

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Carolyn C. Matthews, Administrative Law Court Judge

Appellate Case No. 2014-000773

Kenneth William Green, #116020..... Appellant

v.

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

RECORD ON APPEAL

RECEIVED
SEP 05 2014
SC Court of Appeals

Kenneth William Green
#116020
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

Appellant, pro se

Tommy Evans, Jr., Esquire
South Carolina Department of Probation,
Parole, and Pardon Services
2221 Devine Street
Post Office Box 50666
Columbia, South Carolina 29501

Attorney for Respondent

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kenneth Green, #116020,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 13-ALJ-15-0042-AP

ORDER

STATEMENT OF THE CASE

This case is before the South Carolina Administrative Law Court ("ALC") pursuant to the appeal of Kenneth Green ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. On August 13, 2013, Appellant, through counsel, petitioned the South Carolina Parole Board ("Board") for release. In his Petition for Release, the Appellant claims to have received four (4) votes in favor of parole when he appeared before the Board on November 29, 2000. The Appellant claims that he is entitled to parole in light of the recent South Carolina Supreme Court ruling in Barton v. S.C. Dep't of Prob., Parole and Pardon Servs., 404 S.C. 395, 745 S.E.2d 110 (2013). The South Carolina Department of Probation, Parole and Pardon Services ("Department") responded to the Appellant on August 27, 2013, informing him that he did not receive the required number of votes for parole and he "will not be conditionally paroled pursuant to [the] Barton decision." Appellant filed his appeal before the ALC on September 17, 2013. The Department filed the Record on Appeal on October 9, 2013. The Appellant filed his Brief on November 21, 2013, which included affidavits from James M. Green, Sr., the father of the Appellant, James M. Green, Jr., the brother of the Appellant; and a letter from Douglas Jennings regarding another inmate's parole hearing. The Department filed the Brief of Respondent on December 12, 2013. The Appellant filed his Reply Brief on December 19, 2013. On February 24, 2014, the ALC ordered, from the Department, the transcript of the November 29, 2000 parole hearing of the Appellant. On March 4, 2014, The Department provided the Appellant and the ALC the transcript of the November 29, 2000 parole hearing. After a thorough review of the complete record, including the transcript of the parole hearing, the ALC affirms the final decision of the Department denying parole to the Appellant.

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SC ADMIN. LAW COURT

BACKGROUND

On October 24, 1982, the Appellant, along with his co-defendant, was drinking in a bar in Summerville. They observed the victim pull out a significant amount of cash to pay for his drink and leave. The victim proceeded to get into his truck and drove away, only to be followed by the Appellant and co-defendant. The Appellant and co-defendant proceeded to force the victim off the road. The appellant and co-defendant exited their vehicle, upon which time the Appellant, armed with a shotgun, shot the victim in the head, killing him instantly. The Appellant took twenty (\$20.00) Dollars in cash and another shotgun from the victim. On March 9, 1983, the Appellant appeared before the Honorable John Hamilton Smith for the offense of murder. The Appellant was sentenced to a term of incarceration for the remainder of his natural life.

The Appellant made his initial appearance before the Board on November 18, 1998. The Appellant has appeared before the Board an additional twelve (12) times since, each resulting in a denial of parole. The Appellant's last appearance occurred on January 30, 2013, which resulted again in his denial of parole. The Board decided to deny parole due to: 1) the nature and seriousness of the current offense; 2) an indication of violence of this or a previous offense; and 3) a use of a deadly weapon in this or a previous offense. The Appellant filed his Petition for Release on August 13, 2013, claiming that he received four (4) votes in favor of parole at a hearing held on November 29, 2000, and therefore in light of the recent ruling in Barton, Appellant is entitled to his release. The Department responded to the Appellant, informing him he did not receive the required number of votes for parole during the November 29, 2000 hearing. This appeal followed.

DISCUSSION

An individual has a right to ALC review of a final decision of the Board only when that decision affects a liberty interest for which due process is required. See Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs., 352 S.C. 594, 598-99, 576 S.E.2d 146, 149-50 (2003); see also Sullivan v. S.C. Dep't of Corrections, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review). In Furtick, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole eligibility pursuant to S.C. Code Ann. § 24-21-620, the statute does not create a liberty interest in the granting of parole itself. Furtick, 352 S.C. at 598, 576 S.E.2d at 149 n. 4. Therefore, claims arising from the Board's decision denying parole are not appealable to the ALC, only claims that the Board failed to consider the appropriate criteria so as to be tantamount to an abrogation of parole eligibility. Cooper v. S.C.

Dep't of Prob., Parole and Pardon Servs., 377 S.C. 489, 661 S.E.2d 106 (2008). The South Carolina Department of Probation, Parole and Pardon Services, specifically the Parole Board, "has the sole authority to determine parole eligibility." Id. at 496, 661 S.E.2d at 110 (citing State v. McKay, 300 S.C. 113, 115, 386 S.E.2d 623, 623-24 (1989)). Here, the Appellant is claiming that he received the requisite number of votes required for parole pursuant to Barton, and that he was denied parole in an arbitrary and capricious manner.

When acting in an appellate capacity, the ALC must apply the criteria of S.C. Code Ann. § 1-23-380(5), which reads:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (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 exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2012).

The Appellant claims that on November 29, 2000, he received four (4) affirmative votes and therefore he should be granted parole pursuant to the ruling in Barton. At the time the Appellant committed his offense, South Carolina law specifically stated:

The Board may issue an order authorizing the parole which shall be signed either by a majority of its members or by all three members meeting as a parole panel on the case, ninety days prior to the effective date of the parole.

S.C. Code Ann. § 24-21-645 (Supp. 1984).

As part of the Omnibus Criminal Justice Improvement Act of 1986, additional language was added to state; "at least two-thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60." S.C.

