

THE STATE OF SOUTH CAROLINA

In the Supreme Court

Appeal from the South Carolina Court of Appeals

Justices Short, Thomas and Hill

Appellate Case No.: 2016-002100

RECEIVED

AUG 08 2018

SC Court of Appeals

Basil Wali AkbarAppellant

v.

South Carolina Department of Probation, Parole, and Pardon Services.....Respondent

MOTION/PETITION FOR REHEARING

This matter comes before this honorable Court seeking rehearing Rules 219(b), 236, SCRCP to Appeal of Basil Wali Akbar (Appellant), an inmate incarcerated with the South Carolina Department of Corrections, appealing an Administrative Law Court (ALC)/ the South Carolina Court of Appeals that does implicate a state-created liberty and property interest, and State and Federal Constitutional concerns, see *Wicker v SCDC*, 360 SC 421, 602 SE 2d 56; *Slezak v SCDC*, 331 SC 327, 506.

REHEARING TO ARREST JUDGMENT

Appellant contends that he is grieved and prejudice by judgment/decision on appeal, SC Code Sec 18-1-130 (1985); Rule 201(b) SCACR; *Burns v Gardner*, 328 SC 608, 493 SE 2d 356 (Ct App 1997). Justiciable controversy was stated with particularity points that were overlooked, and misapprehended by the courts [Rule 221(2), SCACR] his argument when:

1. The Administrative Law Court/the South Carolina Court of Appeals erred by overlooking, and misapprehended Appellant's complaint by erroneously misconstruing that he was appealing denial of parole, therefore untimely filed. To the contrary the record is clear from the whole context of case, stated with specificity, Rule 103(a)(2), documented that he was not challenging a routine denial of parole. The Appellant was clearly contesting the misapplication of procedures and regulation that was exercised arbitrary capriciously, that are the scope of the complaint. The record speak for itself. The ALJ court's finding does not accord with the statements at issues on appeal. The ALJ court abused its discretion and fail to exercise sound judgment. The Appellate court stand to review such decision that is asserted to be grossly unsound, ungrounded and unreasonable, *Mins v Coleman*, 248 SC 235, 199 SE 2d 623 (1966), statute of limitation does not apply. Appellant request this Court to make specified ruling or Order, for Omnibus relief for multiple forms of relief, and that the Court rule in favor based on the pleading on file. The outcome of the case rest on this Court's interpretation of the law, Rule 12(c) SCRCP. Appellant further request that this Court take judicial notice of the record as a whole undisputed, and undisputable fact(s) to decide case, to construe and apply the law when controversies over what has been done or not done under it, and arrest judgment, and correct mistake result in decision. Appellant claim that a substantial error appearing on the face of the Order/Per Curiam [". . . dismissing his appeal of the Parole Board's denial of parole."], did corrupt and pollute the whole proceeding, and judgment, and read in the Appellant's pleading that which was never intended to be at issue, (emphasis added). The record speak for itself.

HEARING ON THE PLEADING, 12(c), SCRCP; PROMULGATION OF
REGULATION(S), POLICIES, CRITERIA(S), SC CODE ANN SEC 1-23-150, (2);
AND SEC 1-23-126; AND NOVEL ISSUE(S) ARGUMENTS III, VI, VII.

The South Carolina Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is state created, [*Wicker v SCDC, id; Slezak v SCDC, id.*] and may only summarily dismiss those appeals that do not implicate an inmate's state created liberty or property interest, Appellant believes he demonstrated in his pleading. See, arguments enumerated 2-11.

2. Did South Carolina Department of Probation, Parole and Pardon Services (Department), failure to promulgate new objective criteria; and neglect of duty to give formal notice thereto prior to citing provision 24-21-10(F)(1), SCRCPP, in Notice Rejection letter denied parole candidate Due Process.
3. Does the Department's arbitrary capricious conduct usurping similar class candidate's annual parole hearing to bi-annual, serving life sentence prior to 1981, void certified administrative policy; law or regulation, denied Due Process, and Equal Protection of the Law.
4. Does Due Process requirement of the Fourteenth Amendment apply to parole release determination proceeding; and are the procedures used by the Department in part constitutionally inadequate, and furthered violates Double Jeopardy Clause/Rule of Evidence.
5. Does South Carolina Statutory Parole Criteria [SC 1964 Code Sec 55-612] creates an exception and liberty interest to conditional parole when the candidate meet statutory standards for release, despite Department's discretionary function that results in abuse of discretion.
6. Does South Carolina 1964 Code Sections 55-611, and 55-611.1, read in concert mandates ten (10) years paroleable life sentence be treated as thirty (30) years day for day sentence for all purposes including release date.
7. Does the Department's failure to inform Appellant on record what Department felt in Appellant's file, reasons to rescinding "AYE" votes to "NAY" votes arbitrarily, for impermissible reasons or no reasons denied Due Process.
8. Does the Department's arbitrarily denying Appellant's request for parole reconsideration/re-hearing, denied liberty interest rights and Due Process.
9. Does the Department's failure to advise Appellant of adverse information contain in file upon request; and failure to advise what portion of SC Code 1964 Sec 55-612/24-21-640, and criteria from 1212 that Appellant met, or fail to meet, deny Due Process.
10. Does the Department's classifying Appellant's [1971] offense as violent constitutes Ex Post Facto Clause violation.

11. Does the Department's traditional procedural use of the same five "Finding of Fact" elements as the primary rejection reasons fail to concur with legislative intent; offends process Due Process; and for said reasons seeks Injunctive Relief for issues 1-11.

The rules for hearing matters on appeal from the final decision of an agency are based on the South Carolina Appellate Court Rules, should be used to resolve *Novel* issues of Appellate Procedure in the ALJD, Rule 40 ALJDRP. See, arguments, #3, #6, and #7.

The Appellant assert that Department is required to promulgate regulation, etc., official publications [SC Code Ann Sec 1-23-150(2), and Sec 1-23-126], and Appellant submits he have a legal interest of privity in law to have information accessible to the inmate population for review as a right to know. More specific, [New objective parole criteria pursuant to Sec 24-21-10(F) (1), SCRCP; and policy/manual governing frequency of parole for prisoners serving 30 years or more prior to 1981].

CONCLUSION

The Appellant prayer is that this Honorable Court grant rehearing, reverse decision, and remand issues for adjudication on the merits, it would be a miscarriage of justice affirm decision.

August
July 7, 2018.

s/ Basil W. Akbar
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Certificate of Service

I, Basil Wali Akbar, certify that Notice of Appeal was served on the Department of Probation, Parole and Pardon Services; Administrative Law Court; and the South Carolina Court of Appeals, by depositing a copy in the United States Mail, postage prepaid, to the following addresses:

SC Department of PPPS
2221 Devine Street, Suite 600
Columbia SC 29250

South Carolina Court of Appeals
Jenny A. Kitchings, Clerk
1015 Sumter Street
Columbia SC 29211

South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia SC 29201

August
July 7, 2018.

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IMS

too heavy
(Indg)



South Carolina Court of Appeals

Jenny A. Kitchings, CLERK

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