

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable H. W. Funderburk, Jr.
Administrative Law Judge

Case No. 16-ALC-15-0010-AP

RECEIVED

APR 13 2018

SC Court of Appeals

MELISSA BURRIS, #212040,

Respondent,

SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES,

Appellant.

NOTICE OF APPEAL

The South Carolina Department of Probation, Parole and Pardon Services, by its attorney, Tommy Evans, Jr., appeals the order of the Honorable H.W. Funderburk, Administrative Law Judge, dated and filed December 6, 2016, and received on December 9, 2016.

Appellant filed an appeal in this matter on December 12, 2016, however, on May 4, 2017, this Court ruled that the order of the Administrative Law Court (ALC) was not a final order. Therefore, this Court decided to dismiss this appeal. A petition for Rehearing was filed on May 8, 2017, and denied on August 9, 2017. Appellant filed a Petition for Writ of Certiorari which was denied on March 28, 2018. On March 31, 2018, Appellant was re-evaluated by a different psychologist and on April 10, 2018, the Respondent appeared before the Parole Board per the

Administrative Law Court's Order. The Parole Board granted the Respondent's parole, thereby making the decision of the ALC final. Since this matter is final the Department would like to once again appeal the final decision of the ALC regarding the qualifications of Dr. Robin Lyn Moody. Due to the amount of evaluations completed by Dr. Moody, and the possibility of future evaluations, it is imperative that this Court review the final decision of the ALC. The Department only wish is for this Court to determine the single issue regarding if Dr. Moody is duly qualified to complete mental health evaluations pursuant to Section 24-21-610 of the South Carolina Code of Laws.¹

This Court initially ruled that they could not rule on this appeal due to the decision not being final. The Department now argues that since the question of parole has been decided, this Court now has jurisdiction to determine if the previous decision of the ALC was made in error. The Court of Appeals has jurisdiction over any cause in which an appeal is taken from an order, judgment or decree in the circuit court, family court, a final decision of an agency, a final decision of an administrative law judge, or the final decision of the Worker's Compensation Commission. S.C. Code Ann. §14-8-200 (2015). An appeal may be taken, as provided by law, from any final judgment, appealable order or decision. Rule 201, SCACR.

Since the hearing is final, no decision made by this Court would be interlocutory. An order is interlocutory and not final when "there is some further act which must be done by the court prior to a determination of the rights of the parties." *Mid-State Distribs. Inc. v. Century Imps. Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993). The case is now final; there exists no

¹ Notwithstanding any other provision of this section or of law, no prisoner 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.

further act regarding the final decision of the ALC.

The initial subject of the appeal raised by the Department was whether or not it was lawful for Dr. Moody to give her opinion regarding the ability of the Respondent to function outside of prison. The ALC decided that Dr. Moody was not qualified to make this decision. The Department argues that the ALC was incorrect. We wish this court to review this decision to determine if this decision was in error.

This case is now resolved; no further act can be made regarding this decision. This issue cannot be brought again before the ALC so this issue is final. In Good v. Hartford Accident & Indemnity Co., 201 S.C. 32, 21 S.E.2d 209 (1942), the South Carolina Supreme Court decided what makes a decision final. In the Good opinion it states:

“A judgment order of decree to be final for purposes of an appeal or error must dispose of the cause, or a distinct branch thereof, as to all parties, reserving no further questions or directions for future determination. It must be finally dispose of the whole subject-matter or be a termination of the particular proceedings or action, leaving nothing to be done to enforce by execution what has been determined. In other words, a final judgment is one which operates to divest some right in such manner as to put it beyond the power of the Court making the order to place the parties in their original condition after the expiration of the term; that is, it must put the case out of Court, and must be final in all matters within the pleadings.”

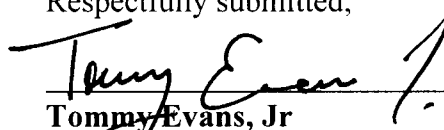
Good, at 212, quoting, Am.Jur. 860 Section 22.

In South Carolina, an immediate appeal may be taken where the rights of the State would be substantially impaired if the appeal is not heard. When error in the decision or ruling cannot be vindicated on appeal, a substantial right is involved. Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000). The previous decision by the lower court dramatically impaired the rights of the Department. This is due to the fact there are a limited number of

psychiatrists or psychologists available willing to perform these evaluations; which must be conducted inside a South Carolina prison. If this determination is not reviewed, there would be delays in the final decision of the parole board regarding cases requiring mental health evaluations because of the disqualification of Dr. Moody by the ALC's final decision.

This Court decided not to hear this appeal due to the fact this Court ruled that this case has not yet completed. The case was remanded back to the Parole Board. Another evaluation and a subsequent hearing was held in which she was granted parole. However the question remains, whether or not Dr. Moody can be considered duly qualified in order to conduct mental health evaluations pursuant to South Carolina law. The Department only wishes a ruling on the lawfulness of the ALC's decision. The Department does not wish the Appellant's appeal to be repealed, but requests resolution on this single matter.

Respectfully submitted,



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

Columbia, South Carolina
April 11, 2018

Attorney for Appellant

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Appellant.

CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant, hereby certify that this 11th day of April, 2018, I served

the following documents:

1. Notice of Appeal; and
2. Certificate of Service.

by first class mail, postage prepaid as follows:

Tommy Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063



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Executive Assistant
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SC Court of Appeals

April 11, 2018

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
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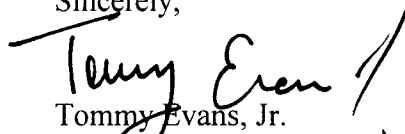
RE: State v. Melissa Burris

Dear Ms. Kitchings:

Please find enclosed the original Notice of Appeal in the above captioned case wherein the Department is appealing the order of the Honorable H.W. Funderburk., Administrative Law Judge, dated and filed December 6, 2016. Also enclosed is the proof of service of the Notice of Appeal and a copy of the order which is to be challenged on appeal.

Thank you for your assistance in this matter.

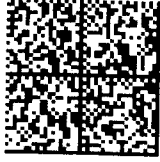
Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn
Enclosures

cc: The Honorable H.W. Funderburk
Tommy Thomas, Esquire

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SC Court of Appeals

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