Code Ann. § 24-21-645 (Supp. 2012).

Due to this change, the Board was requiring all inmates convicted of a violent offense receive two-third vote in the affirmative to be granted parole. However, the South Carolina Supreme Court recently decided that requiring an inmate convicted of a violent crime prior to 1986 receive a two-thirds vote to be granted parole is a violation of *ex post facto*. Barton, 404 S.C. at 412-14, 745 S.E.2d at 119-20.

In Barton, Ms. Thalma Barton was serving a life sentence for the offense of murder. She appeared before the Board on January 8, 2012, and of the six Board members present, four voted in favor of parole. Id. at 399, 745 S.E.2d at 112. The existing law required a two-thirds vote of all seven (7) members, so the Board determined Ms. Barton failed to receive the required number of votes to be released on parole. Upon receiving the order denying parole, Ms. Barton appealed. The South Carolina Supreme Court decided that since the law existing at the time of the offense allowed a majority to grant parole, it was unlawful to deny parole to Ms. Barton. Since the Barton decision, the Department has informed the ALC that five (5) other individuals have had their prior denials reversed and have been granted parole.

The Appellant claims that he should have his prior parole denial reversed in light of the Barton decision. The Appellant claims that he received four (4) votes in favor of parole at the November 29, 2000 hearing. The Appellant has provided the ALC with affidavits of James M. Green, Sr., the father of the Appellant, and James M. Green, Jr., the Appellant's brother. These affidavits claim that the Appellant received four votes granting parole.

The Department has provided the ALC and the Appellant with a transcript of the November 29, 2000 hearing. The transcript concludes with a vote tally, which was stated by the Chairman of the Board. The Chairman stated, "OK, let's see our votes please. OK. Kenneth William Green is rejected by a vote of four to two. Number 1, 2, 3 and 4." The Appellant and all affiants claim that the Appellant received four votes in favor of parole; however, the transcript concludes that four members conclusively voted against parole.

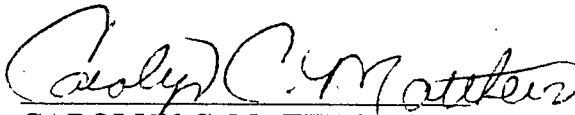
In administrative proceedings, the general rule is that the burden of proof rests upon the party challenging the agency decision. See Leventis v. S.C. Dep't of Health & Env'tl. Control, 340 S.C. 118, 136, 530 S.E.2d 643, 653 (2000). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary, or affected by an error of law. See S.C. Code Ann. § 1-23-380(5) (Supp.

2012); see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). In this case, the substantial evidence in the record supports the decision of the Department. The record, specifically the transcript, clearly determined that the Appellant did not receive the required majority affirmative vote for parole. Therefore, the decision of the Department denying the Appellant parole for the November 29, 2000 hearing in light of Barton is affirmed.

ORDER

IT IS THEREFORE ORDERED that the Department's decision denying Appellant's Petition for Release is **AFFIRMED**.

AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS
S.C. Administrative Law Court

March 21, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the party(ies) or their attorney(s).

This 21st day of March 2014

BY 
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kenneth Green, #116020,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 13-ALJ-15-0042-AP

ORDER DENYING APPELLANT'S
MOTION

This matter is before the South Carolina Administrative Law Court ("ALC") by Motion of Kenneth Green ("Appellant"), who is incarcerated with the South Carolina Department of Corrections. The Appellant filed his Motion Regarding Matter to be Included in the Record on Appeal on October 2, 2013. The South Carolina Department of Probation, Parole and Pardon Services ("Department") has complied with ALC Rule 58 and ALC Rule 61 in the current record on appeal. The Department is not obligated to provide further documents for addition to the current record on appeal.

ORDER

IT IS THEREFORE ORDERED that the Appellant's Motion Regarding Matter to be Included in the Record on Appeal is **DENIED**.

AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS

S.C. Administrative Law Court

October 23 2013
Columbia, South Carolina

I, the undersigned, on this date
certify that the order in the above entitled matter upon all
issues to this cause by depositing a copy hereof
in the United States mail, postage paid, in the Intergovernmental
Mail Service addressed to the party, for their attorney(s).

23rd October 2013
UCCO

Clerk

FILED

OCT 23 2013

SC ADMIN. LAW COURT

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kenneth Green, #116020,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 13-ALJ-15-0042-AP

**ORDER DENYING APPELLANT'S
MOTION TO EXPAND THE RECORD
AND ORDER FOR COMPLETE RECORD**

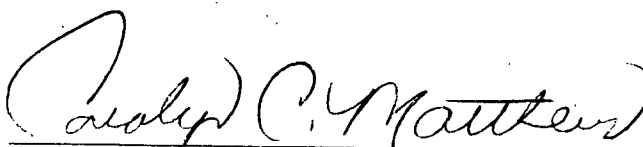
This matter is before the South Carolina Administrative Law Court ("ALC") by Motion of Kenneth Green ("Appellant"), who is incarcerated with the South Carolina Department of Corrections. The Appellant filed his Motion to Expand the Record on February 4, 2014. The Appellant is requesting that an affidavit of Senator Douglas Jennings, Jr. be included in the Record. However, the affidavit is not pertinent to the case involving the Appellant, and actually refers to another individual seeking parole. The affidavit of Senator Jennings will not be included in the Record.

Appellant alleges that on November 29, 2000 he received the necessary votes required for parole. The Record before the Court does not include a transcript of the November 29, 2000 parole hearing. In order for the Court to properly render a decision on this matter, a transcript from the November 29, 2000 parole hearing is necessary. This Court will grant Respondent **thirty (30) days** from the date of this Order to file the complete Record, specifically the addition of a transcript of the November 29, 2000 hearing.

IT IS THEREFORE ORDERED that Appellant's Motion to Expand the Record is **DENIED**.

