

STATE OF SOUTH CAROLINA
S.C. COURT OF APPEALS

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SC Court of Appeals

Appeal From Richland County S.C.
ADMINISTRATIVE LAW COURT

Shirley C. Robinson Administrative Law Judge
CASE NO. 2017-002079

Timothy L. Marsh Appellant,
vs.
South Carolina Department of Probation, Parole
and Pardon Service Respondent.

BRIEF ON APPEAL OF APPELLANT

Timothy L. Marsh
Timothy L. Marsh,
#145874
PRO SE

DATE: January 01, 2018

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STATEMENT OF ISSUES ON Appeal

- (1.) Whether the Board's decision to deny the Appellant parole after service of Twenty-Nine years of incarceration was based on erroneous information?
- (2.) Whether the Board's decision to deny the Appellant parole was arbitrary and capricious due to the Board's deviation from appropriate Criteria?
- (3.) Whether the Board's failed to consider — or did not give appropriate weight to — favorable information/factors supporting a decision to grant Appellant parole?
- (4.) Whether the Board's enumerated factors denying parole are immutable and fixed as of date of offense and therefore depriving Appellant of a meaningful opportunity at parole?
- (5.) Whether the Board abuses its authority and acted arbitrarily and capricious when it refused to allow Appellant to postpone schedule parole hearing?

STATEMENT OF CASE

On March 22, 1988, the Appellant was convicted of murder and sentenced to life in prison. He was 19-year-old at that time.

The facts underlying the events of October 31, 1987, are straight forward and tragic. The victim Frederick Beard 29-years-old stole Appellant's bicycle. The Appellant ultimately crossed paths with Beard and shot him. The testimony differs moments prior to shooting Beard, but there were drinking, drugs and Halloween night. The Appellant did not deny shooting Beard, but claimed a struggle occurred and Beard was shot.

The Appellant has been continuously incarcerated since arrest date November 05, 1987. Considering all things, he's been a model prisoner and did not have a criminal record prior to this.

In 2008, after serving 20 years, the Appellant went before the Board for consideration. He was denied that time and has been denied (4) times since.

The 5th time was January 11, 2017, and this is the first time Appellant has appealed the Board's decision. In October 2016, the Appellant was interviewed for his up-coming parole hearing scheduled for January 11, 2017.

In November 2016, events occurred which required appellant to change his parole plan. The appellant wrote two letters dated November 28, 2016 and December 10, 2016, requesting a continuance of January 11, 2017, parole hearing. The Board did not respond to the letters and the hearing went forward as scheduled.*

The Board ultimately denied Appellant's release for parole. The reasons for denial are the very same (3) reasons used all (5) times.

- (1) Nature and seriousness of current offense
- (2) Indication of violence in this or previous offense
- (3) Use of deadly weapon in this or previous offense

The appeals follows:

* See Attachment "A" and "B" letters to the Board.

" ARGUMENT ON APPEAL "

(1)

The Board's decision to deny Appellant parole was based on erroneous information, and therefore is arbitrary, capricious and abuse of discretion.

Appellant argues that the Board relied upon clearly erroneous information reaching its determination to deny parole.

As this court is aware, any administrative agency or tribunal decision predicated on erroneous information is fatally flawed. James v. Jacobson, 6 F.3d 233, 239 (4th Cir 1993) (a court's decision is flawed by erroneous factual or legal premises); Weir v. Citicorp Nat. Services, INC., 435 S.E. 2d 864 (S.C. 1993).

Prior to the death of the victim, the Appellant had a clean criminal record, yet the Board considered the Appellant's "prior offenses" "prior supervision history" and "prior record". (R-2) Why/how can the Board consider things that don't exist? To be sure, the Appellant has reason to believe that the Board considered prior criminal convictions and probation revocation information that is clearly erroneous. *

*The [redacted] submitted an FOIA requesting to the SC. PPPs which was denied in full. This FOIA request is presently before the Richland County Court of Common Pleas, Case # 2017-CP-40-1920

Additionally, the Appellant has reason to believe that the Board also used erroneous inmate disciplinary information. For the record, Appellant has a total of 0 prisoner disciplinary in 24 years, therefore any reliance on prison disciplinary would seem to support granting parole. Apparently, the Board used inaccurate information in this regard.

Presumably, the prisoner's record before the Board must contain erroneous and/or inaccurate information insomuch as the Appellant has no "prior offenses", has never been charged or adjudicated for any "prior supervision violation" and has absolutely no "prior record" to consider other than a clean prior record.

