20771

The State of South Carolina
In The Court of Appeals

Appeal from Richland County
Administrative Law Judge
Ralph K. Anderson III
Case No: 13-ALJ-15-0004-AP

South Carolina Dept of Pardon
Probation and Parole Services

v.

Robert F. Spigner, 065500

Record on Appeal

Appellate Case No:
2013-001380

Tommy Evans Jr. Esq.
Assistant General Counsel
Post Office Box 50666
Columbia, S.C. 29250
Telephone (803) 734-9220

Robert Spigner

Date: Sept 27, 2013

INDEX

2

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert F. Spigner, #65500	)	Docket No. 13-ALJ-15-0004-AP
	)	
Appellant,	)	
	)	
vs.	)	ORDER
	)	
South Carolina Department of Probation, Parole and Pardon Services,	)	
	)	
Respondent.	)	
	)	

This matter is before the Administrative Law Court (ALC or Court) pursuant to the Appellant Robert F. Spigner's (Appellant) appeal from the South Carolina Department of Probation, Parole and Pardon Services' (Department) decision denying him parole. Appellant requested a rehearing of this decision, but the Department denied that request. Appellant filed this appeal with the Court on January 22, 2013.

BACKGROUND

On December 23, 1970, Appellant and his co-defendant were involved in the murder and robbery of a victim. Appellant was later arrested and charged with murder. On September 8, 1971, Appellant was convicted of murder, after which he was sentenced to life imprisonment. In 1981, Appellant was granted parole upon his initial appearance.[1] In September 2000, the Parole Board revoked Appellant's parole for various offenses, including cocaine use (to which Appellant admitted), absconding supervision, failure to maintain employment, and testing positive for marijuana.

Since revocation of his parole, Appellant has appeared before the Parole Board a number of times, and has been denied each time. Appellant's last appearance occurred on October 10, 2012, after which parole was denied for the following reasons: (1) nature and seriousness of the current offense; (2) an indication of violence in this or a previous offense; (3) use of a deadly weapon in this or a previous offense; (4) a prior criminal record indicates poor community

[1] At the time of Appellant's offense, Section 55-611(2) of the Code of Laws of South Carolina, 1962 (Supp. 1970) allowed an inmate parole eligibility for the offense of murder upon the service of ten (10) years.

adjustment; and (5) a failure to successfully complete a community supervision program. On October 25, 2012, Appellant requested a rehearing, but the Board denied this request on December 13, 2012. Appellant thereafter filed his Notice of Appeal before this Court.

DISCUSSION

Appellant argues that: (1) the Department failed to follow the mandatory statutory criteria, specifically the South Carolina Omnibus Crime Reduction Act of 2010 (the Act),[2] prior to denying him parole; (2) the Department decided his case by denying him parole before he was interviewed, thereby denying his due process rights; and (3) in deciding to deny him parole, the Department failed to apply the requisite criteria for classifying his offense that was applicable at the time of his offense and instead used the current classification scheme under Section 16-1-60, thereby violating the *ex post facto* clauses of the federal and state constitutions.

Compliance with Statutory Criteria Governing Parole

In his Initial Brief, Appellant contends that the Department failed to comply with the Act because it did not use "COMPAS" (Correctional Offender Management Profiling for Alternative Sanctions)[3] before his case went before the Parole Board. S.C. Code Ann. § 24-21-10(F)(1) (Supp. 2010) requires:

> The department must develop a plan that includes the following:
>
> > (1) establishment of a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions, including additional objective criteria that may be used in parole decisions.

The South Carolina Supreme Court provided guidance for this issue in *Cooper v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008). The Court emphasized:

---

[2] In his Initial Brief, Appellant references the Act and quotes the language of S.C. Code Ann. § 24-21-10(F)(1) (Supp. 2010), but mistakenly cites to Section 1-23-380, which governs the judicial review by the ALC upon a party's exhaustion of administrative remedies. Appellant also references S.C. Code Ann. § 1-23-380(A)(6)(C) (Supp. 2010) in his Reply Brief, but no such provision existed in 2010 or exists now. Moreover, it remains unclear how Section 1-23-380 "clearly supports appellant's position that he should have been given the COMPASS Assessment[.]"

[3] The Department refers to this program as "COMPASS," but Appellant refers to it as "C.O.M.P.A.S," at least in his Initial Brief. Because Appellant additionally provides the words that comprise the acronym that he uses, the Court will adopt his usage, though, for sake of convenience, the Court will remove the periods and refer to the program as "COMPAS."

> [I]n future parole review hearings the Parole Board may avoid the result in the instant case if it clearly states in its order denying parole that it considered the factors outlined in section 24–21–640 and the fifteen factors published in its parole form. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

Indeed, S.C. Code Ann. § 1-23-600(D) (Supp. 2012) states in pertinent part that "[a]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving . . . the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services." Thus, this Court is concerned only with the mandatory procedural requirements as set forth in S.C. Code Ann. § 24-21-640 (Supp. 2010) and the fifteen (15) factors found in the Department's parole form. Section 24-21-640 mandates in pertinent part the following:

> The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

The Department's fifteen (15) factors are set forth in its Form 1212, a copy of which Appellant received on July 11, 2012, during his pre-parole investigation and prior to his October 11, 2012 parole hearing.

In this case, Appellant has cited no legal authority showing the Department was required to use COMPAS. He asserts that it is "research-based and serves as an objective risk and needs assessment instrument." He also asserts that "[t]he program consist[s] of questions used to determine overall risk potential and criminogenic needs. The C.O.M.P.A.S. assesses risk and needs to inform decisions regarding offender release, placement and management." Appellant further asserts that the intent of the Legislature as to the Act is clear – that "[t]his tool, C.O.M.P.A.S. questionnaire, is to be used as a part of the criteria in making parole decisions." However, though Appellant makes occasional references to the Act, albeit with the incorrect citation thereto, he offers no explanation as to how those authorities support his assertions. Rule 37(B)(3) of the South Carolina Administrative Law Court Rules (SCALCR) requires each appellate brief to be "divided into as many parts as there are issues to be argued, and each part

shall bear an appropriate caption, followed by a discussion and citation of authority." (Emphasis added).[4] Mere conclusory statements and general references to legal authority without any discussion or explanation as to how that authority supports those assertions is insufficient to preserve on appeal the issue that they concern. In short, Appellant has abandoned any issues to which those assertions may have given rise. *See* Rule 208(b)(1)(D), SCACR (requiring the citation of authority in the argument portion of an appellant's brief); *Divine v. Robbins*, 385 S.C. 23, 38, 683 S.E.2d 286, 294 (Ct. App. 2009) (noting that when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal (citing *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994))); *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.").[5]

Moreover, the record reflects, and Appellant has failed to show otherwise, that the Parole Board relied on the factors published in Department Form 1212, the statutory factors set forth in Section 24-21-640, and on the characteristics of Appellant's current offense(s), prior offense(s), prior supervision, history, prison disciplinary record, and/or prior criminal record. Therefore, the Parole Board in this case committed no procedural error warranting remand to the Parole Board. *See Compton v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009) ("In the instant case, the Parole Board clearly stated in its notice of rejection that it considered the statutory criteria and the criteria set forth in Form 1212, which is sufficient under *Cooper*.").[6]

---

[4] Rule 37(B)(3), SCALCR is based on Rule 208(b)(1)(D), SCACR.