IT IS FURTHER ORDERED that the Record shall be due thirty (30) days from the date of this Order.

AND IT IS SO ORDERED.



CAROLYN C. MATTHEWS
S.C. Administrative Law Court

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SC ADMIN. LAW COURT

February 24, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to the case. A copy of this order is being provided to a copy heretofore in the event of a hearing, or in the interagency hearing service addressed to the party(ies) or their attorney(s).
On 24th day of February 2014
By: nmh
Court Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kenneth W. Green, # 116020)
)
Appellant,)
)
vs.)
)
South Carolina Department of Probation,)
Parole and Pardon Services,)
)
Respondent.)
_____)

NOTICE OF APPEAL

DOCKET NO. 13-ALC-15-_____ -AP

Notice is hereby given that Kenneth W. Green, #116020 does hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated August 27, 2013, and received September 3, 2013, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-123-380(A) (6)):

- (1) In determining Appellant's parole eligibility, DPPPS employed a process in determining hearing votes of the parole board that lacks substantive due process and is contrary to constitutional and regulatory law.
- (2) Appellant was denied parole in an arbitrary and capricious manner where the parole board voting process failed to apply or follow agency regulatory guidelines regarding the manner in which "yea" and "nay" votes are counted and reported.
- (3) Appellant has previously satisfied the requisite number of votes required to be granted parole in light of *Barton v. DPPPS* yet has been denied parole.

Kenneth W. Green #116020
Kenneth W. Green, #116020

9-17-13
Dated:

Lieber Correctional Institution, SA-29
P.O. Box 205
Ridgeville, SC 29472-0205

CERTIFICATE OF MAILING

I certify that a copy of the Notice of Appeal and attachments is mailed to counsel for Respondents, Matthew C. Buchanan, Department of Probation, Parole and Pardon Services at 2221 Devine Street, Suite 600, P.O. Box 50666, Columbia, SC 29250 this 17th day of September, 2013.

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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

August 27, 2013

Tommy Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063


RE: Kenneth Green, #~~92614~~ 116026

Dear Mr. Thomas:

I am in receipt of your Petition for Release and audio cassette tape regarding Mr. Green. Our office of Board Support has reviewed this information and verified the contents of the tape. The seven members present at this hearing were Mr. Baxter, Mr. Elliott, Mr. Bellamy, Mr. Hodges, Bishop Rembert, Ms. Shissias, and Ms. McClain. While all seven members appear to be present at the hearing, the Chairman indicates that four members voted to reject Mr. Green and two voted in favor, therefore, the required number of votes were not received and Mr. Green will not be conditionally paroled pursuant to Barton decision.

Should you have any questions, please do not hesitate to contact me.

Sincerely,


Matthew C. Buchanan
General Counsel

MCB:dn

cc: Larry Patton, Director of Parole Board Support

09

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth W. Green, # 116020,)
)
Applicant,)
)
vs.)
)
South Carolina Department of)
Probation, Parole and Pardon)
Services,)
)
Respondent.)
_____)

Docket No. 13-ALJ-15-042

Honorable Carolyn Matthews

APPELLANT'S ORIGINAL BRIEF

This matter is before the Administrative Law Court ("ALC") by Appellant's Notice of Appeal of a final agency decision of the South Carolina Department of Probation, Parole and Pardon Services ("SCDPPPS"):

STATEMENT OF THE ISSUE ON APPEAL

1. Whether the Department of Probation, Pardon, and Pardon Services incorrectly denied Appellant parole based on the number of votes received at Appellant's eligibility hearing(s), in contravention of South Carolina Constitutional and Statutory Law, in light of the recent South Carolina Supreme Court ruling in *Thalma Barton v. South Carolina Department of Probation, Pardon, and Pardon Services*, 404 S.C. 395, 745 S.E.2d 110 (2013)?

STATEMENT OF THE CASE

The Appellant, Kenneth W. Green, # 116020, is currently serving a life sentence for murder, from Dorchester County. Appellant has been incarcerated since October 26, 1982.

On November 18, 1998; November 29, 2000; February 19, 2002; May 20, 2003; June 2, 2004; June 1, 2005; June 1; 2006; October 24, 2007; October 22, 2008; October 28, 2009; November 10, 2010; November 9, 2011; and January 30, 2013, Appellant appeared in front of the South Carolina Parole Board ("Board") for consideration for parole.

By correspondence bearing the dates above, respectively, Appellant was advised that he had been rejected for specific reasons: Nature and Seriousness of Current Offense, Indication of Violence in This or Previous Offense, and Use of a Deadly Weapon in This or Previous Offense.

Appellant first became eligible for parole on November 18, 1998. The Appellant subsequently appeared before the Board and was denied parole thirteen (13) times.

Appellant has an outstanding institutional record. He has made a continued effort to rehabilitate himself under the limited resources available to him from the South Carolina Department of Corrections ("DOC"). Appellant is currently a participant in the DOC's Character Living Unit Initiative, a peer-to-peer community designed for rehabilitative preparation for re-entry into society.

The Appellant has maintained steady employment and has received only three (3) disciplinary infractions in thirty-one (31) years of incarceration.

Appellant last appeared before the Board on January 30, 2013. The written Notice of Rejection dated November 29, 2000, the hearing in question here, contained the following information as part of the pre-*Cooper*¹ form letter:

"It is my responsibility to inform you of the action of the South Carolina Board of Pardons and Paroles relative to your recent parole hearing. After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole."

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

The reason(s) for rejection are:

**Nature and Seriousness of Current Offense
Indication of Violence in This or Previous Offense
Use of Deadly Weapon in This or Previous Offense**

Appellant's current counsel for parole, Tommy A. Thomas, Esq., filed a Petition for Release, dated August 13, 2013, regarding the November 29, 2000 Parole Board vote. Per August 30, 2013, correspondence from Mr. Thomas (attached), Appellant was informed that in 2000 and 2001, the [Parole] Board always counted reject votes first.

