661 S.E.2d 106 (2008)	3
Constitution:	
S.C. Constitution Art. 1, §3	2,3
U.S. Constitution Amend. 14, §1	2,3
Statutes: (S.C. Code Ann.)	
§1-23-380(A)(6),	4
§ 1-23-610	4
§ <del>17-41</del> -40	3
§24-21-610	5
§24-21-630	5
§24-21-640	5
§44-23-410	2,5
§44-23-430	2,5
Other:	
Civil Rights Act for Institutionalized Persons	2,3
State v. Bagley, 90-GS-40-5864, (92-UP-165) (1992)	1,2,5

## STATEMENT OF ISSUES ON APPEAL

1. WAS THE APPELLANT'S PRIOR RECORD WAS A FACTOR THAT INFLUENCE THE PAROLE BOARD WHEN THEY DECIDE ON PAROLE?
2. DID THE PAROLE BOARD CONSIDERATION OF CERTAIN VARIABLES ARE A DIRECT VIOLATION OF DUE PROCESS AND EQUAL PROTECTION CLAUSE?
3. WAS THE APPELLANT'S COMPETENCY EVALUATION IN STATE V. BAGLEY, CH901-3472, DATED SEPTEMBER 26, 1990, IS A FACTOR THAT INFLUENCE THE PAROLE BOARD WHEN THEY DECIDED HIS PAROLE?

## STATEMENT OF THE CASE

On March 28, 2017, Bernard Bagley, the Appellant brought this appeal before the Administrative Law Court (ALC), alleging that the Parole Board was influenced to deny him parole based on the factors of his prior record and prior offense, along with other variables and factors in violation of due process and equal protection of the law, on his last appearance before the Board on March 15, 2017.

The Parole Board denied Appellant parole and issued him a notice of rejection dated March 16, 2017, stating in reaching its decision, the Board considered: (1) the characteristics of Appellant's prior offense, and prior criminal record, NOTE: i.e. relevant portion of the notice of rejection.

In addition, the Parole Board weighed these considerations on the following findings of fact: (1) the nature and seriousness of offense; (2) indication of violence in this or a previous offense; and (3) the use of a deadly weapon in this or a previous offense, in which the Appellant alleges that the Parole Board erred in considering information on the sentencing sheet "other condition consecutive to 90-GS-40-5864" that was officially expunged from his criminal record.

On August 15, 2017, the ALC affirmed the Respondent's decision, and Appellant received the ALC order on August 18, 2017. On September 11, 2017, Appellant mailed Notice of Appeal on Respondent(s).

## FACTS

The Appellant is in the unlawful custody of the South Carolina Department of Corrections as a result of a bias conviction on April 12, 1991, in which he was sentenced to a natural life imprisonment without expectancy nor a liberty interest for parole. The Appellant initially appeared before the Parole Board on September 8, 2010, and was denied parole, and has been denied parole following each three (3) subsequent appearances before the Board. His last appearance before the Board was on March 15, 2017, which should have been in 2016 rather than 2017. The Board is considering the 2/1/3 sentence requirement as a factor to deny him parole because the service of an additional 1/3 is required before Appellant could be release on parole.

Furthermore, evidence under §44-23-410, and §44-23-430, of S.C. Code Ann., suggest and produce that Appellant was incompetent on the 11th and 12th of April, 1991, during trial and sentencing, along with the 10th of April, 1991, as well on August 23, 1990, as it relates to the time of the offense.

## ARGUMENTS

1. THE APPELLANT'S PRIOR RECORD WAS A FACTOR THAT INFLUENCE THE PAROLE BOARD WHEN THEY DECIDE ON PAROLE.

The Appellant contends that the Parole Board during his March 15th hearing was influenced when the decided on to deny him parole on the basis of his prior criminal record, and whether he uses violence, and whether he used a weapon in the offense 90-GS-40-5864. The record as well as the notice of rejection dated March 16, 2017, do in fact show a strong correlation between these variables and the decision whether to deny parole. For example, the Board seem less willing to use discretion in cases for lifers involving prior criminal record and offense, and the offender use of a weapon.