[5] It is noteworthy that the Department argues in its Brief that COMPAS has never been mandatory and was not being used as a recommendation tool when Appellant appeared before the Parole Board, because COMPAS was unavailable in parole cases at that time, being initially available only in supervision cases.

[6] Appellant makes another argument in his discussion of his third issue that may be addressed here, as it relates to statutory criteria regarding parole. He asserts that the Parole Board used "S.C. Code Ann. § 16-1-60 criteria 'Violent', while ignoring S.C. Code § 16-1-60[(B)]," and that the Parole Board used this criteria relating to those who were never on parole instead of using criteria for parole violators, specifically 55-616 of the South Carolina Code of Laws, 1962. However, this argument has no merit. Appellant fails to demonstrate that Section16-1-60 was even used by the Parole Board in reaching its decision, or that it is only used for those who have never been granted parole. The Parole Board can take into consideration, as one of the fifteen (15) factors on Form 1212, "[t]he nature and seriousness of the inmate's offense . . . ." For the same reasons given above, this argument is considered abandoned on appeal for failure to explain how the authority he cites supports his argument.

Denial of Parole Prior to Interview by Parole Board

Appellant next asserts that the Parole Board violated his due process rights because it denied him parole before granting him an interview. "The Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Liberty interests protected by the Fourteenth Amendment may arise from the Constitution itself or from an expectation or interest created by state laws or policies. *Id.*; *Hewitt v. Helms*, 459 U.S. 460, 466 (1983), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

The U.S. Supreme Court has held that "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz v. Neb. Penal Inmates*, 442 U.S. 1, 7 (1979). In other words, "given a valid conviction, the criminal defendant has been constitutionally deprived of his liberty." *Meachum v. Fano*, 427 U.S. 215, 224 (1976). Thus, if Appellant has a liberty interest in parole, then it must emanate from state law. *See Ellis v. Dist. of Columbia*, 84 F.3d 1413, 1415 (D.C. Cir. 1996). The South Carolina Supreme Court has held that a state-created liberty interest is implicated by the Parole Board's failure to follow proper procedure in making its decision to deny parole. *Cooper*, *supra*.

In this case, Appellant submitted a "Request To Staff Member" form provided by the South Carolina Department of Corrections (SCDOC) on which he submitted a request for "the Dates and Results of All [His] Parole Hearing[s]." Appellant also requested his classification status and whether it was violent or nonviolent. Under the section of the form entitled "Disposition By Staff Member," a SCDOC staff member wrote a list of time periods of imprisonment, beside which was written either "Parole Granted" or "Parole Denied." The final entry on the list read as follows: "6-23-10 – 6-23-12 Parole Denied." Under this entry was written the phrase, "You are classified as violent." This form was dated on 9-10-12.

Appellant argues that because this form states that his parole was denied on June 23, 2012, which was before the Parole Board hearing on October 11, 2012, he was denied due process. The Department argues that inmates never appear before the Parole Board prior to the completion of their pre-parole investigations, and that Appellant thus did not appear before the

Parole Board until October 11, 2012. It is understandable why Appellant may have been under the impression that the Parole Board had decided to deny his parole on June 23, 2012, prior to a hearing before the Parole Board in October of that year. However, I find this to be a mere scrivener's error. *See, e.g., State v. Sosbee*, 371 S.C. 104, 113, 637 S.E.2d 571, 575 (Ct. App. 2006) (finding that the erroneous listing of charges and CDR codes on the defendant's sentencing sheet was a mere scrivener's error and thus did not warrant reversal and remand). The record does not reflect that the Parole Board met or rendered a decision around this time. Indeed, had the Parole Board denied Appellant's parole, there would have been no need or reason for it to have denied Appellant's parole again less than four (4) months later, on October 11, 2012. Rather, the record reflects that Appellant was given the Form 1212, which he signed, on July 11, 2012, during his pre-parole investigation. Also, the Parole Board held a hearing on October 11, 2012, at which time Appellant was allowed to present mitigating evidence and/or make any presentation or statements to the Parole Board that he wished. Thus, even had the Parole Board denied Appellant parole prior to a hearing, that procedural defect was cured by the subsequent pre-parole investigation and October 11, 2012 hearing. *Unisys Corp. v. S.C. Budget and Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office*, 346 S.C. 158, 174, 551 S.E.2d 263, 272 (2001) ("An adequate de novo review renders harmless a procedural due process violation based on the insufficiency of the lower administrative body."). Therefore, Appellant was not deprived of his due process rights.

Compliance with Statutory Offense Classifications

Finally, Appellant argues that the Department applied the incorrect statutory criteria in determining whether to grant him parole because it applied the "violent" classification of his crime under Section 16-1-60 instead of applying the criteria in effect at the time of his offense, i.e. Sections 55-611, -12, and -66 of the South Carolina Code of Laws, 1962 (Supp. 1970). He thus argues that Department violated his due process rights by using the wrong criteria and retroactively applying Section, 16-1-60.

First, it is true that "[t]he law existing at the time of the offense, not the time of sentencing, determines whether an increase of punishment or reduction of benefits constitutes an *ex post facto* violation." *Elmore v. State*, 305 S.C. 456, 409 S.E.2d 397 (1991) (citing *Miller v. Florida*, 482 U.S. 423 (1987), *overruled on other grounds by Al-Shabazz v. State*, 338 S.C. 354,

427 S.E.2d 742 (2000). However, Appellant has provided no support for his assertion that the Parole Board used the "violent offense" classification from Section 16-1-60 in reaching its decision as to Appellant's parole. The Parole Board is free to take into consideration, as one of the fifteen (15) factors on Form 1212, "[t]he nature and seriousness of the inmate's offense . . . ." However, for the same reasons given above, this argument is considered abandoned on appeal for failure to explain how the authority Appellant cites supports his argument. Furthermore, Section 55-612 of the South Carolina Code of Laws, 1962 (Supp. 1970), is nearly identical to the current version, Section 24-21-640 (Supp. 2010). Section 55-612 reads in pertinent part:

> The Probation, Parole and Pardon Board shall carefully consider the record of the prisoner, before and after imprisonment, and no such prisoner shall be paroled until it shall appear, to the satisfaction of the Board, that the prisoner has shown a disposition to reform that, in the future, he will probably obey the law and lead a correct life, that by his conduct he has merited a lessening of the rigors of his imprisonment, that the interests of society will not be impaired thereby and that suitable employment has been secured for him.

Section 24-21-640 states:

> The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

Comparing the two provisions, both Section 24-21-640 (Supp. 2010) and its predecessor, Section 55-612 (Supp. 1970), require the Parole Board to "carefully consider the record of the prisoner" before he can be paroled. The record in this case reflects that the Board took Appellant's record into consideration. Moreover, the only differences in the pertinent language of these two statutes is the use of "must" in the later version instead of "shall" in the earlier version, the use of "may" in the later version instead of the second use of the term "shall," the replacement of commas with semicolons, the simplification of the "Probation, Parole, and Pardon Board" to "board," and the addition of the term "during" in the later version. However, none of these differences are significant. The only two changes that warrant any discussion are the use of "may" and the inclusion of "during" in the later version.