¹ *Cooper v. S.C. Dep't of Prob., Parole, and Pardon Servs.*, 337 S.C. 489, 661 S.E.2d 106 (2008)

Appellant had three (3) family members present specifically at the November 29, 2000 parole eligibility hearing: James M. Green, Sr. (father); James M. Green, Jr. (brother); and Tina Green (sister-in-law). All three individuals aver that it was reported that Appellant received four (4) votes in favor of parole at the November 29, 2000 hearing (*see* attached Affidavits).

The, November 12, 2013 correspondence (and pending affidavit) of Senator Douglas Jennings, Jr., (attached) in the companion case before this Court, *Gene Ray Richardson v. S.C. Dep't of Prob., Parole, and Pardon Servs.*, 13-ALJ-15-043, states the correct sequence of votes, and as well as concurs with and supports the three (3) affidavits referenced *infra*.

The affidavit of James M. Green, Sr., avers that on November 29, 2000, upon returning home from the parole hearing of Appellant, that former Senator William S. Branton called Affiant and stated that Appellant had only four (4) votes in favor of parole.

Similarly, counsel-representing Appellant at the eligibility hearing of November 29, 2000 informed Appellant, via correspondence that based on counsel's personal participation and observance of the proceedings that day, that Appellant received four (4) votes in favor of parole.

ARGUMENT

- I. **Whether the Department of Probation, Pardon, and Pardon Services incorrectly denied Appellant parole based on the number of votes received at Appellant's eligibility hearing(s), in contravention of South Carolina Constitutional and Statutory Law, in light of the recent South Carolina Supreme Court ruling in *Thalma Barton v. South Carolina Department of Probation, Pardon, and Pardon Services*, 404 S.C. 395, 745 S.E.2d 110 (2013)?**

The Department of Probation, Pardon, and Pardon Services' retroactive application of §24-21-645 of the South Carolina Code constituted an *ex post facto* violation.

As noted, Appellant was sentenced prior to 1987. Prior to June 3, 1986, §24-21-645 provided that the Parole Board may authorize parole when authorized by a majority of its members. *See* S.C. Code §24-21-645 (Supp. 1984) (emphasis added).

The Parole Board is comprised of seven members.² At Appellant's eligibility hearing on November 29, 2000, at least four (4) members voted in favor of granting Appellant parole. According to §24-21-645 of the South Carolina Code, the Parole Board may issue an order authorizing parole signed either by a majority of its members or by any three members meeting as a parole panel.

The Parole Board erroneously applied the amended version of §24-21-645, which requires "a two-thirds majority vote of the Parole Board's seven members," thus meaning Appellant needed five votes, rather than four, to receive parole.

The gravamen of Appellant's complaint is that the pre-amendment version of §24-21-645 should apply to his case because he committed his crime prior to the amendment. Alternatively, Appellant asserts that he should have been granted parole even under the amended statute, as the Parole Board interpreted the statute erroneously and, the Respondent now seeks to assert an irregular voting procedure for the year Appellant received the required four (4) votes.

Appellant made good faith efforts to obtain written documentation from Respondent for the manner in which parole votes are called, collected, counted and published. Respondents resisted every attempt to provide Appellant with a logical procedure to equitably provide due process in this administrative tribunal. Respondent's resistance to the specific requests made is an attempt to cast a veil of secrecy in order to bamboozle Appellant (and similarly situated incarcerated individuals) in a game of three-card monte with the parole votes. In one game/year the yea/grant votes are reported first; another game/year the nay/reject votes are reported first; depending on whether the prisoner received four (4) votes in favor - all without established procedure.

Even the Office of the South Carolina Attorney General has sanctioned the deviation from *any* clearly established protocol:

² See S.C. Code Ann. § 24-21-10 (2007)

“Parole hearings are informal proceedings, and the Board or its panels may properly conduct them with a fairly free hand. What follows here is a model plan for conducting hearings. In the experience of both the Board and the Department, this model has worked well. It is only a model, and *the Board or its panels are free to deviate from it.*”³
(Emphasis supplied)

The procedure employed is mired so thickly that it allows the vote/card game behind the veil of secrecy to operate undetected by even State Representatives and Attorneys.

The November 4, 2010 correspondence to Representative Huggins highlights how vague and ambiguous the three-card monte game operates in the voting process: “*After deliberations, a voice and electronic vote is cast.*”⁴

Appellant asserts Respondents will not or cannot produce a published protocol to call for, collect, count and publish the “voice and electronic” (i.e., hand-raising, green/red light, or written ballot) Parole Board votes at eligibility hearings. Appellant requested Respondent’s Operations Manual be placed in the Record but was denied.

Appellant suggests that the burden shifts now to Respondents to show this Honorable Court, this Appellant and the citizens of the great State of South Carolina the exact manner and method of these procedures in a clear and written manner (Operations/Procedure Manual), most specifically as employed on November 29, 2000. The reviewing standard of this Court requires Respondents to produce a procedure by which this Court can decide this matter on reliable and accurate evidence and the record as a whole.

Appellant suggests that every professional organization, association or Board employing a method of voting has historically by custom, practice or procedure, called for “yea” [in favor] votes prior to “nay” [oppose] votes and “abstain” [no vote] votes. Where the procedure employed is in

³ Correspondence from Leigh Blackwell, Assistant Attorney General to Honorable Chip Huggins, S.C. House of Representatives, November 4, 2010, page 3 (attached)

⁴ *Id.* (Original emphasis)

question, the Parole Board must produce documentation that establishes a different, reliable procedure, other than the affidavit of one of their agents.