Also, to these inappropriate factors, the Parole Board was influenced by the Appellant's age, gender, income, and disabilities, which are direct violation of constitutional due process and equal protection of the S.C. Constitution Article 1, §3, and U.S. Constitution Amendment 14, §1, as well as of federal statutes such as the Civil Rights Act. The executive branch (Parole Board) bias of extra inappropriate factors has actually influenced the Board when they made their parole decision on the 15th of March, 2017. The evidence supports

an association between prior criminal record and prior offense in the Notice of Rejection and the parole hearing outcome on March 15th. The Appellant, a lifer expectancy is denial of parole as "a routine denial of parole" as stated by the ALC and the Respondent. SEE: Compton v. SCDPPPS, 685 S.E.2d 175 (2009). One reason is that the prior criminal record and prior offense are factors that influence the denial of parole as stated in the notice of rejection. It's the Appellant's belief that the Parole Board viewed his status as "society dynamite" considering him dangerous and likely to violate the law again.

#### ARGUMENTS

#### 2. THE PAROLE BOARD CONSIDERATION OF CERTAIN VARIABLES ARE A DIRECT VIOLATION OF DUE PROCESS AND EQUAL PROTECTION CLAUSE.

The Appellant asserts that the Board did consider certain inappropriate variable and inappropriate factors to deny him parole in violation of due process and equal protection of the S.C. Constitution and Article 1, §3, and the U.S. Constitution Amendment 14, §1, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." As well as of federal statutes such as the Civil Rights Act for institutionalized persons. So it's the State's rationale that a lifer expectancy is denial of parole on the basis of "a routine denial of parole" when it is clearly stated in the notice of rejection that the Board considered inappropriate variables and factors of Appellant's prior criminal record and prior offense as listed in the sentencing sheet "other condition 90-GS-40-5864" that was officially expunged, but yet appears in the sentencing sheet in violation of §17-1-40, of S.C. Code Ann., and to be arbitrary and capricious. In addition, the Appellant is not asking this Court nor the ALC to substitute its judgment for that of the Board as to its consideration of the factors as listed in Cooper v. SCDPPPS, 661 S.E.2d 106 (2008). Appellant requires this Court to intervene for that of the Board consideration of the inappropriate variables and factors as stated in the notice of rejection, which influenced how he was denied parole. Appellant asserts that his parole disparity is bias

because the Parole Board at that time was dominated by members who have a paternalistic and protective attitude toward women, and he argues because his victim is a female, and he was a police officer at the time of the offense, his behavior violates what the members believe heinous regardless of the Appellant's state of mind or mental state at the time of the offense. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions as prescribed in §1-23-380(A)(6), and §1-23-600, of S.C. Code Ann., made upon unlawful procedure.

Favoritism has crossed gender lines, benefiting the victim with all do respect whom is a woman, and gender bias is present because the Board perceive the Appellant as high risk and a danger to women, has not granted him any leniency prepare parole release conditions, expectancy of the same, but only the likely expectancy to be denied parole on the basis of "a routine denial of parole."

Furthermore, another factor that has played a role in denying Appellant parole by the Board is his age and disabilities. The Board perception that the elderly risk to society upon parole is costly, and such practices are a violation of his civil rights, because the Appellant is a United States Military Veteran with his benefits intact, along with all sought of programs available to him, along with adequate family support. On the other hand, the Board members at that time use the denial of parole to protect the Veterans Affairs, sparing them the opportunity to assist and provide Appellant the programs available to him, but rather continue him to the pains of the hardships of imprisonment experiences. In other words the Board members denial of parole imposes the harshest terms on him at the age of 60, and the denial of parole is more harshly on him than any other group because of his age and disabilities, i.e. bipolar and manic disorder, and stress disorder syndrome.

#### ARGUMENTS

3. THE APPELLANT'S COMPETENCY EVALUATION ON STATE V. BAGLEY, CH901-3472, DATED SEPTEMBER 26, 1990, IS A FACTOR THAT INFLUENCE THE PAROLE BOARD WHEN THEY DECIDED HIS PAROLE.