"'May' signifies permission and generally means the action spoken of is optional or discretionary. But when the question arises whether 'may' is to be interpreted as mandatory or

permissive in a particular statute, legislative intent is controlling." *Robertson v. State*, 276 S.C. 356, 358 278 S.E.2d 770, 771 (1981) (internal citations omitted); *see also Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352-53, 549 S.E.2d 243, 250 (2001) (finding that the term "may" in the applicable statute did not give the Retirement System unfettered discretion to grant or deny unused annual leave). In this case, "may" as used in the later version is synonymous with "shall," because as with the earlier version, Section 24-21-640 mandates that no prisoner can be granted parole unless a condition is met, and that condition is the Parole Board's satisfaction in the areas set forth in the remainder of the provision. As to the inclusion of "during" in Section 24-21-640 (Supp. 2010) and not in Section 55-612 (Supp. 2012), it is clear that "during" was included in the latter for clarification of what was already present in the former. In Section 55-612, as in the Section 24-21-640, the Parole Board has to look at whether "the prisoner has shown a disposition to reform that, in the future, he will probably obey the law and lead a correct life, that by his conduct he has merited a lessening of the rigors of his imprisonment, that the interests of society will not be impaired thereby." (Emphasis added). The meritorious conduct referenced can refer to none other than that displayed **during** the prisoner's imprisonment. Likewise, the only opportunity a prisoner would have to demonstrate a disposition to reform would be **during** his incarceration. Therefore, it is clear that the later inclusion of "during" in the statutory language was meant to clarify the meaning already manifest in the prior version of the statute. Hence, the differences between the two statutes and the procedures that they govern are insignificant.

Moreover, even had there been a procedural change that disadvantaged Appellant, that would not necessarily mean that there was an *ex post facto* violation. *See State v. Huiett*, 302 S.C. 169, 171-72, 394 S.E.2d 486, 487 (1990) ("Even though a procedural change may have a detrimental impact on a defendant, a mere procedural change which does not affect substantial rights is not *ex post facto*.").[7] Here, there was no retroactively punitive change in procedure that affected any substantial rights of Appellant, and therefore there was no *ex post facto* violation in this case.

---

[7] The Department may wish to reconsider the way in which it worded the rule it attributes to *Roller v. Gunn*, 107 F.3d 227 (1997), particularly in light of *Jernigan v. State*, 340 S.C. 256, 531 S.E.2d 507 (2000).

ORDER

IT IS THEREFORE ORDERED that the Department's decision is AFFIRMED.

AND IT IS SO ORDERED.

Ralph K. Anderson, III
Chief Administrative Law Judge

May 24, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

May 24, 2013
Columbia, South Carolina

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

KELA E. THOMAS
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

October 11, 2012

Mr. Robert Spigner #00065500
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Spigner:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Prior Criminal Record Indicates Poor Community Adjustment
Failure To Successfully Complete A Community Supervision Program

Sincerely,

Catherine Cooper

Catherine Cooper
Director of Parole Board Support

State of South Carolina

Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

KELA E. THOMAS
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

December 13, 2012

Mr. Robert F. Spigner(#65500)
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Spigner:

I am writing this letter on behalf of the S.C. Board of Probation, Parole and Pardon Services.

The Parole Board heard your request for a rehearing on December 12, 2012 After thorough consideration, and after having reexamined the parole file, the Parole Board decided that the reasons stated in your request did not affect the decision of the Parole Board, and would not affect the decision of the Parole Board if they were to rehear this case. Your request for a rehearing was denied by the Parole Board. The Board's decision is final.

Sincerely,

Cathy Cooper
Director Parole Board Support

CC/eaw

STATE OF SOUTH CAROLINA

IN THE ADMINISTRATIVE LAW COURT

Robert F. Spigner, Petitioner, V. South Carolina Dept. of Probation, Parole, and Pardon Services, Respondents.	)	13P0004 ORIGINAL BRIEF

STATEMENT OF ISSUES ON APPEAL

I. Did the S.C. Parole Board render Petitioner ineligible for parole when they failed to follow the S.C. statutory requirements as set forth in S.C. Code § 1-23-380, as well as S.C. Omnibus Crime Reduction and Sentencing Act of 2010?

II. Did the S.C.D.P.P.P.S. render Petitioner ineligible for parole by deciding his case before he was interviewed, thus denying Petitioner his fair opportunity and right to be heard, as set forth in the Parole Board's own criteria, and as dictated by S.C. Statute § 24-21-640?

III. Did the S.C.D.P.P.P.S. apply the incorrect and improper criteria in deciding Petitioner's parole, thereby making Petitioner ineligible for parole. One question raised here is what method and by what authority did the S.C.D.P.P.P.S. use to change Petitioner's original 1971 Common Law Felony to a 1986 Omnibus Crime Bill Violent Offense, thereby using that criteria?

STATEMENT OF THE CASE

Petitioner, Robert F. Spigner, was paroled from the S.C.D.C. in July of 1981.

Petitioner was arrested on parole warrant on August 15, 2000. Failure to report; Petitioner had moved his residence but did not inform his parole officer.

On October ____, 2000, the parole board violated and revoked Petitioner's parole.

Since that time Petitioner has appeared before the parole board for reinstatement on parole six (6) times; November 7, 2001; November 7, 2003; January 13, 2006; May 21, 2008; May 21, 2010 and October 10, 2012.

This appeal arises out of Petitioner's latest denial by the parole board on October 10, 2012.

A timely notice of appeal was filed on January 7, 2013.

ARGUMENT

I. Did the S.C. Parole Board render petitioner ineligible for parole when they failed to follow the S.C. statutory requirements as set forth in S.C. Code § 1-23-380, as well as S.C. Omnibus Crime Reduction and Sentencing Act of 2010?

The Omnibus Crime Reduction and Sentencing Reform Act of 2010 states: (S.C. Code § 1-23-380) "The department of Probation, Parole, and Pardons Services must develope a plan that includes the following: Establishment of a process for adopting a validated Actuarial Risk and Needs Assessment Tool consistent with evidence-based practices and factors that contribute to criminal behavior which the parole board shall use in making parole decisions, including additional objective criteria that may be used in parole decisions".

As part of this Sentencing Reform Act, the S.C.D.P.P.P.S. implemented a risk/needs assessment instrument to assess those inmates seeking parole, i.e. C.O.M.P.A.S. (Correctional Offender Management Profiling for Alternative Sanctions). The tool is researched-based and serves as an objective risk and needs assessment instrument. Developed

by the Northpoint Institute for Public Management, Inc.

The program consist of questions used to determine overall risk potential and criminogenic needs. The C.O.M.P.A.S. assesses risk and needs to inform decisions regarding offender release, placement and management.

The S.C. Omnibus Crime Reduction and Sentencing Reform Act of 2010 was signed into law by the Governor on June 20, 2010 (effective January 1, 2011). The legislative intent is clear. See S.C. Code Ann. § 1-23-360(A)(6)(C). This tool, C.O.M.P.A.S. questionaire, is to be used as a part of the criteria in making parole decisions.

It is reported in the INFORMER (the S.C.D.P.P.P.S. newsletter) spring 2012 edition that "more than 850 assessments completed to date". C.O.M.P.A.S. was being used as required by law and should have been in use since January 1, 2011.

Petitioner was interviewed for parole on July 11, 2012, and informed that his hearing date would be September 20, 2012. At this interview, Petitioner was not given C.O.M.P.A.S. as part of his parole interview. However, there were other inmates and prospective parolee's who were being given C.O.M.P.A.S. prior to July 11, 2012 and after July 11, 2012.

Petitioner was never given C.O.M.P.A.S. prior to nor after his parole hearing. "If a parole board deviates from or fails to render its decision without consideration of the appopriate criteria, it essentially abrogates an inmates right to parole eligibility and, thus infringes on a State Created Liberty Interest" Cooper v. S.C.D.P.P.P.S., 377 S.C. 489, 661 S.E.2d 106 (2008).

