

State of South Carolina
In The Court of Appeals

Appeal From The Administrative
Law Court

The Honorable Ralph K. Anderson III

Docket No. 13-ALJ-15-0004

Case No. 2013-001380

Robert F. Spivner 065500
Appellant

Final Reply Brief
of Appellant.

v

South Carolina Dept. of Pardon
Probation and Parole Services
Respondents

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NOV 07 2013

SC Court of Appeals

Dated NOV. 5 2013

Robert F. Spivner

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ISSUES ON APPEAL

1. Did the S.C. Parole Board render Appellant ineligible for parole when they failed to follow S.C. Statutory requirements as set forth in S.C. Code Ann. 24-21-10(F)(1) (Supp. 2010) as well as S.C. Omnibus Crime Reduction and Sentencing Act of 2010?
2. Did the S.C. Parole Board render Appellant ineligible for parole by deciding his case prior to the time he was given his pre-parole interview, thus denying Appellant his just and fair opportunity and right to be heard as set forth in the Parole Boards own established criteria and dictated by S.C. Code Ann. 24-21-640 (Supp. 2012)?
3. Did the S.C. Parole Board apply the incorrect and improper criteria (Law and Statutes) in deciding Appellants parole, thereby rendering Appellant ineligible for parole? One of the many questions

raised herein is: what determinative method and by what Authority did the SCDPPAS Utilize to Change Appellants Original 1971 Common Law Felony into a 1986 Omnibus Crime Bill Violent Offense and thereby using that After Established Criteria as to Appellants Eligibility?

Argument

1. Did the S.C. Parole Board render Appellant ineligible for Parole when they failed to follow S.C. Code Ann. 24-21-10(F)(1) Supp 20-10, as well as the S.C. Omnibus Crime Reduction and Sentencing Act of 2010?

FIRST: The respondent and The ALC are giving the incorrect interpretation of the Statute S.C. Code Ann. 24-21-10(F)(1). The words MUST and SHALL are mandatory as explained by the Appellant in his Briefs. The correct interpretation must be given. This Statute itself is legal authority that COMPAS is mandatory.

SECOND: The respondent offer no authority that COMPAS is not mandatory. Appellate Court Rule 208(D) requires the Citing of Authority. EN PART "followed by discussion and Citation of Authority". IN pleading this issue the respondent offer no authority and have abandoned this issue ON APPEAL.

The Only relevant Authority used by the ALC and the Respondent when discussing this issue is 24-21-10(F)(1) and this statute supports the fact that COMPAS is mandatory.

Third The respondent have never in any other Pleading stated that they already use a risk/needs assessment tool. If this is true then why did the General Assembly enact S.C. Code 24-21-10(F)(1) and all the other statutes that require training and oversight if there is a risk/needs assessment tool in place? The Respondent claim that the Appellant was given a risk/need assessment tool prior to being denied parole. Appellant now questions when and where was I given this. Not giving Appellant COMPAS renders Appellant ineligible for parole. See *Cooper v. S.C.D.P.P.S.* 377 S.C. 489, 661 S.E.2d 106 (2008).

2. Did the S.C. Parole Board Render Appellant ineligible for parole by deciding his case prior to the time he was given his pre-parole interview. Thus denying Appellant his just and

Fair Opportunity and right to be heard as set forth in the Parole Board's own Established Criteria and dictated by S.C. Code ANN. 24-21-640 (2012)?

The Respondent now states in their response to this issue (1) the ALC is correct that this is a scrivener's error, (2) the message the Appellant received via the S.C. - D.C. was incorrect, the ALC was correct in determining this an obvious error. The Respondent is correct in stating that S.C.D.C. has no control over Parole decisions. However, S.C.D.C. does not have any control over the information that is received concerning Parole decisions. That information comes from S.C.D.P.P.S. The information received from the Head of Classification at the Broad River Corr Inst. is an official document. The Respondent offers nothing to refute this document.

3. Did the S.C. Parole Board apply incorrect and improper criteria (Law and Statutes) in deciding

Appellant's parole? Thereby rendering Appellant ineligible for parole? One of many questions raised herein is what determinative method and by what Authority did the S.C.D.P.P.S. utilize to change Appellant's Original 1971 Common Law Felony into a 1986 Omnibus Crime Bill Violent Offense? and thereby using that after Established Criteria as to Appellant's Eligibility.

