

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson III, Chief Administrative Law Judge

Case No. 2018-000656

Perry Deveaux, #109601.....Appellant,

v.

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

FINAL BRIEF OF APPELLANT

RECEIVED

AUG 14 2018

SC Court of Appeals

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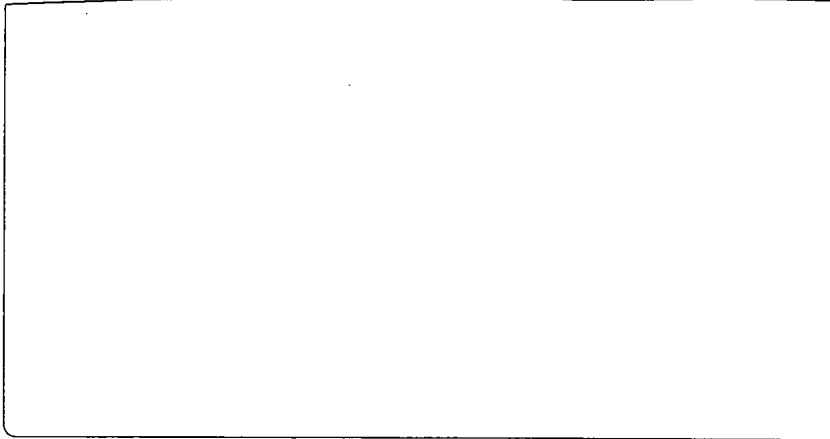


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Furtick v. S.C. Dep't of Prob., Parole & Pardeon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003), cert. denied, 539 U.S. 932, 123 S. Ct. 2584 (2003)4

State Cases

Steele v. Benjamin, 362 S.C. 66, 606 S.E.2d 499 (Ct. App. 2004)4, 5

Other Authorities

Federal Constitution Eighth Amendment1, 2, 5
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South Carolina State Constitution Amendment, Article 1, §151, 2, 5, 6

STATEMENT OF ISSUE ON APPEAL

Whether the Administrative Law Court erred in denying Appellant's claim that the South Carolina Department of Probation, Parole and Pardon Services, operating through its Parole Board, has violated the Eighth Amendment of the Federal Constitution, Article 1, §15 of the South Carolina State Constitution, and the South Carolina parole statute when it has functionally converted Perry Deveaux's life sentence with parole-eligibility after 10 years to a de facto life sentence by once again denying him parole after 25 years of such denials and when Mr. Deveaux has an exemplary institutional record.

STATEMENT OF THE CASE

Perry Deveaux, Jr. pleaded guilty to murder on February 24, 1982¹, in Charleston County to murder. He received a life sentence, but at that point, the statute provided for a parole-eligibility after 10 years.

Mr. Deveaux, who has an exemplary work and disciplinary history, has been consistently denied parole. Represented by counsel, and with a detailed risk assessment provided to the Parole Board, Mr. Deveaux was again denied parole on October 18, 2017. Through its consistent unwillingness to grant Mr. Deveaux parole, in spite of his exemplary institutional record, the South Carolina Parole Board has illegally converted Mr. Deveaux's sentence, which was imposed in 1982 and provided

¹ The offense date was November 28, 1975. Mr. Deveaux was only arrested years later, and after a confidential informant implicated him in this crime. From the time of his arrest until his guilty plea date, he was free on a \$20,000 bond. He did not get into any trouble during this time.

parole eligibility after 10 years, into a de facto life without parole sentence. His sentence violates the Eighth Amendment of the Federal Constitution, Article 1, §15 of the South Carolina State Constitution, and S.C. Code Ann. §§16-3-20.

ARGUMENT

The Administrative Law Court erred in denying Appellant's claim that the South Carolina Department of Probation, Parole and Pardon Services, operating through its Parole Board, has violated the Eighth Amendment of the Federal Constitution, Article 1, §15 of the South Carolina State Constitution, and the South Carolina parole statute when it has functionally converted Perry Deveaux's life sentence with parole eligibility after 10 years to a de facto life sentence by once again denying him parole after 25 years of such denials and when Mr. Deveaux has an exemplary institutional record.

Perry Deveaux pleaded guilty to the murder of Kathleen Sanderlin in 1982. Since then, he has resided in the South Carolina Department of Corrections. At the time of his plea, his offense carried a parole eligibility timeframe of 10 years. Mr. Deveaux has been eligible for parole since 1992, with yearly hearings before the Parole Board. For 25 years now, he has been denied parole.

In preparation of this last parole hearing, undersigned counsel presented the Parole Board with a risk assessment prepared by Dr. Susan Knight 11 days before the hearing date. Dr. Knight spoke with Mr. Deveaux on multiple occasions and she reviewed his entire institutional record. She detailed the source documentation that she assessed in drawing her conclusions which are noted in her report. See Forensic Assessment. She spoke to numerous collateral sources. As she pointed out to the Board, Mr. Deveaux has only committed very minor disciplinary offenses, and his record is overwhelmingly devoid of violence. ROA 27-30. As his institutional record

shows, Mr. Deveaux has consistently worked while he was incarcerated, and has received evaluations of "Good" and "Excellent." Dr. Knight painstakingly detailed Mr. Deveaux's work history for the Board. ROA 19-21. In 2013, he was assigned as a ward keeper assistant, a position he still holds to this day.

Throughout his 35-year history of incarceration, Mr. Deveaux has only had two incidents of physical altercations, and both of them minor. They occurred in 1990 and 2012. ROA 42.