The parole board has failed to utilize the procedure promulgated by the Legislature in the S.C. Omnibus Crime Reduction and Sentencing Reform Act of 2010.

The parole board must follow appropriate criteria and rational consistent with the Statute § 24-21-640, S.C. Code § 1-23-330. By not following and adhering to the Legislative Intent prior to, during, and after Petitioner's parole hearing, the parole board essentially and effectively abrogated Petitioner's right to parole eligibility.

Petitioner now questions the method and authority used by the parole board in reaching its decision. It is clear that they did not utilize the correct criteria in making their decision. The S.C.

Supreme Court has determined in Hinton v. S.C.D.P.P.P.S., 357 S.C. 327, "we find it unacceptable that the parole board should look to the so called 'facts' of the case to make its determination, for the 'facts' are almost always disputed". Thus, the method and authority used by the parole board could or would likely alter the interpretation of the facts or fact-based evidence.

II. Did the S.C.D.P.P.P.S. render petitioner ineligible for parole by deciding his case before he was interviewed, thus denying petitioner his fair opportunity and Right to be heard as set forth in the parole board's own criteria, and as dictated by S.C. Statute § 24-21-640?

S.C. Code § 24-21-640 provides in relevant part: The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board; that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and, that suitable employment has been secured for him. The board must establish written specific criteria for the granting of parole, and provisional parole. This criteria must reflect all of the aspects of this Code Section § 24-21-640 and a review of a prisoners disciplinary and other records. The criteria must be made available to all prisoners at the time of their incarceration and the general public.

The criteria that was created by S.C. Code § 24-21-640 is outlined on the S.C.D.P.P.P.S's. own form 1212, which is in use. See attached Exhibit #A.

On September 10, 2012, Petitioner was informed by the head of classification that Petitioner was denied parole on June 23, 2012. See Attached Exhibit #B. This was a date prior to Petitioner even being interviewed for parole. Petitioner was interviewed on July 11, 2012. The response clearly shows Petitioner was denied parole on June 23, 2012.

The parole board in their letter denying petitioner's parole stated that "After considering all of the factors published within Department

Form 1212 (Criteria for Parole Consideration) as well as the factors outlined in Section § 24-21-640 of the S.C. Code of Law, the parole board has decided to deny parole to the following persons: See Attached Exhibit #C: It is clear from the information as provided by the head of classification that the S.C.D.P.P.P.S. did not follow expressed and implied Legislative Intent and Policy.

1. Petitioner was not given C.O.M.P.A.S. as is mandated by the Sentencing and Reform Act of 2010.

2. S.C. Code § 24-21-640 (1976 Et.Seq. and as amended). The board's decision was made based on unlawful procedure. It is unlawful to make a decision on any other criteria that was incomplete and unexplained.

3. The board has failed to follow its own established procedure. See the fifteen (15) criteria listed on the parole board's Form 1212. See Attached Exhibit #A. By denying Petitioner before the Petitioner was interviewed, it is implicit that the board could not have considered all of the fifteen (15) criteria as required by law, more particularly, it is obvious that it would be impossible to consider numbers (4, 5, 6, 7, 8, 9, 10). The board's decision was clearly erroneous in view of reliable, probative and substantial evidence on the whole record. A record for the most part ignored as well as the Petitioner's right to be heard in person along with those who support him.

The board must follow appropriate criteria, rationale and consistent with the Statute. Its decision must not be arbitrary and capricious nor based on impermissible considerations. Zanivino v. Arnold, 531 F.ed. 687.

The parole board has by its decision to decide Petitioner's case before Petitioner had his opportunity to be interviewed and present his case deprive Petitioner of his right to be eligible for parole consideration. The board has also violated Petitioner's right to due process under the United States Constitution and the Constitution of the State of South Carolina. This preemtive decision to deny Petitioner his rightful opportunity to be heard is arbitrary, capricious, mean spirited, shocking to the universal sense of justice and fundamental fairness, and also denies Petitioner equal protection of the law. See Butler v. State, 397 SE2d 87; Johnson v. Cadoe, 548 SE2d 587.

III. Did the S.C.D.P.P.P.S. apply the incorrect and improper criteria in deciding Petitioner's parole, thereby making Petitioner ineligible for parole? One question raised here is what method and by what authority did the S.C.D.P.P.P.S. use to change Petitioner's original 1971 Common Law Felony to a 1986 Omnibus Crime Bill Violent Offence, thereby using that criteria?

Petitioner request that this court take notice! Petitioner is a technical parole violator.

The parole board continues to use criteria that does not apply to Petitioner, nor was it in effect at the time of Petitioner's sentencing. The criteria that was in effect in 1971 (1952 Code 55-616) should and must be the criteria applied to Petitioner. Specifically criteria that was created under S.C. Code 55-616 that addresses the issue of parole violators. Instead, the parole board continues to use S.C. Code § 16-1-60 criteria "Violent", while ignoring S.C. Code § 16-1-60(b).

There is a criteria that was created by the parole board for "Parole Violators", however, the parole board chooses not to use it! By not using the criteria that was created for parole violators and using instead the criteria that is for someone who has never been granted parole. The parole board is violating Petitioner's due process rights and equal protection of the law, thus making Petitioner ineligible for parole. "If the parole board deviates from or fails to render its decision without consideration of the appropriate criteria, it essentially abrogates an inmates right to parole eligibility, and this infringes on a State created liberty interest" Cooper v. S.C.D.P.P.P.S., (377 S.C. 489), 661 S.E.2d 106 (2008). S.C. Code § 16-1-60 has been unlawfully applied to Petitioner, without regard to and of when his crime occurred. This makes Petitioner's eligibility more onerous. Therefore, S.C. Code § 16-1-60 cannot be applied to Petitioner in any manner, "for a person to be considered guilty of a violent crime, the offense must be defined as a violent crime, pursuant to S.C. Code § 16-1-60(A), at the time of the commission of the crime". § 16-1-60(B) took effect January 1, 1994. The amendment § 16-1-60(B) clearly states that § 16-1-60(A) does not apply to Petitioner because

Petitioner's original classification was at best a Common Law Felony, arbitrarily and with no justification at law or in equity changing that classification to violent or something else violates Petitioner's due process rights.

In order for the S.C.D.P.P.P.S. to change Petitioner's offense classification from a Common Law Felony, they would have to have had a second trial to determine the facts. The Supreme Court in Hinton v. S.C.D.P.P.P.S., 357 S.C 327, 592 S.E.2d 335, "we find it unacceptable that the parole board should look to so called 'facts' of the case to make this determination, for the 'facts' are almost always disputed, and neither this court nor the parole board has any way of extricating which particular 'facts' the jury decided were true and which were not. The parole board should not undertake such a determination in what would amount to a de facto second trial and an egregious due process violation". The parole board's classification of Petitioner is a clear violation of Petitioner's due process rights. Not withstanding the effects of this classification but the method used to reach that classification is unconstitutional.

Any prisoner who's crime occurred between 1962 and June 3, 1986, clearly had a protected liberty interest in parole if they met the criteria of S.C. Code § 24-21-64, previously (55-616, 612, 611 (1962)).

The method used by the S.C.D.P.P.P.S. is the issue here, as well as the fact that the parole board has changed Petitioner's classification of his criminal offense. The question raised here is by what method and by what authority did S.C.D.P.P.P.S. use to change Petitioner's original 1971 Common Law Felony to a 1986 Omnibus Crime Bill Violent Offense? Petitioner asserts that whatever method and by whatever authority such action(s) were implemented are arbritary, capricious, and unfounded at law or in equity.

