

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM RICHLAND COUNTY
ADMINISTRATIVE LAW JUDGE,
S. Phillip Lenski
Docket No. 17-ALJ-15-0023
Appellate case No. 2018-000112

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MAR 30 2018
SC Court of Appeals

Rodney Mollins
Appellant

VS.

INITIAL REPLY BRIEF

SOUTH CAROLINA DEPT. OF PROBATION
PAROLE AND PARDON SERVICES.
Respondents

Dated

3-28-18

Rodney Mollins, # 210264
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, S.C. 29210

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South Carolina Code Ann. 24-21-640 - Page 7

South Carolina Parole Board Policy and Procedure Manual Page 5

Hawkins v. N.Y.D.O.C. 30 N.Y.S. 3d 397. - Page 6

ISSUES ON APPEAL

1. Was petitioner denied eligibility to participate in the parole program, by the parole Board continuing to use factors that will never change to deny him parole?

2. Was petitioner constitutional Due process right violated when petitioner who is classified as violent had his parole hearing before only 6 parole Board members, thereby making him ineligible to participate in the parole program?

3. Was petitioner unconstitutionally denied a meaningful opportunity to participate in the parole program, when the parole Board failed to consider the fact that petitioner was a juvenile at the time of the offense. When the criteria for parole consideration requires the parole Board to consider the petitioner before his incarceration?

Was petitioner denied eligibility to participate in the parole program by the parole Board continuing to use factors that will never change to deny him parole?

The respondent's in addressing this issue avoid the main. petitioner is being denied eligibility to participate in the parole program. S.C. code Ann. 24-21-140 "the Board must establish written specific criteria for the Granting of Parole and provisional parole. "The parole Board and the Administrative Law court both have failed to address the issue of eligibility or the fact and the Law as State by the South Carolina General Assembly when they made S.C. code Ann. 24-21-140. By not using a criteria for the granting of parole, the parole Board is, in violation of constitutional and statutory provision. The court can review the decision of the ALJ because that decision was clearly erroneous in view of the reliable, probative, and evidence on the whole record. The decision by the ALJ doe's not consider the intent of the S.C. General Assembly as expressed in S.C. code Ann. 24-21-140

Was petitioner constitutional Due process right violated when the petitioner who is classified as violent had his parole hearing before 6 parole Board members, thereby making him ineligible to participate in the parole program?

The respondents on page 6 of their initial Brief State "in the absence of any statutory or other controlling provision, "and the ignore their own policy and procedure manual page 15. " states violent versus non-violent. Offenders convicted of a violent crime will be scheduled for parole hearing before the full Board only" this policy is clear and the respondent and the ALJ have chosen to ignore this in favor of an argument that doe's not address this fact. The decision by the ALJ is clearly erroneous in view of the reliable, probative, and evidence on the record as a whole. This court can review this issue.

Was petitioner unconstitutionally denied a meaningful opportunity to participate in the parole program, when the parole Board failed to consider the fact that petitioner was a juvenile at the time⁴ of the offense. When the criteria for parole consideration requires the parole Board to consider the petitioner before his incarceration?

The respondent's when addressing this issue clearly misrepresent what the ALJ states on page 4 of his order "This court finds the reasoning in Hawkins persuasive. The appellant's argument that the maturity of a juvenile who has taken steps to rehabilitate himself in prison should be considered by the Board has merit, in the court's opinion currently, the Board doe's not consider these factors, however, no existing United States or South Carolina Authority requires the South carolina parole Board to consider age or immaturity in it's decisions". The decision on this issue by the ALJ is clear and is in total contradiction with what the parole Board is claiming. The Board is saying that on authority they are considering

The fact that petitioner was a juvenile at the time of the offense. This court must consider that the criteria relied by the parole Board is vague at best ("The inmates prior criminal records" is criteria, no. 3, and S.C. code Ann. 24-21-640 in part "the Board must carefully consider the record of the prisoner before, during and after imprisonment". The ALJ is correct there is no authority to compel the Board to consider the fact that petitioner was a juvenile at the time of the offense and all the immaturity of youth. It's beyond belief that the parole Board would consider factor that are not supported by authority, when the ALJ could not find the authority how can the parole Board all at once find authority. But for a favorable parole decision a person sentenced to life with parole as a juvenile will be punished by life in prison. The Board must seriously consider youth and it's attendant characteristic. No clearly, established (State) Law exist with respect to this issue. Many circuits have addressed this issue or this court to rely on. This court has the power to go outside this

Jursidiction and rely on determinations by other circuits that address this very important issue.

CONCLUSION

Petitioner is request that this court order a new parole Board hearing with the satutory correct number of Board members as well as consideration of his youth at the time of the offense

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Appellant

VS.

CERTIFICATE OF SERVICE

S.C.D.P.P.P.S.
Respondent

Rodney Mollins, declares under the penalty of perjury that he mailed a copy of his initial Brief to the parties listed below by palcing them in the U.S. mail clearly addressed.

RESPECTFULLY SUBMITTED

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Sworn to and subsceibed before me

This 28th day of MARCH 2018

Lisa Brown-Alston (L.S.)

Notary Public For South Carolina

My Commission Expires: 2/5/2023

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

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SC Court of Appeals

Dear Clerk of court;

Enclosed is the original of my Brief and the record of Appeal. Please forgive me for seeming to but not, in fact, neglecting to send copies along with. As a prisoner in the South Carolina Dept. of Corr. I am prohibited by policy GA-01.03" Inmater access to the courts, Inmates access to courts, 12.1 from making photocopies. It's sanction is a deprivation supported by Hendricks v. S.C.D.C., 385 S.C. 625, 686 S.E. 2d 191 (2010).

To the extent not in conflict with any Law or rule of court, please make and distribute to the appropriate offices the requisite number of copies and return to me a clock-stamped copy for my file.

Thanking you in advance for your time attention and anticipated response, I am.

s/ Rodney Mollins
Rodney Mollins

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