Dr. Knight also performed a psychological assessment of Mr. Deveaux. She notes that he does not have any symptoms consistent with major mental illness, major mood disturbance, anxiety, or trauma-related symptomatology. ROA 31.

Dr. Knight also presented to the Board Mr. Deveaux's reintegration plan which provides that Mr. Deveaux would enter the Transitions Center in Columbia, South Carolina has he developed an appropriate independent housing plan as established by a case manager. ROA 35, 40-41.

Significantly, Dr. Knight performed a Violence Risk Assessment that analyzed the following historical variables over an individual's lifetime: 1) violence, 2) violent attitudes, 3) antisocial behaviors, 4) instability of relationships, 5) instability of employment, 6) substance abuse, 7) major mental illness, 8) personality disorders, 9) traumatic experiences, and 10) problems with treatment response. ROA 37.

According to her assessment, Mr. Deveaux does not indicate a history of entrenched violent attitudes or antisocial behaviors. He has also exhibited stability in relationships and employment. And while Mr. Deveaux does indicate the presence

of a history of substance abuse, that factor can be controlled with a viable risk management strategy. Also, Mr. Deveaux does not meet the criteria for a major mental illness, ROA 38, nor does he have a personality disorder. ROA 39.

Dr. Knight also noted that Mr. Deveaux has a degree of insight into his cognitive limitations, and he does not have any recent symptoms of a major mental disorder. He is stable in his functioning. ROA 39.

Dr. Knight noted the following regarding the parole decision for Mr. Deveaux:

Regarding parole, records indicate he has been denied parole at least 15 times, from 1990 to 2016. In 1995, a psychological evaluation for parole suitability was conducted by SCDC with Mr. Deveaux. Although noted as limited in his intellectual development, he was described as "sociable," "friendly," "logical," "cooperative," "compliant" and "obliging," with "no indications of opposition or anger." He did "not display any strong identification with the criminal role." Although the evaluator believed Mr. Deveaux would need "a good deal of structure and direction" if released, he issued scores of +2 on all items (from -3 to +3), indicating a positive and greater chance of successful adjustment. Therefore, the evaluator found a favorable rating regarding parole supervision, of which the present examiner agrees.

Results from a violence risk assessment measure do not indicate significant risk factors for future violence; and at age 61, Mr. Deveaux is well outside the age-crime curve for future criminality and violence.

ROA 43.

The South Carolina Supreme Court held in *Furtick v. S.C. Dep't of Prob., Parole & Pardeon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003), *cert. denied*, 539 U.S. 932, 123 S. Ct. 2584 (2003) that "the permanent denial of parole eligibility implicates a liberty interest sufficient to require at least minimal due process," and thus, review by the Administrative Law Court. In *Steele v. Benjamin*, 362 S.C. 66, 72, 606 S.E.2d 499, 502 (Ct. App. 2004), the South Carolina Court of Appeals noted that a sufficient

liberty interest may be implicated to trigger due process requirements even though the Parole Board's decision did not constitute a permanent denial of parole eligibility. See *Steele*, 362 S.C. at 72-73, 606 S.E.2d at 503 (holding inmate's complaint that the Department's application of biannual parole review to him constituted an ex post facto violation implicated a protected liberty interest which warranted judicial review under the APA).

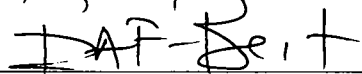
The Parole Board-- once again-- denied Mr. Deveaux parole citing Nature and Seriousness of Current Offense, Indication of Violence in This or Previous Offense, Use of Deadly Weapon in This or Previous Offense, and Failure to Successfully Complete a Community Supervision Program. Both the Department and the ALJ concede that this last reason was cited in error, and that Mr. Deveaux did not "fail to successfully complete" a community supervision program. While it is true that Mr. Deveaux pleaded guilty to a horrific crime, his institutional record illustrates how different his life is now, 35 years later. A model inmate, his record is devoid of violence. He has demonstrated stability and an admirable work-ethic. In 1982, when he pleaded guilty, the Legislature intended that he would have a meaningful opportunity for parole after serving 10 years of his sentence. In repeatedly denying Mr. Deveaux parole in light of this record, the Parole Board has converted his sentence into one of de facto life without parole. The Administrative Law Court erred in finding that the Parole Board has not violated Appellant's rights under Eighth Amendment of the Federal Constitution, Article 1, §15 of the South Carolina State

Constitution, and the South Carolina parole statute by converting Appellant's sentence to a functional life without parole sentence.

CONCLUSION

This Court should reverse the Administrative Law Court's opinion, and find that the South Carolina Department of Probation, Parole and Pardon Services has violated Appellant's rights under the Eighth Amendment, Article 1, §15 of the South Carolina State Constitution, and S.C. Code Ann. §§16-3-20.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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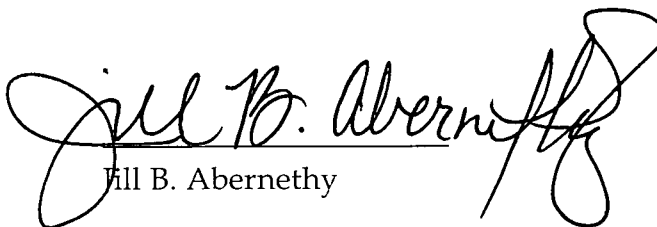
v.

S.C. Department of Probation, Parole and Pardon Services, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Appellant's Final Brief was served by first class United States mail, postage prepaid, this 13th day of August 2018, upon the following:

Tommy Evans, Jr.
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