Under ordinary circumstances, S.C.D.C. must determine the sentence imposed by the trial court from the sentencing sheets. If there is some ambiguity in the sentencing sheets, S.C.D.C. may examine the transcript of the record to determine the intent of the sentencing judge. See Major v. S.C.D.P.P.P.S., 384 S.C. 457; 682 S.E.2d 795 (2009)(Pleicone, J. dissenting)("only if there is an ambiguity in the sentence, must the department or the court ascertain the intent of the judge"). In this case there is no ambiguity, therefore, S.C.D.P.P.P.S.

is limited to the plain meaning of sentence imposed. On September 8, 1971, the Honorable Wade Weatherford sentenced Petitioner to life for the crime of Common Law Murder. The judges intent is clear; there is no ambiguity. See Tant v. S.C.D.C., S.C. Court of Appeals (opinion No. 4827) It is a due process violation to make a decision outside of the record to change Petitioner's sentence, subsequent to the General Sessions Criminal Term of Court expiring (See S.C.R.C.P. 59(e).

CONCLUSION

There are facts that are clear here.

1. Petitioner was sentenced in 1971, to Common Law Felony. S.C. Code § 55-611, 612, 616 Parole Statue.
2. Petitioner was paroled in July of 1981.
3. Petitioner is a Technical Parole Violator.
4. Even prior to Petitioner's 2012 parole hearing he was denied parole. This is a patent violation of policy and statue.
5. The correct criteria for reinstatement on parole is not being applied to Petitioner.
6. Petitioner was not afforded the C.O.M.P.A.S. before Petitioner's parole hearing as required by law although other inmates and prospective parolee's were given the C.O.M.P.A.S., and afforded said opportunity and right.
7. That even after Petitioner informed the parole board of these facts, after Petitioner's hearing the parole board stated that it would not have made any difference. This is arbitrary, capricious, callous and shocking miscarriage of fairness and justice, is improper, incomprehensible and unallowable in the American System of Justice.

Clearly Petitioner's right to be eligible for proper parole consideration has been unfairly and improperly denied. A new hearing De novo, should be ordered immediately and the correct criteria ordered to be applied.

Respectfully,

Robert F. Spigner

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
Honorable Judge Anderson

Robert F. Spigner, Petitioner, V. South Carolina Dept. of Probation, Parole, and Pardon Services, Respondents.	)	13P0004 CERTIFICATE OF SERVICE

Petitioner, Robert F. Spigner, declares under the penalty of perjury that he mailed a copy of his Original Brief to the parties listed below, clearly addressed, by placing same in the U.S. Mail, postage paid.

Honorable Judge Anderson
Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, S.C. 29201

Ms. Teresa A. Knox
S.C.D.P.P.P.S.
P.O. Box 50666
Columbia, S.C. 29250

Date:_____, 2013. S/_____

cc: File

Sworn to and subscribed before me
this ____ day of _____, 2013.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: _____

EXHIBIT "A"

South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration

SC Board of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, SC 29250

Inmate Name	SCDC #
Robert Spigner	65500

23

Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature	Date	Witness	Date
Robert Spigner	7/11/12		7/11/12

Form 1212 Revision A March 18, 2002 (Stock)

Distribution: White Copy - Parole Services; Pink Copy - Inmate

Exhibit "B"

24

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: Ms Macon	TITLE: Head of Classification	DATE: Sept. 2012
INMATE'S NAME: Robert F. Spigner		SCDC #: 065500
INSTITUTION: Broad River Corr		LIVING QUARTERS: Con 226

Please let me know the Dates and Results of All my Parole Hearings.
And what is my Classification Status?
Violent or non Violent?

DISPOSITION BY STAFF MEMBER:
11-7-81 - 9-7-1 Parole Granted
11-7-01 - 11-7-03 Parole Denied
1-13-04 - 1-13-06 Parole Denied
6-21-08 - 5-21-10 Parole Denied
4-19-06 - 4-19-08 Parole Denied
6-23-10 - 6-23-12 Parole Denied
You are classified as Violent.

DATE: 9-10-12	SIGNATURE: Ms Macon

SCDC FORM 19-11 (REV.FEB 2001)

25

State of South Carolina

Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

KELA E. THOMAS
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

April 24, 2013

The Honorable Jana Shealy
Clerk, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

RE: Robert Spigner, #65500 v. S.C. Department of Probation, Parole and Pardon Services

Dear Ms. Shealy:

Please find enclosed for filing the *Brief of Respondent* dated April 24, 2013, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures

cc: Robert Spigner, #65500

ARGUMENTS

1. **The Respondent followed all mandatory statutory criteria prior to the denial of the Appellant's parole.**

The Appellant argues that the Respondent failed to follow the South Carolina Omnibus Crime Reduction act of 2010. His allegations stem from the Board not using the COMPASS program prior to the case going before the Parole Board. South Carolina law specifically states:

> The department must develop a plan that includes the establishment of a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions, including additional objective criteria that may be used in parole decisions.

S.C. Code Ann. §24-21-10(F)(1)(Supp. 2010).

The Appellant is of the opinion that the COMPASS program is mandatory. This program only makes a recommendation; it is, not a decision maker. COMPASS is not a part of the mandatory criteria, it is only an additional measure to possibly assist the Parole Board in making a decision. The mandatory criteria is found in South Carolina law and the fifteen criteria found in Department policy. Section 24-21-640 of the South Carolina Code of Laws specifically state:

> The board must carefully consider the record of the prisoner before during and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that, in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and, suitable employment has been secured for him.

S.C. Code Ann. §24-21-640 (Supp. 2011).

The statute also mandates the Board must establish written, specific criteria for the granting of parole and provisional parole. S.C. Code Ann. §24-21-640(Supp. 2011). This criteria can be

found on form 1212 which was given to the Appellant during his pre-parole investigation. (R. p. 6) These are the only mandatory criteria that must be considered by the Board. COMPASS was not even being used as a recommendation tool when the Appellant appeared before the Parole Board. This was due to the programs unavailability in parole cases, it was only initially available in supervision cases. Since COMPASS was never a mandatory or right given to an inmate prior to the Board considering his case for parole, his denial should not be remanded due to the Board not considering this program.

In Cooper v. The S.C. Dept. of the Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008) the Supreme Court established what future Parole Board orders should entail. It specifically states in Cooper:

> We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form. If the Board complies with this procedure the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure.

Id., at 500.

The order given to the Appellant followed the Cooper decision. The criteria within the statue, and the mandatory policy was considered prior to the denial of parole. The final decision was in writing and it included a findings of fact and conclusions of law separately stated. S.C. Code Ann. §1-23-350 (Supp. 2011). The findings of fact were the legitimate reasons for the denial of parole, and the conclusions of law was the considered criteria. The order is clear the statute and the mandatory policy was considered prior to the denial of parole, and the Appellant was notified of the reasons for denial. According to the Supreme Court if this is shown no further review by

the ALC is necessary. The Parole Board clearly stated in its rejection that it considered the statutory criteria set forth in Form 1212 which is sufficient under Cooper. Compton v. S.C. Dept. of Probation, Parole and Pardon Services, 385 S.C. 476, 685 S.E.2d 175 (2009).