Appellant asserts that on November 29, 2000 the Board reported four (4) votes first. To rebut this assertion the burden is on the Respondent, who is in possession of all relevant documents to show this assertion is incorrect and the South Carolina Parole Board is the only entity on the planet earth that collects "nay" votes first.

In Appellant's Petition for Release, Item #1, ROA, counsel stated that Appellant received four (4) votes [first].

The affidavit of Respondent's agent, Roosevelt Hicks, avers that he reviewed the audio cassette and "all paperwork" from the November 29, 2000 hearing, but stated that while it appeared all seven members were present, the Chairman "indicated" only six members voted. Mr. Hicks does not delineate how it "appears" the Chairman "indicated" the voting.

Appellant asserts that a state agency charged with ascertaining or deciding the liberty of an incarcerated individual, a ward of the State, is similarly charged with maintaining those records for the duration of that agency's jurisdiction over the individual. There is no feasible reason such records of an individual, Appellant here, are not kept where [he] has "appeared" before the Board thirteen (13) times. At a minimum, the Board stores such records at the State Archives and should be required to produce them here. Appellant suggests that Respondents are required to maintain such records pursuant to S.C. Code Ann. §§ 60-2-10 et seq. and 60-11-10 et seq.

Appellant asserts Mr. Hicks was not personally present, and, having no true and accurate record to produce governing the recording of votes at the November 29, 2000 Board hearing, cannot aver to the procedure as stated in his September 23, 2013 affidavit.

Appellant rebuts and contends the September 23, 2013 affidavit of Roosevelt Hicks in consideration of the votes at the November 29, 2000 parole eligibility hearing of Appellant. In

rebuttal and contention Appellant submits the attached affidavits of James M. Green, Sr., James M. Green, Jr., and Tina Green, who were personally present and did hear Parole Examiner Cindy Smith clearly state “you got four (4) votes, you missed it by one (1).”

Appellant respectfully submits the November 12, 2013 correspondence of Senator Douglas Jennings, Jr., in the companion case of *Gene Ray Richardson, supra*, to substantiate the correct procedure of the vote calling, collecting and publishing of the Parole Board in the years 2000-2001. Senator Jennings’ correspondence and pending affidavit challenge the veracity of Respondent’s September 23, 2013 affidavit and contravenes the Record on Appeal submitted by Respondents currently before this Court.

Similarly, Senator Jennings’ November 12, 2013 correspondence directly refutes Respondent’s August 27, 2013 response (attached) to Appellant’s August 13, 2013 Petition for Release.

Appellant vehemently asserts that Respondents manipulated the reporting of Parole Board votes to wrongfully deny Appellant parole.

Our Supreme Court, in *Thalma Barton v. South Carolina Department of Probation, Pardon, and Pardon Services*,⁵ held that the Parole Board’s retroactive application of §24-21-645 constitutes an *ex post facto* violation.

The *Barton* Court further held “the change in parole consideration under §24-21-645 offends South Carolina Constitution, article I, § 4, even if the federal constitution is not offended.” (Internal citations omitted.)

In other words, prior to the amendment, Appellant merely needed to obtain favorable votes from a majority of the Parole Board. This amendment is not procedural, but poses a sufficient risk

⁵ 404 S.C. 395, 745 S.E.2d 110 (2013)

of increasing the measure of punishment attached to Appellant's crime and other similarly situated individuals.

This change affects an inmate's substantial personal right in statutorily correct parole review. *See Cooper*, 337 S.C. at 499, 661 S.E.2d at 111-112. ("Parole is a privilege and Cooper has no right to be paroled; however, Cooper does have a right to require the [Parole Board] to adhere to statutory requirements in rendering a decision.")

The validity of the procedures employed, despite statutory direction, call into question the tactical resource manipulation of procedural and resource data by Respondents in the execution of their quasi-legislative and quasi-tribunal duties that deprived Appellant of a liberty interest and fair opportunity for parole. Every record and procedure in question in this matter is in the sole possession of Respondents. Thus, the burden rests upon the State of South Carolina, specifically the agency charged by the South Carolina Legislature with this duty, the South Carolina Department of Probation, Pardon, and Pardon Services, to show this Honorable Court:

- A.** The written, documented procedure(s) by which the Parole Board eligibility hearing votes were:
- i.** Called
 - ii.** Collected
 - iii.** Counted; and
 - iv.** Published

For the year 2000 in which Appellant here appeared before the South Carolina Board of Pardons;

- B.** The written, documented and electronic (transcribed) Parole Board votes as they were:
- i.** Called
 - ii.** Collected
 - iii.** Counted; and
 - iv.** Published

For Appellant's parole eligibility hearing for the year 2000 in which Appellant here appeared before the South Carolina Board of Pardons:

in order to ascertain whether the South Carolina Board of Paroles provided substantive and procedural due process in compliance with South Carolina Constitutional and Statutory law, and did not retroactively apply §24-21-645, as amended; and in light of the recent *Thalma Barton v. South Carolina Department of Probation, Pardon, and Pardon Services* decision.

The primary rule of statutory construction is the Court must ascertain the intention of the Legislature, e.g., *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). When the terms of a statute are clear and unambiguous, the Court must apply them according to their literal meaning, without resort to subtle or forced construction to limit or expand the statute's operation. *Id.* Furthermore, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.

This rule of statutory construction was applied by our Supreme Court in *Kerr v. State*, 345 S.C. 183, 547 S.E.2d 494, 496-97 (2001) to determine the context of certain parole eligibility and revocation statutes.

Appellant here asserts this includes South Carolina Administrative Agencies empowered with quasi-legislative rule-making authority, which encompasses the Operations Manual or other procedures currently unknown to Appellant in the determination of suitability for parole.