The Board's "routine denial of parole" has to be address by this court when Appellant contends that he was given an invalid conviction and sentence that has resulted to him being constitutionally deprived of his liberty because he

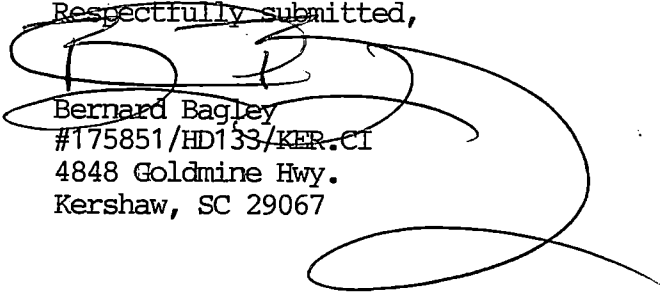
was incompetent during trial and sentencing on April 10th through the 12th of April, 1991. The Board has the Appellant's records and transcript regarding his mental health status during that period. In fact, the expunged offense and prior criminal record shows that the offense final determination was ruled upon based on Appellant's state of mind and mental state at the time of the offense (90-GS-40-5864). Nevertheless, the Board has used the prior criminal record and offense as an inappropriate factor to deny him parole in violation of the foregoing first two arguments, as well as failure to apply Appellant's state of mind and mental state at the time of the offense as a mitigating circumstance or factor for the current offense that correlate with the prior offense and criminal record.

The Appellant further asserts that he was not given a valid conviction as required by state law under §44-23-410, and §44-23-430, of S.C. Code of laws. In addition, he contends that he has a liberty interest in parole as required in §24-21-610, as well as §24-21-630, of S.C. Code of laws, in which the Board parole-related decision(s) to deny Appellant parole impinge upon those state-created liberty interest as stated in §24-21-610, and §24-21-630. The Board has failed to follow proper procedure in making its decision to deny parole the part of sentence required to be served as prerequisite to parole has served at least one third of the term, not two one third, and he is a first offender that has served the minimum for which he was sentenced, and he has served more than ten consecutive years of an invalid conviction and sentence. Also, §24-21-640, of S.C. Code of Laws, provide that no person must be made ineligible for the parole program, or circumstances warranting parole program by reason of gender. For example, §44-23-410, requires that a defendant failure to request a competency hearing at trial cannot be waived. Additionally, §44-23-430, for example, a mentally incompetent person cannot be expected to raise contentions of his mental incompetence before and during trial, and failure to request an additional independent second competency evaluation cannot be waived. Also for example, §24-21-610, requires the Board to apply the one third of the term, not two one third term factor for requirement for parole, along with first time offender serving ten consecutive years, in reaching its decision to grant or deny parole.

CONCLUSION

WHEREFORE, based on the Appellants contentions, and assertions herein he request that this Court order and remand this matter for a new parole hearing as soon as practicable.

~~Respectfully submitted,~~

  
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief complies with SCACR, for  
Initial Briefs. (Rule 208)

s/

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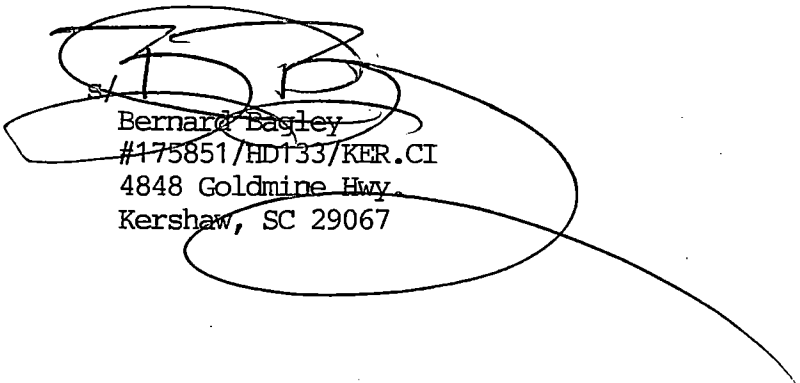
Respondent.

PROOF OF SERVICE

I certify that I have served the Brief of Appellant, Designation of Matter,  
and Certificate of Counsel on the Respondent by depositing a copy of the  
same in the U.S. Mail, postage prepaid, on October 13, 2017, addressed to  
the following: SCDPPPS

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