COMPASS is not a mandatory measure that must be considered prior to each parole case, it is just an additional measure made to assist the Parole Board in making a determination. The final decision remains with the Parole Board, which the Court has no jurisdiction. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the denial of parole to a potentially eligible inmate by the South Carolina Department of Probation, Parole and Pardon Services. S.C. Code Ann. §1-23-600 (Supp. 2011).

2. The parole decision was not made prior to the pre-parole investigation so the Appellant was not denied due process.

The Appellant argues that the decision was made prior to his interview in violation of due process. In the United States Supreme Court case of Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972) the Court acknowledged that a person facing a revocation of parole has minimal due process rights. A distinction between a person currently on parole and a person seeking parole was made in the case of Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100 (1979).[1] In Greenholtz the Supreme Court determined that there exist no conditional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. Greenholtz, at 2104. The Appellant was not denied due process he

[1] There is a crucial distinction between being denied a conditional liberty one has, as in parole and being denied a conditional liberty that one desires. The parolees in Morrissey (and probationers in Gagnon) were at liberty and as such could "be gainfully employed and [were] free to be with family and friends and to form other enduring attachments of normal life." 408 U.S. at 482, 92 S.Ct. at 2600. The inmates here, on the other hand, are confined and thus subject to all of the necessary restraints that inhere in a prison. Greenholtz, at 2105.

was given a right to a hearing in which he was allowed to present evidence in mitigation, and make a presentation to the Board as to why he should be granted parole.

The Appellant alleges that he was denied parole prior to being interviewed, this is untrue. As any other parole case the inmate will not appear before the Board prior to the completion of his pre-parole investigation. The pre-parole investigation began on July 11, 2012, he did not appear before the Board until October 11, 2012. Parole was not denied until that day, so his accusations of being denied on June 23, 2012, is completely false.

3. The Parole Board used criteria that existed when the Appellant committed the offense.

The Appellant argues that the criteria considered by the Board was not identical to the criteria existing when he committed the crime. He argues the use of current criteria is a violation of ex post facto. The law existing at the time of the offense and not at the time of sentencing determines whether an increase of punishment or reduction of benefits constitutes of an ex post facto violation. Elmore v. State, 305 S.C. 456, 409 S.E.2d 397 (1991). The law regarding the mandatory criteria is identical to what existed at the time the crime was committed. Use of this criteria in the denial of the Appellant's parole is not a violation of ex post facto.

At the time the Appellant committed this crime, section 55-612 revealed the mandatory criteria the Parole Board was obligated to apply to an inmate seeking parole. Section 55-612 of the South Carolina Code of Laws specifically state:

> The Probation, Parole and Pardon Board shall carefully consider the record of the prisoner, before, during and after imprisonment, and no such prisoner shall be paroled until it appear to the satisfaction of the Board, that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interests of society will not be impaired thereby; and that suitable employment has been secured for him.

S.C. Code Ann. §55-612 (Supp. 1962)

In comparing this to the previously mentioned section 24-21-640, the only difference is the word "shall" replaced by the word "may." This change does not affect the Board members or the criteria used in the determination of parole. This minor difference must be considered procedural, and cannot be considered a violation of ex post facto. A procedural change is not ex post facto even though it may work to an inmate's disadvantage. Roller v. Gunn, 107 F.3d 227 (1997). The use of the current criteria to deny the Appellant parole was not in violation of any laws; therefore, his denial of parole should be upheld

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests that the final decision of the South Carolina Department of Probation, Parole and Pardon Services be affirmed.

Respectfully submitted,

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina
April 24, 2013

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

ROBERT F. SPIGNER, Petitioner,	)	13P0004
v.	)	REPLY BRIEF
South Carolina Dept. of Probation, Parole and Pardon Services, Respondents.	)	

REPLY BRIEF OF PETITIONER

ISSUES

I

How can the Parole Board contend that COMPASS is not mandatory? Failure by the Parole Board to consider COMPASS mandatory is in violation of the S.C. Statute Code Ann. §1-23-380(A)(6)(C). The Parole Board is perpetrating a grievous misrepresentation upon this Court, or at the least, offering a legal position tinged with untruthfulness.

The Respondents in their reply page seven (7), citing S.C. Code Ann. §24-21-10(F)(1)(Supp. 2010), clearly states that the department MUST * develop a plan... which the Parole Board SHALL ** use in making parole decisions.... Also see Appellant's Original Brief page two (2), S.C. Code Ann. §1-23-380. As part of the SENTENCING REFORM ACT of 2010, the Respondents implemented COMPASS, this is the SOLE tool used by the Parole Board for assessing Risk/Needs Assessments for those prisoners seeking parole. Not giving COMPASS to all prisoners seeking parole is not in compliance with the dictates of the Legislative Mandate.

Appellant Prays That This Court Should Take Notice!

Respondents are attempting to change the focus of this issue by use of a clever ruse. However, the brief of the Respondents page seven (7) (S.C. Code Ann. §24-21-10(F)(1)(Supp. 2010)), and Appellants Original Brief page two (2), S.C. Code Ann. §1-23-380(A)(6)(C), (Supp. 2010) clearly supports appellant's position that he should have been given the COMPASS Assessment! The Legislative intent is clear in that the Code Sections passed by the Legislature approved and signed into law by the Governor, MUST * be given it's (their) plain meaning!

* MUST----"Used to say that something is required by a RULE or LAW." Advanced Merriam Webster English Dictionary P. 1069 (2008).

** SHALL----"A command, used in Laws or Rules to say that something is required." Advanced Merriam Webster English Dictionary P. 1493 (2008).

II

SEE APPELLANTS ORIGINAL BRIEF, issue II, pages four (4) and five (5). SEE

ALSO APPELLANT'S EXHIBIT (B), again attached hereto, evidencing Appellant's denial of parole prior to his parole hearing, October 10, 2012 (This denial was decided June 23, 2012).

III

Appellant is not arguing Ex Post Facto; the issue is clearly stated in Appellants Original Brief, page six (6), issue III, first three (3) paragraphs et al. In effect, the Parole Board is applying the same criteria to Appellant who is a parole violator (Compliance), that the Parole Board is applying to someone who has never been paroled. Thus, there exist a criteria that applies to parole violators, (Compliance and Community Safty), that the Parole Board arbitarily and capriciously chooses to not use! The use of a standard applicable to those persons who are "comming up" for parole the first time is totally different from that of Appellant's, in that he is a parole violator having "previously been granted parole."

Respondents in it's concluding paragraph on page eleven (11) is attempting to cleverly change Appellant's issue by positing it's position with statements that are tainted with falsehoods. Thus, Respondents stated immaterial averments opposing Appellants Original Brief are spurious, deceptive and absent of good faith...

CONCLUSION

Appellant prays that this court will remand back to the Parole Board appellant Robert F. Spigner, for a proper hearing that is consistent with:

1) The mandates of **S.C. Code Ann. §1-23-380(A)(6)(C)** and **S.C. Code Ann. §24-21-10(F)(1).**
2) Use the criteria that the Parole Board has for parole violators.
3) Provide Appellant with a copy of the Parole Board's criteria in effect for reinstatement on parole for parole violators (Compliance).
4) Grant Appellant a fair and proper hearing, not deciding his petition BEFORE the Parole Board hearing is held, and, any other relief this court deems proper and just.

Respectfully,

Robert Spigner

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Robert F. Spigner, Petitioner,	)	13P0004
V.	)	CERTIFICATE OF SERVICE
South Carolina Dept. of Probation, Parole and Pardon Services, Respondents.	)	

The Petitioner, Robert F. Spigner, declares under penalty of perjury that he personally mailed a copy of his **Reply Brief** to the parties listed below as addressed by timely placing the Brief in the U.S. Mail.