When Considering Appellant for parole respondents use the wrong criteria. Appellant is a technical Parole violator. There exist a policy that applies to Parole violators. This fact is evidenced by the S.C. Sentencing Reform Commission report to the General Assembly Page 17. R. 36-38, this is the criteria that should be used when deciding Appellant's parole.

"RES JUDICATA IS AN AFFIRMATIVE DEFENSE AND MUST BE PLEADED TO BE ESTABLISHED" S.C.D.C. V. THOMPSON 257 S.E.2D 747, 748 (S.C. 1979); SHECUT V. SHECUT 185 S.E.2D 896 (S.C. 1971).

DEFENSE OF "RES JUDICATA" DEALS WITH MERITS OF CONTROVERSY RATHER THAN JURISDICTION OF THE COURT. CONNELL V. CONNELL 153 S.E.2D 396 (S.C. 1967)

Primary

Purpose of the RES JUDICATA DOCTRINE commonly known as the CLAIM PRECLUSION, ARE TO BRING AN END TO LITIGATION AND PREVENT A DEFENDANT FROM BEING FORCED TO DEFEND THE SAME ACTION REPEATEDLY "GARRIS V. GOVERNING BOARD OF S.C. REINSURANCE FACILITY, 511 S.E. 2d 48 (S.C. 1998). IN THE CASE AT BAR: IN LIGHT OF BINDING AUTHORITIES, THE PAROLE BOARD ESPOUSAL OF RES JUDICATA DOES NOT PRECLUDE APPELLANT'S RIGHT TO CONTEST RESPONDENT'S POSITION WITH THE INTRODUCTION OF WRITTEN EVIDENCE FROM THE APPELLANT'S UNDERLYING CRIMINAL CONVICTION TO WHICH RESPONDENT'S OPEN THE DOOR.

THE THREE ELEMENTS THAT PROVE RES JUDICATA ARE: 1. IDENTITY OF THE PARTIES (THE S.C. DEPT. OF PARDON, PROBATION AND PAROLE SERVICES, ROBERT F. SPIGNER CLASS 500) 2. IDENTITY OF THE SUBJECT MATTER (THE FACTS OF APPELLANT'S CONVICTION) AND 3. ADJUDICATION OF THE ISSUE IN THE FORMER SUIT. (THE FACTS OF THE APPELLATE'S CONVICTION WERE LITIGATED IN ROCKLAND COUNTY COURT OF GENERAL SESSIONS IN 1991). TO CONTINUE TO LITIGATE THE FACTS OF THAT CONVICTION IS AN EGREGIOUS SUBSTANTIAL AND PROCEDURAL DUE PROCESS VIOLATION.

RESPONDENT CONTENDS THAT A PAROLE HEARING IS NOT LITIGATION. APPELLANT DISAGREES. LITIGATION: (LITIGABLE)

Able to be contested or disputed. Black Law dictionary Pg 944. . Respondent States on Pg. 6 of Respondent's Brief in reply to Appellants Original Brief "there exist no violation of Due Process, the Appellant was allowed to appear before the Board to address accusations and present any mitigating evidence". At parole hearing Aggravating factors are also presented by victim witness, law enforcement, family members. A Parole Hearing is more than notice and proof. A Parole hearing is in fact litigation on the very facts of Appellants conviction.

Res Judicata precludes parties from subsequently relitigating issues actually litigated and those that might have been litigated in a prior action. S.C. Dept. of Soc. Serv. v. Basnight 346 S.C. 241, 551 S.E.2d 274, 278 (Ct. App. 2001).

CONCLUSION

The issue represented in this appeal affect many other similarly situated individuals. All of the issues should be remanded for a decision consistent with criteria and law.

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The State of South Carolina
IN THE COURT OF APPEALS

Robert F. Spigner, 06590
Appellant

v

South Carolina Dept. of Probation
and Parole Services
Respondents

Certificate of Service

Appellant Case

NO: 2013-001380

Robert F. Spigner, declares under the penalty of perjury
that he did mail a copy of his Final Reply Brief to
the parties listed below by placing them in the U.S. Mail.

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Dated NOV 5, 2013

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Pardon Services

Respondent

Certificate of Counsel

The Undersigned certifies that his Final Brief(s)
Complies with Rule 211, SCACR and with the South
Carolina Supreme Court's order dated August 13, 2007.

NOV. 5, 2013

Robert F. Spigner 065500