The Court has ordered the Board to reconsider the denial of a prisoner's parole in cases where that decision was based in part on false or erroneous information contained in prisoner's records. See Tinsley v. SC. PPS, 2016 WL 1367046 (S.C. 2016), (reversed and remanded for hearing to determine if parole Board used "false information" in its deliberation process). This Court should conduct a hearing and determine if the Board used erroneous or false information when deciding prisoner's case for release on parole.

(2.) The Parole Board's decision to deny Appellant's Parole was Arbitrary and capricious due to the Board's deviation from Appropriate Criteria.

Appellant has a state created liberty interest in requiring S.C. Parole Board members to adhere to statutory criteria in rendering a decision. See Cooper v. S.C. PPS, 611 S.E. 2d 106, 109 (2008).

Section Σ 24-21-64 provides in relevant part:

The board must carefully consider the record of the prisoner before, during and after imprisonment, and no such prisoner may be paroled until it appears 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

... that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of Society will not be impaired thereby; and that suitable employment has been secured for him.

S.C. Code Ann. § 24-21-640

The law goes on to require the Board to establish written specific criteria for the granting of parole. id. § 24-21-640, "If the board deviates from or renders its decision without consideration of the appropriate criteria we believe it essentially abrogates an inmate's right to parole eligibility, and, thus, infringes on state-created liberty interest," Cooper 661 S.E. 2d at 499.

Considering the Appellant's background, circumstances and assured suitable employment, the Board's decision to deny Appellant's parole deviated from established, appropriate criteria. The Appellant in this case is a first time offender; has been a model inmate while incarcerated almost 30 years; he's shown a disposition to reform; his prison record indicates a probability that he has reformed and would obey the law and lead a correct life; and his conduct merits a lessening of the rigors of his imprisonment.

Instead of considering the required statutory criteria the board simply gives lip service to the statute and relies on the very same (3) three factors it has denied Appellant parole all (5) five time (i.e., (1) nature and seriousness of current offense; (2) indication of violence in previous offense; (3) use of deadly weapon in this or previous offense.). These factors are fixed in time and can never be changed by the actions of Appellant while incarcerated. Consequently, the Board has effectively disqualified Appellant from ever being released on parole and thus permanently denying him parole no matter what Appellant does to meet release criteria. Cooper, id. pg. 499.

The Appellant contends that the Board's single page rejection of parole is merely pretextual and fails to comply with the statute requiring a **MEANINGFUL** consideration of established criteria for parole. Moreover, the Board's decision was apparently made without giving credence to Section 24-21-640, but rather relied exclusively on (3) three factors that will forever be used to deny the Appellant parole. notwithstanding the multitude of factors that militate in favor of granting this Appellant parole. Spingner v. S.C. PPRS, WL 2015 1681270 (S.C. 2015)
(Board failed to follow statutory requirement)

(3) The parole Board failed to consider, or did or did not give appropriate weight to, favorable information/factors supporting a decision to grant Appellant's parole.

If ever there was a prisoner deserving of parole in South Carolina it is the Appellant. The Board enumerated its reasons for denying parole (ie, nature and severity of offense; indication of violence; use of weapon in crime), but apparently did not consider—or did not give appropriate weight to—the numerous factors that warranted parole.

Specifically, as mentioned above, the Appellant has been incarcerated almost (30) years. During this time he has received his High School Diploma (GED), attended and completed numerous self-help programs, participated in religious services and programs, maintained an exemplary prison disciplinary record, maintained prison Job/employment the entire span of incarceration, has accepted responsibility for his criminal conduct for almost (3) decades, maintains family ties,

Maintained positive mental and physical health, exemplified actions/conduct during incarceration to solve his problems, presented adequate parole plan to Board, procured verifiable employment if granted release on parole, and demonstrated willingness of community and family to receive prisoner back into society. Moreover, murders have historically demonstrates that they are least likely to commit crimes after release*

Apparently, in light of the compelling factors that reasonably militate in favor of granting this Appellant parole, the Board decision to deny him parole is arbitrary and capricious in nature. When compared with other S.C. prisoners who have been granted parole, the Board's decision to deny this prisoner parole appears to be capricious and arbitrary for sure.

*

See U.S. Bureau of Justice Statistics (BJJ)
<http://bjs.ojp.usdoj.gov/bjs/crimoff.htm#recidivism>

Only the Board members actually know what factors they did or did not take into account or which factors they gave more or less weight to, but the record suggests that the Board did not exercise its discretion based on an appropriate assessment of such factors—thus depriving Appellant of meaningful opportunity of parole. See Bagley v. PPS WL 2016 2753983 (S.C. 2016)

(4.) The Parole Board enumerated reasons denying Parole are immutable and fixed as of date of offense and therefore reliance of such reason deprived Prisoner of a meaningful opportunity at parole.

