

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable; John D. Mcleod, ALJ

Case # 2013-ALJ-15-0010-AP

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Mathew S. Harris, #157334 - - - Appellant

Vs

SC. Probation, Parole, Pardon Services - - - Respondent

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Appellant Case No. 2013-001399

Final Brief of Appellant

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OCT 08 2013
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Statement of Issues

I: Whether the Administrative Law Court (ALC) erred in its order, and improperly denied itself subject & personal matter jurisdiction, under SC Ann (Supp 2012) §1-23-600(D), and Cooper V SCPPPSB 377 SC 489, 500 600 SE.2d 106, 112 (2008): And erred in finding of fact and law on the issues raised in appellants brief and record before the court: And dose order abrogate remedie from respondent in the ALC.?

Statement of the Case

I was originally charged with murder, in warrant # c117311, dated 9/14/1988. The lexington county grand jury, returned a true bill indictment, #1989-GS-32-0626, on 4/18/1989. My conviction and sentence was vacated on PCR, 92-cp-32-2316, on 10/9/1993. The SC Supreme Court denied Certiorari. I remained in SCDC, and was taken back for retrial in July/1998. I was convicted and sentenced to life with parole eligibility. The un-adjudicated legal and constitutional challenge to trial & conviction are pending.

I became eligible for early release on parole, after service of 20 years, in 2008. I was denied parole by form letter in 2008, and 2010. In the currant case I was denied parole at hearing on 1/31/2013, @ (R. P. 006). I petitioned for reconsideration, which was denied, @ (R. P.2-3). I filed atimely notice of appeal in the administrative law court (ALC), @ Appellants Exhibit (R. P.020-038).

The case was filed and assigned to Judge Mcleod, ALJ on 2/28/13, and docketed as # 13P0010. The Respondents filed the record on appeal (R. P.004-009), on 3/15/13. I filed my appellants brief dated 4/10/13, with attachment of "Additional Statement of Facts" (R. P.011-019), & "Exhibit", and served all parties on 4/11/13.

Counsel for respondents filed his brief on 5/22/13, (R. P.039-050); and based his defence on lack of jurisdiction of the ALC, and denied that respondents order was arbitrary, caprisious, and denied that FOIA was violated. I filed my Appellants Reply Brief (R. P. 051-055), dated 5/27/13, and served parties on 5/29/13. The ALC, did not conduct any

5/29/13. The ALC, did not conduct any hearing, and summarily by written order, denied the appeal with prejudice, (R. P.001-002), on June/7/2013; for want of jurisdiction as a matter of law and supreme court rule, and did not make a finding of fact and law on the issues raised.

I filed a request for certiorari/appeal in the SC Supreme Court (SC. S.Ct), (R. P. 055-056), on 6/25/13, and served all parties. By order of the SC. S.Ct (R. P.003), dated 6/27/13, the request for Cert was denied, and the document was construed into a notice of appeal, docketed as Appellant Case # 2013-001399, and transferred the case to this court. By letter from the clerk of this court (SC. App.Ct) dated 7/11/13, and received by me on 7/26/13, a formal notice of appeal was requested with filing fee. I filed same dated July/27/13, and served all parties on July/30/2013. I payed the filing fee, and was informed by letter dated Aug/15/2013, that my initial brief, and motion for out of time was due within 15 days. I have complied.

Argument

I: THAT THE ALC DID ERR IN ITS ORDER, AND IMPROPERLY DENIED ITSELF SUBJECT AND PERSONAL MATTER JURISDICTION, UNDER SC. ANN. (SUPP 2012) §1-23-600(D), AND COOPER V SCPPPSB 377 SC 489, 500 600 SE.2D 106, 112 (2008): AND ERRED IN ITS FINDING OF FACT AND LAW ON THE ISSUES RAISED IN APPELLANTS BRIEF AND RECORD BEFORE THE COURT: AND THIS ORDER DOSE ABROGATE REMEDIES FROM RESPONDENT IN THE ALC.! ?

