

THE STATE OF SOUTH CAROLINA
In the Supreme Court
Appellate Case No.: 2017-001759

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable H.W. Funderburk, Jr.
Administrative Law Judge
Case No. 16-ALC-15-0010-AP

COURT OF APPEALS
Appellate Case No.: 2016-002492

RECEIVED

NOV 17 2017

S.C. SUPREME COURT

Melissa Burris #212040,

Respondent,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Appellant.

RETURN TO PETITION FOR WRIT OF CERTIORARI

TOMMY A. THOMAS
P.O. Box 88
Irmo, SC 29063
(803) 732-5507
ATTORNEY FOR RESPONDENT

TOMMY EVANS, JR.
Assistant General Counsel
South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, SC 29250
(803) 734-9220
ATTORNEY FOR APPELLANT

INDEX

Table of Authorities 1

Question Presented 1

Statement of the Case 2

Statement of the Facts 3

Argument 4

Conclusion 7

TABLE OF AUTHORITIES

Statute:

S.C. Code of Laws Ann. §1-23-380 (5) (Supp. 2015)

S.C. Code of Laws Ann. §1-23-610 (Supp. 2016)

S.C. Code of Laws Ann. §24-21-610

S.C. Code of Laws Ann. §40-55-10 *et seq* (2011 & Supp. 2016)

S.C. Code of Laws Ann. §40-53-55 (2011)

S.C. Code of Laws Ann. §40-55-80

SCACR Rule 24

QUESTION PRESENTED

Did the Court of Appeals err in deciding that it did not have jurisdiction in the above case due to the Administrative Law Court's decision not being final?

STATEMENT OF THE CASE

On January 13, 2016, the Respondent appeared before the South Carolina Department of Probation, Parole and Pardon Services, hereinafter referred to as the Parole Board, and was granted parole. The Respondent had been convicted in Anderson County on January 5, 1994, for the crime of Murder and Possession of a Firearm during the commission of a violent crime. The Respondent was sentenced to life and five years respectively. The Respondent has served the requisite amount of time to be considered for Parole. On January 13, 2016, the Respondent was granted conditional parole.

On March 10, 2016, Respondent received a letter from Probation and Parole indicating that her case was reconsidered on February 17, 2016, and the Board rescinded her parole for the following three reasons:

1. The Nature and Seriousness of the Current Offense,
2. Indication of Violence in this or Previous Offense; and
3. Use of Deadly Weapon in this or Previous Offense.

A Notice of Appeal was timely filed on March 25, 2016, in the South Carolina Administrative Law Court.

The Appeal was decided by the Lower Court and by Order of The Honorable H. W. Funderburk the case was remanded back to the South Carolina Department of Probation, Parole and Pardon Services.

A timely Notice of Appeal was filed by the Appellant. On May 4, 2017, The Court of Appeals dismissed the Appeal. On May 8, 2017, the Appellant filed a Petition

for Rehearing. On August 9, 2017, the Court of Appeals denied the Petition for Rehearing. A timely Petition for Writ of Certiorari was filed.

STATEMENT OF THE FACTS

The Respondent has served a period of incarceration that exceeds ten (10) years, therefore she would be required to have a psychological examination by a duly qualified psychologist or psychiatrist pursuant to South Carolina Code of Law §24-21-610.

It was only discovered after the filing of the initial appeal and the receipt of the Record on Appeal from the Administrative Law Court that the Respondent received a negative psychological. This document and/or information was never given to the Respondent.

Between the time of being granted conditional Parole, and her notice of rejection, the Respondent received no disciplinaries from the South Carolina Department of Corrections, nor was she charged with any additional crimes. The factual nature of her crime and the circumstance revolving around her crime did not change.

The psychological was performed by Dr. Robin Lyn Moody a Licensed Clinical Counselor. Dr. Moody is not a Licensed Psychologist. The Administrative Law Court determined that pursuant to State Law and §24-21-610, she was not qualified to render a psychological report.

ARGUMENT

The Respondent is currently serving a life sentence, but is eligible for parole. She appeared before the Parole Board November 6, 2013 and was denied. She appeared a second time before the Board on January 13, 2016 and was granted conditional parole upon receiving a favorable psychological as required by S.C. Code §24-21-610. The evaluation in this case was performed by Dr. Robin Lyn Moody, a contract employee of The South Carolina Department of Probation, Parole and Pardon Services. This evaluation was provided to the Parole Board. Upon receipt of Dr. Moody's psychological report, the Respondent's conditional parole was rescinded.

This decision was appealed to the Administrative Law Court in which the Honorable H. W. Funderburk, Administrative Law Court Judge found:

When acting in an appellate capacity, the ALC must apply the criteria of S.C. Code Ann. §1-23-380 (5) (Supp. 2016), which reads:

The Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on question of fact. The court may affirm the decision of the agency or remand the case for further proceedings. 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 are:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Court also found that the Respondent is entitled to a reexamination of her mental condition followed by a rehearing on the basis the Department did not comply

with State Law requiring the evaluation be conducted by an appropriate person. S.C.