One issue is presented in this appeal. The facts surrounding this issue raise a particular question. Should the Court grant relief as requested by the Appellant? Moreover, if granted, how can this relief be put into effect? The Appellant would submit that should the Court consider sending this case back to the Parole Board for further review, that the Board would be unable to make an objective decision at this point. A decision has been made and further review will only produce a second denial due to those factors listed by the Board in its letter of rejection. This inability at this point to make an objective decision denies the Appellant a realistic opportunity to participate in the parole process. The failure to apply the correct procedure in the calling,

collecting, counting and publishing of “yes” and “no” votes “for” or “against” parole, as ascertained in the Supreme Court’s recent *Barton* decision, arbitrarily and capriciously, in contravention of due process, denied Appellant the privilege of parole to which he earned and received the appropriate number of “yes” votes to be granted parole.


CONCLUSION

For the foregoing reasons and based upon the record, the Appellant would respectfully request that:

- i. This Court reverse the decision of the Parole Board of November 29, 2000;
- ii. Fully review the facts and circumstances regarding the Appellant’s November 29, 2000 denial of parole;
- iii. Remand this case back to the Parole Board with instructions that the Appellant be released on Parole;
- iv. Or, in the alternative, that this Court issue its own findings of fact and conclusions of law regarding the Appellant’s November 29, 2000 parole hearing efforts of rehabilitation and Order that he be released on parole.

Respectfully submitted,

November 19, 2013



Kenneth W. Green

#116020

Lieber Correctional Institution SA-29

P.O. Box 205

Ridgeville, SC 29472

APPELLANT, Pro se

THE STATE OF SOUTH CAROLINA
DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES

In the matter of)
)
Kenneth Green #116020,)
Petitioner,)
_____)

PETITION FOR RELEASE

Now comes, Tommy A. Thomas, Attorney for Kenneth Green #116020,
petitioning the Parole Board of and for the State of South Carolina for Release.

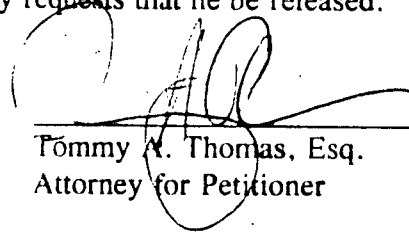
1. Mr. Green appeared before this Board on November 29, 2000. At that hearing, Mr. Green received four parole votes and two reject votes (a copy of the Parole Hearing tape is attached hereto).

2. Mr. Green was convicted to twenty (20) years to life and his sentence began on October 26, 1982.

3. That on July 3, 2013, the South Carolina Supreme Court decided the case of Thalma Barton v. South Carolina Department of Probation Parole and Pardon Service

4. That pursuant to the Supreme Court's recent ruling in Barton the Petitioner would respectfully request that he be released on Parole.

WHEREFORE, the Petitioner respectfully requests that he be released.



Tommy A. Thomas, Esq.
Attorney for Petitioner

August 13, 2013

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

August 27, 2013

Tommy Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063


RE: Kenneth Green, #~~92674~~ 116020

Dear Mr. Thomas:

I am in receipt of your Petition for Release and audio cassette tape regarding Mr. Green. Our office of Board Support has reviewed this information and verified the contents of the tape. The seven members present at this hearing were Mr. Baxter, Mr. Elliott, Mr. Bellamy, Mr. Hodges, Bishop Rembert, Ms. Shissias, and Ms. McClain. While all seven members appear to be present at the hearing, the Chairman indicates that four members voted to reject Mr. Green and two voted in favor, therefore, the required number of votes were not received and Mr. Green will not be conditionally paroled pursuant to Barton decision.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

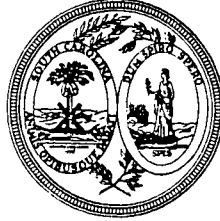

Matthew C. Buchanan
General Counsel

MCB:dn

cc: Larry Patton, Director of Parole Board Support

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

JIM HODGES
Governor



STEPHEN K. BENJAMIN
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440

November 29, 2000

Mr. Kenneth William Green #00116020
MacDougall Correctional Institution
1516 Old Gilliard Rd.
Ridgeville, SC 29472

Re: NOTICE OF REJECTION

Dear Mr. Green:

It is my responsibility to inform you of the action of the South Carolina Board of Parole and Pardons relative to your recent parole hearing. After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.

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

The reason(s) for rejection are:

- 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

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Director of Parole Board Support Services

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

FACSIMILE:
(803) 781-4228

INMATE LINE
(803) 732-6542

August 30, 2013

Kenneth W. Green #116020
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

Dear Kenneth:

Enclosed please find the letter we received from Probation and Parole yesterday. I contacted them regarding their decision and they indicated that they contacted the Parole Board liaison who confirmed that back in 2000 and 2001 the Board always stated the reject vote first.

I am so sorry that you will not be considered at this point for conditional parole. As you know, from now on, you will only have to receive a simple major vote in order to be granted conditional parole.

Yours truly,

Tommy A. Thomas
Attorney at Law

TAT/jem

Douglas Jennings, Jr.
doug@jenningslawoffice.com
Mason William King
mason@jenningslawoffice.com



November 12, 2013

Tommy A. Thomas, Esquire
P. O. Box 88
Irmo, SC 29063

RE: Gene Ray Richardson (SCDC No.: 93614)

Dear Tommy:

I apologize for the delay in responding to your letter of October 2, 2013. As I admitted to you when I saw you recently in Columbia, I had some difficulty locating an "old fashioned" cassette recorder. However, I have now listened to the parole hearing from 6-20-01 on Gene Ray Richardson, and I agree with you strongly that he is a good candidate for relief under the recent Barton decision.

