

STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Judge Ralph K. Anderson, III  
Docket No. 18-ALJ-15-0008-AP

---

Thomas Thompson #80681 - - - Appellant

v.

SC Department of Probation,  
Parole and Pardon Services - - - Respondent

Appellate Case No. 2018-001557

---

APPELLANT'S INITIAL BRIEF

---

Tony Evans, Jr  
Assistant General Counsel  
SC Dept. of PPS  
2221 Devine Str., Suite 600  
Post Office Box 50666  
Columbia, SC 29250

RESPONDENT

Thomas Thompson #80681  
Pro Se Litigant  
Tyger River CI 1-225B  
200 Prison Road  
Enoree, SC 29250

APPELLANT

September 24, 2018

**RECEIVED**  
SEP 27 2018  
SC Court of Appeals

TABLE OF AUTHORITIES

CASES

18 US Court of Appeals §4201

STATUTES

SC Code Ann §1-23-600 Power of Law Judges (Supp2015)

SC Code Ann § 24-23-640 (Supp2015)

OTHER AUTHORITIES

US Constitution Amendment 14

SC Constitution §3

---

STATEMENT OF ISSUE ON APPEAL

!)- Has the Parole Board violated Thompson's right to the Equal Protection of the Law by using it's discretion to impose an extremely harsher punishment on him than other similarly situated persons?

## STATEMENT OF CASE

---

Thomas Thompson was sentenced to life with ten year parole eligibility for the murder of George Upchurch in December 1975 at the age of sixteen. This sentence was the result of a plea agreement which stated purpose was to ensure that Thompson would serve ten years as punishment for the crime he had committed and have a chance to start his life anew while he was still young provided he had good conduct while incarcerated.

Thompson appeared before the Parole Board on January 31, 2018 and was denied parole for the 18<sup>th</sup> time over the past 32 years. A timely appeal was filed in the Administrative Law Court in which Thompson stated that he was not questioning whether the Board followed proper procedure or whether the denial of parole was routine but rather if the Board had violated his Constitutional rights as guaranteed by both the US Const. Amendment 14 and SC Const. §3. Thompson requested a ruling pursuant to SC §1-23-600, Powers of Law Judges. Thompson also cited 18 USCA §4201 "Where Constitutional rights are alleged to have been violated judicial review of agency decisions with respect to parole cannot be absolutely banned".

Judge Anderson denied Thompson's appeal and affirmed the Board's decision stating that Thompson had failed to present proof that the Board had violated his rights and that he was in the same position as when he was sentenced.

## ARGUMENT

---

The State of South Carolina has given the Parole Board sole authority to exercise it's discretion with regard to the granting or denying of parole. This means that while the law stipulates circumstances warranting parole and instructs the Board to establish specific criteria for the granting of parole, §24-21-640, the Board is not bound by any of these in the exercise of it's discretion. This is to say that all things being adverse to parole, the Board may still grant it and likewise, all things being in favor it may still deny parole.

The dictionary defines "discretion" as "liberty of action; freedom in the exercise of judgement" and "LAW, the act or the liberty of deciding according to justice and propriety and one's idea of what is right and proper under the circumstances without willfulness or favor". Thompson will argue that the Board has abused this discretion in his case and subjected him to a much harsher punishment than those similarly situated as himself and that he is certainly not in the same position now as when he was sentenced.

The harshness of a sentence is clearly determined by it's length. The more serious the crime, the longer the length of the sentence given. There can be no argument that the longer the duration of incarceration, the harsher the punishment. According to an article published in the Greenville News circa January 1991 some approximately 400 inmates serving life sentences for murder were paroled after an average of twelve years. All these inmates were situated as Thompson: sentenced to life with ten year parole eligibility for the crime of murder and just as Thompson, when parole was denied the reasons were the same;

Nature and seriousness of offense

Indication of violence in this offense

Use of a deadly weapon in this offense

These reasons are not changeable, they apply to all such persons as well as Thompson whether denied parole or granted it. Surely there can be no argument that a person who has endured three decades (30 years) more time incarcerated has suffered a harsher punishment. The Board's counsel will use the adjectives "one or some" in discussing these other persons while the proper adjective would be "all". All other persons similarly situated as Thompson were granted parole after an extremely less harsher punishment with only a very, very few exceptions.

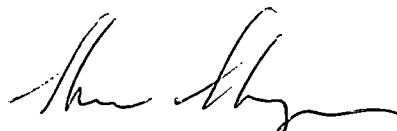
As to whether Thompson is in the same position as when he was sentenced, the facts prove otherwise. Thompson was a sixteen year old at the time of sentencing. The Court sentenced him to this sentence with the express purpose of giving him hope and promise for a chance to start his life anew while he was still young. After being denied parole for the past 32 years Thompson has no hope that the Board will ever grant him

parole in the future. His sole hope for release rests on a possible favorable decision of the Courts. As to the promise of starting his life anew while still young, Thompson is now 59 years of age and the days when he could be considered still young are long past. If granted release now or in the future, any life Thompson could have would be a mere shadow of the promise he was given which the Board has chosen to deny. The fact that the Board is not bound by the Court's stated intentions at the sentencing hearing do not alter them in any way. Clearly Thompson is in no way still in the same position as when he was sentenced.

CONCLUSION

The Parole Board has chosen to use it's discretion to inflict a much harsher punishment upon Thompson than all other similarly situated persons in violation of his Constitutionally guaranteed rights. This fact renders the Board's decision arbitrary and capricious. Thompson respectfully requests that the Court reverse the Board's decision and order it to grant him parole.

Respectfully submitted,



---

Thomas Thompson #80681  
Tyger River CI 1-225B  
200 Prison Road  
Enoree, SC 29335

STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Judge Ralph K. Anderson, III  
Docket No. 18-ALJ-15-0008-AP

---

Thomas Thompson #80681  
Appellant

v.

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

] Appellate Case No. 2018-001557  
]  
]  
]  
]  
]  
]  
]  
]  
]

PROOF OF SERVICE

I do hereby certify that I served Appellant's Initial Brief and Designation of Matter in the Record on Appeal by depositing copies of the same in the US Mail, postage prepaid, addressed as follows:

Tony Evans, Jr  
Assistant General Counsel  
SC Depart. of PPPS  
2221 Devine Str., Suite 600  
Post Office Box 50666  
Columbia, SC 29250

**RECEIVED**  
SEP 27 2018  
SC Court of Appeals

Sincerely,



Thomas Thompson #80681  
Tyger River CI 1-225B  
200 Prison Road  
Enoree, SC 29335

September 24, 2018

Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RE: Thomas Thompson Appellant  
v.  
SC Dept, of PPPS Respondent  
Case No. 2018-001557

**RECEIVED**  
SEP 27 2018  
SC Court of Appeals

Dear Ms. Kitchings,

Please find enclosed for filing Appellant's initial Brief and Designation of Matter for the Record on Appeal in the above case. Also included is Proof of Service of both on Respondent.

Sincerely,



Thomas Thompson #80681  
Tyger River CI 1-225B  
200 Prison Road  
Enoree, SC 29335

September 24, 2018

THOMAS THOMPSON #80681  
TYGER RIVER CI 1-225B  
200 PRISON ROAD  
ENOREE, S.C. 29335

10/21/2016  
10/21/2016  
10/21/2016

JENNY ABBOTT KITCHINGS  
CLERK, SOUTH CAROLINA COURT OF APPEALS  
POST OFFICE BOX 11269  
COLUMBIA, S.C. 29211

**RECEIVED**

SEP 27 2016

SC Court of Appeals

**RECEIVED**

SEP 24 2016

TYRCI MAILROOM