I submit and argue that this appeal is brought as a matter of right, has merit, and is proper as determined by law, §1-23-380 & §1-23-610(5)(b,c,e,f); (5)(b) "in excess of statutory authority of agency", (c) made on unlawfull procedure, (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, OR; (f) arbitrary, or capricious or characterized by abuse of discretion or clearly unwarranted excersize of discretion. Futher that the (R. P.012) statement of issues, and (R. P. 040) Arguments, dose state a valid question of law and fact: And that the order as is overturnes remedies from respondent heretofor allowed under Al-Shabazz Vs State 338 SC 354, 527 SE.2d 742 (2000), and if this is allowed to stand, then alternative remedies should be returned under the SCRCP in the circuit courts, or otherwise before the Judicial Branch of Government.

Further I submit that parole "although a grace and privilege of the legislature" was created under the SC Const art IV §14, for and by the people of SC, so that the government could never impose absolute loss of liberty, in the name of the law, and that when it is no longer necessary for actual confinement after conviction, and rehabilitation or reformation is achieved, then a partial restoration of liberty can be had, and when I was convicted and sentenced, eligibility was had after 20 years, and the board can grant parole after 10 years for good behavior. Privileges and Immunities are protected by the 14th §1 Amend US Const, and the SC Const Art 1 §3 demands due process and equal protection of the law. As pointed out in (R. P.013-019) & (R.p. 053-054); the respondent has acted without just cause in denying parole, and the ALC Order has failed to act under the statutory and constitutional provisions that it is empowered with, therefore this court should act.

I also submit and argue in the instant case, that the ALC order; reliance on the SC. S.Ct holding in Cooper V SCPPPSB 377 SC 489, 500 SE.2d 106 (2008), and SC. Ann (Supp 2012) §1-23-600(D), to reject jurisdiction over the case and person, (R. P.001-002), is in serious error: [1] that the holding in Cooper does not overturn the reasoning and holding in Al-Shabazz that basically upheld the ALJD law and Rules 1-54 ALJ. Here the ALC created a scenario to summarily dismiss an otherwise valid appeal. it does not appear that an alternative remedy was doctrinated. The statutory code in §1-23-600(A)(1-5) does not create an exception to appellant jurisdiction over the instant case. [2]- The statute cited by Resp (R. P. 046-047), that also averred §1-23-380, did not apply to the facts and issues of the instant case. The last sentence of §1-23-600(D) appears to be a tacked on provision in violation of the SC Const, art 1 §3, §22, in that it does not fit the preceding language; when other statutes such as, §11-35-4410 §42-17-60 §§24-13-210(A), 230(A), specifically allow for other remedies in the judicial branch, where as ... "an appeal involving the denial of parole to a potentially eligible inmate by the department of probation, parole and pardon services," SC Const Art III §17; makes no such remedial provision. Further here the word "Potentially" added, is added to eligible to change the nature of the circumstances and law. I was and am eligible for parole since 2008, by law and the purpose and intent that the parole system was created for, (R. P. 023-038).

Further, the court did not adjudicate the second issue in the appellants brief, on the freedom of information act, also addressed in (R. P. 015-016) & (R. P.052-054). The Order also dose not adjudicate the extended statement of facts, (R. P. 017-019). Here the respondent was arbitrary and capricious in denying parole on the ambiguous order that relied on nature and seriousness of offence, and violence of this or other offence, (R. P. 006), without addressing the circumstances of the case, and relying on personal vendettas, (R. P.024-030), in opposition to the states forgiveness and non absolute tyrannical penalties that would otherwise prevail.

Conclusion

Wherefor I pray that this court will vacate the ALC order, and remand for hearing, or adjudication of the facts and law; and/or will take judicial notice of the peticular question of fact and law, as it applies overall.

This/ 14th /Day of/ Oct /2013:

Respectfully Submitted

/s/ Matthew Harris

Mathew Harris, 157334

Appellant Pro Se

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appeal from; SC. Administrative Law Court
John D. Mcleod, ALJ case # 2013-ALJ-15-0010-AP

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Certificate of Appellant

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I the appellant pro se, declares that this final brief meets the requirments of Rule 211(b) SCACR, to the best of my ability and recourse. As an inmate the material requirments of Rule 267 SCACR, of certain paper types cannot be met.

This/ 4th / Oct /2013

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