Specifically, having listened to the tape and reviewed my notes, this hearing was held before the full Board with six members being present and voting, and one member being absent. I believe it is clear that Gene Richardson got affirmative votes from Board members Hodges, McLain, Rembert and Bellamy. The male voices who spoke up on the tape and specifically explained why they were voting "yes" were Board members J. P. Hodges and Sanco Rembert. The female voice who spoke in support of parole was Board member Marlene McLain, who was questioned about the local law enforcement support by Board member June Shissias (who voted no). It is clear from the tape that Board members Hodges, Rembert, and McLain voted in favor of parole because they clearly expressed themselves. Since Chairman Bellamy did not actually call for a voice vote on the record, it is unclear on the tape who the fourth vote in favor of parole was, but my notes and information indicate that it was Chairman Bellamy. In any event, it is unequivocal that since 3 Board members expressed their support verbally, there is no way the 4-2 vote consisted of two votes in favor and four votes opposed.

I would be happy to either provide a sworn affidavit or testify in any such hearing that Gene Ray Richardson was rejected for parole on 6-20-01, having received 4 votes in favor and 2 votes against parole before a Board consisting of 6 members present and voting.

Please let me know how I can be helpful, and I am certainly glad that Mr. Richardson (to whom I am forwarding a copy of this letter) has had the good judgment to retain you to pursue his Barton motion.



Tommy A. Thomas, Esquire
November 12, 2013
Page Two

Thank you and with kindest regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Jennings, Jr.", written in a cursive style.

Douglas Jennings, Jr.

DJ;JR:cbd

cc: Gene Richardson (#93614)

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

AFFIDAVIT OF JAMES M. GREEN, SR.

Personally appeared before me James M. Green, Sr., who deposes and says:

- 1) I am the father of Kenneth W. Green (SCDC# 116020).
- 2) That Kenneth Green appeared before the South Carolina Board of Paroles, via teleconference, from Lieber Correctional Institution on November 29, 2000.
- 3) That present in support of Kenneth Green that day were myself, James M. Green, Jr. (my eldest son), Attorney Tommy Thomas (Kenneth's attorney) and Tina Green (Kenneth's sister-in-law).
- 4) That following the hearing before the Parole Board, Cindy Smith, Parole Examiner for the South Carolina Department of Probation, Parole, and Pardon Services, approached Kenneth and the individuals named in # 3, above, seated together. Ms. Smith stated, "Rejected, you got four (4) votes, you missed it by one (1)."
- 5) That upon my return home, Senator William Branton called me on the phone and said "I'm sorry Jim, he only got four votes, he missed it by one."

The Affiant says the above is true and correct to the best of her knowledge.

James M. Green Sr.
James M. Green, Sr.

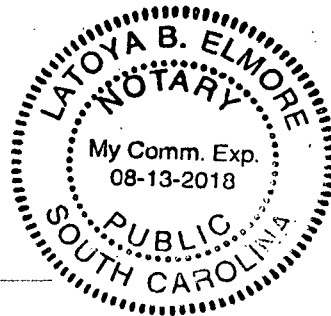
SWORN TO AND SUBSCRIBED before me

This 18th day of November, 2013

Latoya B. Elmore

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 8/13/18



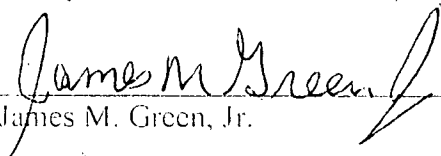
STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

AFFIDAVIT OF JAMES M. GREEN, JR.

Personally appeared before me James M. Green, Jr., who deposes and says:

- 1) I am the brother of Kenneth W. Green (SCDC# 116020).
- 2) That Kenneth Green appeared before the South Carolina Board of Pardons, via teleconference, from Lieber Correctional Institution on November 29, 2000.
- 3) That present in support of Kenneth Green, that day were myself, James M. Green, Sr. (Kenneth's father), Attorney Tommy Thomas (Kenneth's attorney) and Tina Green (Kenneth's sister-in-law).
- 4) That following the hearing before the Parole Board, Cindy Smith, Parole Examiner for the South Carolina Department of Probation, Parole; and Pardon Services, approached Kenneth and the individuals named in # 3, above, seated together. Ms. Smith stated, "Rejected, you got four (4) votes, you missed it by one (1)."

The Affiant says the above is true and correct to the best of her knowledge.


James M. Green, Jr.

SWORN TO AND SUBSCRIBED before me

This 18th day of November, 2013



NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: Nov. 27, 2017

LaVern C. Polk
Notary Public, South Carolina, State at Large
My Commission Expires November 27, 2017



HENRY MCMASTER
ATTORNEY GENERAL

November 4, 2010

The Honorable Chip Huggins
SC House of Representatives, Dist. No. 85
308 Wayworth Court
Columbia, SC 29212

Dear Representative Huggins:

We received your letter requesting an opinion of this Office concerning the South Carolina Board of Pardons and Paroles voting procedures. You asked our Office to advise "what the correct procedures are for the board to re-vote on a case which has already been decided by a previous vote."

To better illustrate your question, you provided a hypothetical situation:

"The board voted to reject a parole request for an offender incarcerated for murder with four board members in favor and two members voting not to parole (the board procedures require violent offenders to receive five votes in order to be paroled. The board is composed of seven members, but there were only six board members present.) After the decision was made and the hearing was closed on this case, one of the board members voting not to parole the offender requested the case be reconsidered. The board member making the request stated the reason was he wanted to change his vote, there was no new evidence. A motion was made to reconsider the case and it passed 5 to 1. The board then voted to parole the offender with a 5 to 1 vote." In this case, neither the victims nor the offender was notified that the case was being reconsidered.

This Office will address prior opinions, relevant statutes, caselaw and the SC Board of Pardons and Paroles' Operations Manual to determine the proper way to conduct a re-vote.