Honorable Judge Anderson
Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, S.C. 29201

Mr. Tommy Evans, Jr., Esq.
S.C.D.P.P.P.S.
P.O. Box 50666
Columbia, S.C. 29250

Dated: May 2, 2013

Respectfully,

Robert F. Spigner

cc:file

Exhibit "B"

35

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: Ms Mason	TITLE: Head of Classification	DATE: Sept 2012
INMATE'S NAME: Robert F. Spigner		SCDC #: 065500
INSTITUTION: Broad River Corr		LIVING QUARTERS: CON 226

Please Let Me Know the Dates and Results of All my Parole Hearing. And what is my Classification Status? Violent or Non Violent?

DISPOSITION BY STAFF MEMBER:

7-7-81 - 9-7-1 Parole Granted
11-7-01 - 11-7-03 Parole Denied
1-13-04 - 1-13-06 Parole Denied
5-21-07 - 5-21-10 Parole Denied
4-19-16 - 4-19-08 Parole Denied
4-23-11 - 4-23-12 Parole Denied
You are classified as Violent

DATE: 9-11-12.	SIGNATURE: [illegible]

SCDC FORM 19-11 (REV.FEB 2001)

SOUTH CAROLINA SENTENCING REFORM COMMISSION REPORT TO THE GENERAL ASSEMBLY

February 1, 2010

Commission Members:

Senator Gerald Malloy, Chair
Representative G. Murrell Smith, Jr., Vice-chair
Senator John M. "Jake" Knotts, Jr.
Senator George E. "Chip" Campsen, III
Representative R. Keith Kelly
Representative Douglas Jennings, Jr.
Justice Donald W. Beatty
Judge Aphrodite K. Konduros
Judge William P. Keesley
Director Jon Ozmint, Dept. of Corrections

Senate Staff
E. Katherine Wells
J.J. Gentry

House Staff
Bonnie Anzelmo

Judiciary Staff
Stephanie A. Nye

Drivers of Prison Growth

There are several key factors driving the state's prison growth.

- Sentencing policies in recent years have led to a significant number of offenders entering South Carolina prisons who are committed for low-level offenses for short periods of time. Admissions to prison have increased 26 percent since 2000, yet a significant number of sentences are for less serious offenses that result in short sentences. In fact, 44 percent of new admits have a sentence of less than 18 months, and 46 percent of felony convictions are for class F felonies, the lowest class of felonies.

- Second, again largely based on sentencing policies, the number of offenders entering prison for non-violent offenses, mostly drug and property crimes, has increased significantly. Forty-nine percent of South Carolina's prison population is being held for non-violent offenses. The percentage of offenders incarcerated for drug-related offenses has more than tripled. In 1980, there were 473 inmates convicted of drug related offenses – six percent of the total population. In 2009, that number had increased to 4,682 inmates or 20 percent of the population.

- Third, offenders on parole and probation are being sent back to prison for non-criminal violations, due to the lack of available alternatives. In recent years, an increasing number of people in South Carolina have been incarcerated for violating the conditions of their probation or parole, not for committing a new crime. In FY2009, the S.C. Department of Probation, Pardon and Parole Services (PPP) revoked 3,205 offenders to prison, accounting for 24 percent of all prison admissions, 66 percent of whom, or more than 2,100 offenders, were sent back to prison for non-criminal (technical) violations, such as failure to show up at the probation office, or alcohol and drug use.

- Fourth, South Carolina's parole board has substantially cut the rate at which it releases inmates who are eligible for parole. In 2009, the Parole Board rejected 3,993 parole applications and approved 511. This represented only 3.5 percent of all inmates released.

Making South Carolina Safer

Prison space should be reserved for violent criminals and those with violent tendencies. Research shows that low-risk offenders, those who pose minimal risk to the public, are more effectively managed outside the prison system. After an in-depth analysis of the state's sentencing and corrections data, the Commission has developed recommendations that will reduce recidivism while also reducing the costs of corrections.

The Commission's proposals would increase public safety by ensuring that there is prison space for high-risk, violent offenders; ensuring that those offenders serve longer terms in prison; requiring supervision for offenders leaving prison so they cannot just disappear into South Carolina communities without any oversight; and improving supervision for those on probation and parole so that they stay crime and drug free.

diversion from criminal prosecution. Offenders convicted of crimes in South Carolina are generally sentenced to prison or probation. Additionally, it was not possible to compile data for all arraigned cases where diversionary sentences were given, because there is no central data collecting agency for all of the diversionary programs.

The state's diversionary programs are typically for first-time, non-violent offenders and are controlled through the discretion of the local solicitors. There are some state funds provided, but most are funded through client fees and fines. These programs are limited in number and access. Even if a diversionary program exists in a circuit, it does not mean that each individual county in the circuit has the program. There is no centralized database to evaluate their effectiveness, and not all programs operate in the same manner. For example, some drug courts are available as diversion from prosecution and others are available as a sentencing option. There are also statutory provisions excluding certain offenders from diversion programs.

The research is clear. Certain programs and rehabilitative intervention strategies, when applied to a variety of offender populations, reliably produce significant reductions in recidivism. There is a rich body of research that describes correctional assessment, programming, and supervision strategies that lead to improved public safety outcomes. They are also more cost effective.

- Administrative Sanctions. Data from DOC and PPP showed that, in FY2009, PPP revoked 3,205 offenders to prison, accounting for 24 percent of all prison admissions. Of the 3,205 offenders PPP returned to prison through revocation proceedings, 2,109 were for technical violations (66 percent), meaning that the revocations were for violations of their probation or parole orders, but no new crime was committed. Current statutory law, PPP policy, and South Carolina case law restrict the ability of the department to respond to violations with swiftness and certainty. PPP maintains a policy which clearly defines violations in two categories, compliance or community safety and a process for violation proceedings. The department has the authority to respond to violations in a limited fashion. They have the authority to issue a verbal/written reprimand, increase reporting frequency and require substance abuse testing/treatment, education and vocational training in response to a violation(s). However, the addition of community service, electronic monitoring/curfew/GPS, extensions or modifications of the supervision period or revocation may only be ordered by a judge or parole board. This process typically includes significant delays from the point of violation to judgment, which diminishes the impact of the sanction. Given the amount of violations experienced by those under the supervision of PPP, the rate at which they return to costly prison beds and the extensive backlog of court cases, the work group was presented with information about alternate methods for responding to violation activity with swiftness and certainty. From data supplied by PPP and DOC, it is estimated that in five years, a 25 percent reduction in parole or probation revocations based on technical violations could result in cost reductions of more than $3 million (estimating cost savings of $10/day per violator). These savings could be averted to support other public safety policies recommended by the Commission.

- Maintaining success in the community. Testimony concerning behavioral changes that have been successful in other states indicated that behavior is often changed through positive reinforcement. Offenders who abide by the conditions of their supervision and

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Vaughn Smith, Appellant,

v.

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

Appeal From The Administrative Law Court
John D. McLeod, Administrative Law Court Judge

Unpublished Opinion No. 2011-UP-516
Heard November 2, 2011 – Filed November 29, 2011

VACATED AND REMANDED

Tommy A. Thomas, of Irmo, for Appellant.

Teresa A. Knox, J. Benjamin Aplin, and Tommy Evans, Jr., all of Columbia, for Respondent.