Code Ann. §24-21-610 states:

Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a **duly qualified psychiatrist or psychologist**. [Emphasis added].

The Administrative Law Court determined that this evaluation does not conform with the requirements of S.C. Code Ann. §24-21-610. Respondent is entitled to a new mental health evaluation conducted by a duly qualified psychiatrist or psychologist, as mandated by S.C. Code Ann. §40-55-10 *et seq* (2011 & Supp. 2016). After receipt of the report from the new evaluation, a rehearing shall be held to consider Respondent's parole.

Petitioner submits that in accordance with Rule 24 (b) SCACR, that there is a novel and important reason for this Court to exercise its discretion and grant review from the decision of the Court of Appeals.

Petitioner argues that Administrative Law Court determined that the Petitioner erred in not allowing a duly qualified psychiatrist or psychologist to conduct the psychological evaluation in the above case. The Administrative Law Court Ordered that a rehearing be conducted to determine parole.

The Petitioner argues that after a rehearing, the issue presented to the Administrative Law Court becomes mute and has no value regarding the matter originally brought before the Court.

Petitioner also argues that the decision of the Administrative Law Court was that Dr. Moody, the examiner in this case, was not qualified to make that determination. That this Administrative Law Court finding makes this decision final.

The Petitioner argues that the Administrative Law Court decision leaves the Petitioner with only two actions: 1) To have the Respondent evaluated by another Doctor; or 2) To Appeal the decision to the Court of Appeals. They argue that once this case is remanded back to Probation and Parole and a qualified psychologist or psychiatrist is retained to evaluate the Respondent, that the issues presented cannot be brought again before the Administrative Law Court, therefore this decision is final. They argue that their rights are dramatically impaired due to the fact that there are a limited number of psychologists or psychiatrists available. They also raise the question of Dr. Moody's previous evaluations, outside of this case, that have been completed and relied upon by the Petitioner.

The Respondent would argue that there is fallacy in both of these arguments.

The Court of Appeals is correct in stating that the Administrative Law Court is not a final decision that is immediately appealable pursuant to §1-23-610 South Carolina Code of Laws, (Supp. 2016).

The Administrative Law Court found that this was an error of Law. The Administrative Law Court found that §40-53-55 South Carolina Code of Laws, requires a license to engage in the practice of psychology and in order to obtain a license, an Applicant must have a Doctorate Degree in psychology and meet other requirements, such as examination and supervised experiences §40-55-80 South Carolina Code of Laws. There was nothing in the Record supporting the conclusion that the examiner in

examination and supervision requirements necessary for licensing in South Carolina. The Administrative Law Court further found that the evaluation in question does not conform to the requirements of the South Carolina Code of Laws Ann. §24-21-610. Respondent is entitled to a new mental health evaluation conducted by a duly qualified psychiatrist or psychologist as mandated by §44-55-10 South Carolina Code of Law. Therefore, the proper remedy was to remand the case back to the Petitioner.

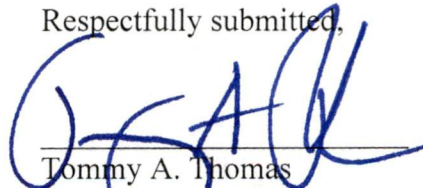
The additional argument that the Petitioner would be dramatically impaired due to the fact that there are a limited number of psychologist or psychiatrist available, has no bearing on the requirements of the laws of the State of South Carolina.

In addition, the question regarding Dr. Moody's previous examinations of other inmates is a question not currently before the Court. This issue has no bearing on the Administrative Law Court's decision regarding the case of the Respondent.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits that the Court should deny the Petitioner's request for Writ of Certiorari.

Respectfully submitted,



Tommy A. Thomas
Attorney for the Respondent

November 16, 2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court
Appellate Case No.: 2017-001759

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable H.W. Funderburk, Jr.
Administrative Law Judge
Case No. 16-ALC-15-0010-AP

COURT OF APPEALS
Appellate Case No.: 2016-002492

RECEIVED

NOV 17 2017

Melissa Burris #212040,

Respondent,

S.C. SUPREME COURT

vs.

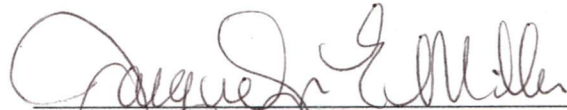
South Carolina Department of Probation, Parole and Pardon Services,

Appellant.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Respondent, hereby certify that I placed in the United States Mail, a copy of a Return to Petition for Writ of Certiorari with postage prepaid and the return address clearly shown on said envelope to:

TOMMY EVANS, JR.
Assistant General Counsel
South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, SC 29250



Jacquelyn E. Miller, Secretary
Tommy A. Thomas, Attorney for Respondent
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, South Carolina
November 16, 2017