

STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Thomas Thompson #80681 - - - - - Appellant

v.

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

Appellate Case No. 2018-001557

APPELLANT'S FINAL BRIEF

Thomas Thompson #80681
Pro Se Litigant
Tyger River CI 1-225B
200 Prison Road
Enoree, S.C. 29335

January 14, 2019

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18 US Court of Appeals §4201

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SC Code Ann. §1-23-600, Powers of Law Judges (Supp 2015)

SC Code Ann. §24-21-640 (Supp 2015)

OTHER AUTHORITIES

US Constitution Amendment 14

SC State Constitution §3

STATEMENT OF ISSUE ON APPEAL

1)- 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.¹ 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 18th time over the past 32 years.² A timely appeal was filed in the Administrative Law court in which Thompson clearly 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 Constitution Amendment 14 and SC Constitution §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."³ Judge Anderson denied Thompson's appeal and affirmed the Board's decision stating that Thompson had failed to present proof that the Board violated his rights and that he was in the same position now as when he was sentenced.⁴

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, SC §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

1-ROA p.21 thru 23, Indictment and sentencing sheet

2-ROA p.1, Notice of Denial

3-ROA p.2 thru 5, Appellant's Brief ALC

4-ROA p.16 thru 19, Administrative Law Judge Order

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 it's 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 here, the longer the duration of incarceration, the harsher the punishment. According to an article published in the Greenville News paper 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 current 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 not suffered a harsher punishment. The Board's Counsel will use the adjectives "one" or "some" in discussing these other persons while the more proper adjective would be "all".⁵ All other persons similarly situated as Thompson were granted parole after an extremely less harsher punishment with only 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 parole 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
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Appellate Case No. 2018-001557)
)

PROOF OF SERVICE

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I, Thomas Thompson, do hereby certify that I have served a copy of Appellant's Final Brief on Respondent by depositing a copy of the same in the US Mail, postage prepaid, on December 26, 2018 addressed as follows:

Tommy Evans, Jr
Assistant General Counsel
SC Dept. of Probation, Parole and Pardon Services
Post Office Box 50666
Columbia, S.C. 29250


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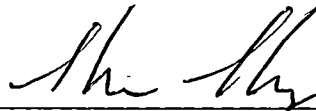
South Carolina Department of Probation,
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Appellate Case No. 2018-001557

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief complies with
Rule 211(B), SCACR.

January 14, 2019



Thomas Thompson #80681
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January 14, 2019

The Honorable Jenny Abbott Kitchings
Clerk of the S.C. Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

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RE: Thomas Thompson v SCDPPPS
Appellate Case No. 2018-001557

Dear Ms Kitchings,

Please find enclosed the amended copy of Appellant's Final Brief along with Proof of Service on Respondent and the Certificate of Counsel required by SCACR 211A. Thank you for your kind assistance in this matter.



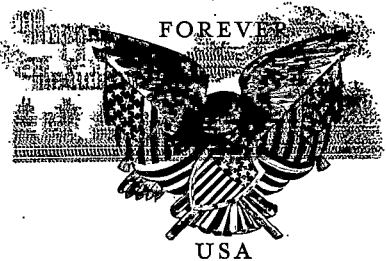
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