The Appellant has appeared before the Board (5) five times over a (10) ten year span of time. Every time the Board has denied Appellants Parole based on the following factor/reason:

1. Nature and seriousness of current offense
2. Indication of violence in this or previous offense
3. Use of Deadly weapon in this or previous offense

To be sure, these factors/reasons are immutable and the Appellant can not do anything to alter or change them. Therefore, it is an exercise in futility for the Appellant - to go up for parole consideration, and the Board is essentially depriving the Appellant of parole eligibility by not giving him a meaningful opportunity at parole. If the Board determines that these factors/reasons alone can serve to deny prisoner parole then the Board will never change its determination inasmuch as the factor/reasons supporting such determination can and never will change, Ruff v. S.C. PPS, 2015 WL 3885638 (S.C. 2015) Bagle v. S.C. PPS, 2016 WL 2753983 (S.C. 2016) (prehearing investigation incomplete, did not have all favorable evidence, Board decision did not demonstrate a rational nexus between the factors used to deny parole and Appellant actual risk of reoffending).

(5) The Parole Board Abused its Authority and Acted Arbitrarily and Capriciously when it refused to allow Appellant to Postpone his scheduled Parole Hearing.

A month prior to his scheduled parole board hearing the Appellant wrote to the Board requesting to postpone his January 11, 2017, hearing (SEE attachment "A and B").

The purpose of this continuance was to allow Appellant effectuate changes in his parole plan. The Board did not respond to either of Appellant's letters, and therefore; by implication, denied Appellant's request to postpone hearing. This Court is urged to consider the Board's action in this regard as an abuse of discretion; an arbitrary and capricious use of executive powers.

CONCLUSION

WHEREFORE, the Appellant urges this Honorable Court to find that the Parole Board acted arbitrary and capriciously in its handling and determination of Appellant's parole hearing review.

Respectfully Appellant prayed for this 21 day of
~~January~~ ~~2018~~ 21 2018

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Appellant, Pro Se

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STATE OF SOUTH CAROLINA SC Court of Appeals
IN The South Carolina Court of Appeals
Docket Number # 2017-002079

Pro SE Appellant Initial Appeal Brief

Timothy L. Marsh Appellant

v.

South Carolina Department of Probation
Parole, and Pardon Services Respondent

Certificate of Service

I, Timothy L. Marsh # 145874, Inmate housed in South Carolina Department of Corrections, Pro SE Counsel, certify that I have served Initial Appeal Brief, dated _____, 20____, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, the 01 day of January, 2018 Addressed to:

Jenny Abbott Kitchings, Clerk
of The South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

I further certify that all parties required
by Rule 208(A)(1) to be served have been served.

date, January 01, 2018,
Timothy L. Marsh
Timothy L. Marsh #145874
LCI F-5# 232
990 Wisacky Hwy.
Bishopville, S.C. 29010

cc

Tommy Evans Jr.
Respondent

date. January 01, 2018

Timothy L. Marsh #145874
Appellant,
v.
South Carolina Department
of Probation, Parole and
Pardon Service Respondent

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SC Court of Appeals

Case No. 2017-002079

I Timothy L. Marsh #145874 hereby certify that I served a copy of a motion requesting permission to proceed outside the court deadline Rule 208 and 209 along with the Appellant initial Appeal Brief to the respondent and all parties on January 01, 2018, by placing a copy of the same in the us. mail, postage prepaid addressed follows:

cc:

Thank you

SC. Court of Appeals
Jenny A. Kitchings clerk
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Respectfully Submitted
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January 01, 2018

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Appellate Case No.
2017-002079

Re: Timothy L. Marsh #145874 v. South Carolina
Appellant,
Department of Probation, Parole & Pardon Services,
Respondent,

Dear Clerk, Kitchings,
Please find for filing and consideration my Pro Se
"Initial Brief" and designation of matter, along with a
motion requesting permission to serve and file my
initial brief and designation of matter outside of
the filing deadlines set by Rules 208 and 209 S.C.A.C.R.
in the above captioned case.

Thank you very much.

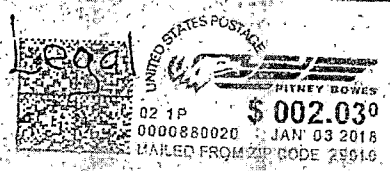
c.c.

Tommy Evans Jr., Esquire
S.C. Administrative Law Court

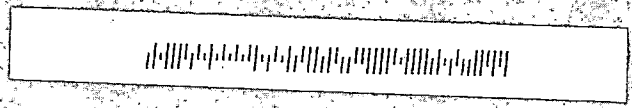
Respectfully Yours,
Timothy L. Marsh
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