PER CURIAM: Vaughn Smith appeals the administrative law court's order remanding his administrative appeal to the parole board for additional proceedings. We vacate pursuant to Rule 220(b)(1), SCACR, and the following authorities: S.C. Code Ann. § 1-23-600(D) (Supp. 2010) (providing the administrative law court "shall not hear . . . an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services"); Compton v. S.C. Dep't of Prob., Parole & Pardon Servs., 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009) (per curiam) (holding a parole board order denying parole and stating the board considered all statutory and Department criteria is sufficient to avoid deeming an inmate effectively ineligible for parole). We vacate the administrative law court's order and remand with instructions to dismiss the appeal pursuant to section 1-23-600(D).

VACATED AND REMANDED.

FEW, C.J., and THOMAS and KONDUROS, JJ., concur.

Such as when being paroled under Section 24-21-645, which is a law that works in mandatory tandem with 24-21-640; if the prisoner is classified under 16-1-60 then the members of the parole board approving parole changes from a 4 vote majority to a 5 vote two thirds requirement. (R.p.36, pp.40-41; Supp.R.p.l).

Changing the number of votes that determine whether a prisoner goes free on parole or not; is a major change and can have a profound effect on the prisoner as serious as losing a championship game by one (1) point.

See also exhibit page 14 of the Appellant's Primary Brief attachments, second to last paragraph on insert page 33 for reference. (R.p.44).

In contrast to prisoners going up for parole in 1973; (all felons) were governed under one evaluational parole voting system.

This is one of a few major changes in code of law coming from the Omnibus Crime bill section 24-21-645, that seriously has an effecting element to the chances of the Appellant making parole.

This is the realistic example and core issue to what the Appellant is arguing within his appeal; where as the respondent defaultly didn't address and the Honorable A.L.J. dismissed because they overlooked the true understanding of how 16-1-60 is being *26 used within the massive parameters of the Omnibus Crime Bill; However, be it known dear Honorable court of Appeals, the Respondent knows the very workings of 16-1-60 and its connection to the many facts of the Omnibus Crime bill, because they live by it and use its provisions everyday respectfully!!

This is also why the Appellant requested both in his Primary Brief conclusion and in his Motion to show cause; an oral hearing, date May 19, 2009; that was never answered. (R.p.27; pp.77-81).

The reasoning was to avoid what virtually happened The Honorable Courts not knowing the workings of the many fascists of the Respondent; and the appellant given too little room in small briefs to explain in depth, what the Respondent is deliberately avoiding the issues that affect the Appellant's appeal.

Another reason why the Appellant raised the issue about 16-1-60, was simply it was never suppose to be used on the Appellant because of his conviction date of 1973 and that his original conviction classification is common law.

The provisions in 16-1-60 B prohibit the Respondent from using the classification of violent offender with the Appellant, but they did anyway in violation of due process and Ex post facto laws.

See exhibit page (11) of the Appellant's Primary Brief Attachments. (R.p.40).

Which leads up to a major discovery unknown to the Appellant until a couple of weeks after the Appellant was denied parole last August 13, 2008.

See exhibit page 13-A and 13-B of the Respondent's Director's letter status report, from the Primary Brief attachment. (Supp.R.p.2; R.p.43).

*27 Within this official letter, the (Respondent-Director) reveals that for many years the (Board-Respondent) is evaluating the Appellant as if he has committed a prior violent crime Armed Robbery; which is grossly in error. It has since within the Respondent's brief; conceded that it was an error; but not after years of damage to the evaluational psyche of Board members when under section 24-21-640 see exhibit page (12-B) of the Appellant's Primary Brief attachments - last paragraph it states.

The Board shall not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60. end-quote. (Supp.R.p.l).

This section of Law causes serious disadvantaging consequences upon the Appellant when classified as a violent offender - pursuant to 16-1-60; to which it has already been discussed that the respondent is not authorized to use the violent offenders terminology which automatically defines the definition 16-1-60. within today's system of classification.

Oct. 25, 2012

Ms. Catherine Cooper
Director of Parole Board Support
2221 Devine St. Suite 600
Columbia, S.C. 29250

Dear Ms Cooper;

This is My formal request of the S.C. Parole Board for A Rehearing for the following reasons:

1. The Board Conduct was not in Compliance with the Due Process Requirements of the United States Constitution or the South Carolina Constitution. Under the Sentencing Reform Act June 2010, the Board implimented A Risk/Needs Assessment tool "Compas". This tool has been used in the Preparole hearing process to Evaluate Some Prisoners, but the Board has failed to give this test to me, in violation of my Rights to be treated fairly.

2. The Parole Board has failed to give me a full and fair hearing, by rendering its decision prior to my even being interviewed for Parole. The Board Never Considered My Parole Plan or my Support

from the Community. According to the Sentencing Reform Act of 2010, the Parole Board is supposed to make Evidence Based Decisions. How can that be if the decision is made prior to my even being interviewed?

3. The South Carolina Parole Board has failed to give me A fair hearing when they ignore S.C. Code 16-1-60(B), Under the guidelines that I was sentenced in 1971, I am only required to have (4) votes to be reinstated on Parole and my Offense is Common Law, Not Violent in Classification.

According to the Sentencing Reform Act, the Risk/ Needs Assessment tool is supposed to be in Place.
A. I was never given it!
B. My Parole Decision was made Prior to My being Interviewed.
C. The Parole Board Never Asked me one question only if I wished to Make a Statement.
D. The Reason for My Rejection are always the same, Reason that will Never Change, no matter what I do.

E. When I was paroled in 1981, the reason now being given were overcome. The decision now should focus on my violation and what I have done since then. Where is the evidence based decision?

For the before mention reasons, I am requesting a full and fair rehearin in accordance with the law.

Respectfully

Robert T. F. Spigner

CC: file.

South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration

Inmate Name	SCDC #
Robert Spigner	65500

SC Board of Probation, Parole and Pardon Services
P O Box 50666
Columbia SC 29250

44

Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature	Date	Witness	Date
[signature]	2/11/12	[signature]	2/11/12

Form 1212 Revision A March 18, 2002 (Stock)

Distribution White Copy - Parole Services, Pink Copy - Inmate

The State of South Carolina
IN The Court of Appeals

Robert F. Spigner, 065500
Appellant

v

South Carolina Dept. of Pardon
Probation and Parole Services
Respondent

Certificate of
Appellant

The Undersigned Certifies that this Record on Appeals, Contains All Materials proposed to be included in the Record on Appeal by all parties and not any other Material

Robert F. Spigner
Broad River Corr. Inst
4460 Broad River Rd
Colm S.C. 29210

The State of South Carolina
IN The Court of Appeals

ROBERT F. SPIGNER, 065300
APPELLANT

v

South Carolina Dept. of Pardon
Probation and Parole Services
RESPONDENT

Certificate of
Service

Appellant Case
NO: 2013-001380

ROBERT F. SPIGNER declares under the penalty of perjury that he did MAIL (15) COPIES EACH of his Record on Appeal and Final Brief to the Clerk of the Court of Appeals. And One (1) copy to the Respondents addressed as below, by placing in the U.S. Mail.

Ms. Jenny A. Kitchings, Clerk
S.C. Court of Appeals
1015 Sumter St
Col A, S.C. 29201

MR. Tommy Evans JR. ESQ
2221 Devine St Suite 600
Col A, S.C. 29250
(803) 734-9220

Respectfully
Robert F. Spigner

cc: file
DATE: Sept 27, 2013