Law/Analysis

The South Carolina Department of Probation, Parole and Pardon Services was created by S.C. Code § 24-21-10. The Department includes the Board of Pardons and Paroles, as explained in S.C. Code § 24-21-10(B). The enabling statute reads in relevant part as follows:

- (A) The Department of Probation, Parole, and Pardon Services, hereafter referred to as the "department", is governed by the director of the department. The director must be appointed by the Governor with the advice and consent of the Senate.
- (B) The Board of Probation, Parole, and Pardon Services is composed of seven members. The terms of office of the members are for six years. Six of the seven members must be appointed from each of the congressional districts and one member must be appointed at large.

S.C. Code § 24-21-10.

S.C. Code § 24-21-13 explains that the board is governed under written policies and procedures, as developed by the board's director:

- (A) It is the duty of the director to oversee, manage, and control the department. The **director shall develop written policies and procedures** for the following:
 - (1) the supervising of offenders on probation, parole, community supervision, and other offenders released from incarceration prior to the expiration of their sentence;
 - (2) **the consideration of paroles and pardons** and the supervision of offenders in the community supervision program, and other offenders released from incarceration prior to the expiration of their sentence. The requirements for an offender's participation in the community supervision program and an offender's progress toward completing the program are to be decided administratively by the Department of Probation, Parole, and Pardon Services. No inmate or future inmate shall have a "liberty interest" or an "expectancy of release" while in a community supervision program administered by the department;
 - (3) the operation of community-based correctional programs; and
 - (4) the operation of public work sentence programs for offenders as provided in item (1) of this subsection. This program also may be utilized as an alternative to technical revocations. The director shall establish priority programs for litter control along state and county highways. This must be included in the "public service work" program.
- (B) It is the **duty of the board to consider cases for parole, pardon**, and any other form of clemency provided for under law.

S.C. Code § 24-21-13 (emphasis added).

In an opinion of this Office dated February 15, 1978, we explained that departments may act within their authority and create necessary rules:

Administrative bodies have the authority to make or adopt rules and regulations with respect to matters which are within the province of the body. The provisions of the statute control as to what areas rules and regulations deal with. The rules and regulations can properly function to effectuate the purpose of legislation.

Op. S.C. Atty. Gen., February 15, 1978 (citing 91 C.J.S. Public Administrative Bodies and Procedures, § 112).

Parole Hearing Procedures

The Department has an Operations Manual for the SC Board of Pardons and Paroles. According to the written procedures, the board's hearing is conducted as follows:

Parole hearings are informal proceedings, and the Board or its panels may properly conduct them with a fairly free hand. What follows here is a model plan for conducting hearings. In the experience of both the Board and the Department, this model has worked well. It is only a model, and the Board or its panels are free to deviate from it.

- The Department, through its Parole Board Support Services schedules hearings. The names and case numbers of offenders who have been scheduled for a parole hearing are then published at the respective prisons where they are confined, so that they can begin preparing themselves for their hearing.
- The Department, through its parole examiners, then interviews these offenders, investigates their cases, and submits a recommendation for or against parole.
- At the hearing, the offender or offender's counsel, if the offender has counsel, appears first and presents case to the Board or panel. If the offender has family members or other persons appearing, they may be allowed to make a statement. The Board or the panel may limit the number of witnesses to three; more witnesses may be allowed if the circumstances warrant it.
- Members of the Board or the panel may ask questions of the offender and his witnesses. The Board's Chair or the member presiding over the panel leads the questioning.
- Once the case has been presented, the offender is excused from the hearing room, and those appearing in opposition to parole are then given their opportunity to be heard.
- After the witnesses in opposition are heard, they are excused from the hearing room, and the Board or the panel then deliberates over the case.
- **After deliberations, a voice and electronic vote is cast.**
- The offender and the other interested parties are then informed of the decision by Department staff. If the offender is rejected for parole, the Department gives a written notice of the reasons for rejection.
- The hearings proceed in this manner until all cases scheduled to be heard have been heard.

South Carolina Jurisprudence summarizes the procedure of the board's parole hearings as follows:

At the parole hearing the prisoner himself has the right to appear and present evidence in his own behalf; but if he fails to appear, the Board has the right to decide the case in his absence. He may, if the Board allows it, have up to three witnesses, of his own choosing, appear in his behalf. In addition, the prisoner may at his own expense have an attorney represent him at his hearing. Under the Victim's and Witness's Bill of Rights, victims and their families and prosecution witnesses also have the right to appear at parole hearings if they wish to be heard on the question of a prisoner's release. **After the hearing itself has concluded and all the people, both for and against parole, have been heard, the Board votes to grant or deny parole.** If the Board decides to deny parole, the prisoner is given written notice of the Board's reasons for rejecting him. If the Board decides to grant parole, the prisoner will be released from the custody of the Department of Corrections into the custody of the parole authorities, under certain standards, and often under certain special conditions of supervision.

26 S.C. Jur. Probation, Parole, & Pardon § 18 (emphasis added).

Because of the offender's right to appear, certain notice requirements are set in place. The Director of Parole Board Support Services is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the offender. Additionally, the Director of Victims Services is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the victim or, if deceased, the victim's immediate family; the solicitor in jurisdiction where offender was prosecuted; law enforcement agency that made arrest; and the judge of court in which offender was convicted and sentenced. See, SC Board of Pardons and Paroles, Operations Manual, Part II, Notice Requirements, p. 20. See also, 26 S.C. Jur. Probation, Parole, & Pardon § 18.

South Carolina law gives the Board sole and exclusive power to grant or deny paroles; however, this power is not unlimited. In making its parole decisions, "the Board is required by law to carefully consider the record of the prisoner before, during and after imprisonment." SC Board of Pardons and Paroles, Operations Manual, Part II, Absolute Discretion of the Board, p. 28.

Rehearing Requirements

The full Board or one of its panels may consider re-hearing in a case if one or more of the following reasons apply:

- a. Subsequent Misconduct by the Prisoner. In those cases where the Board has granted parole conditioned on the satisfaction of some pre-release requirement, and the prisoner has committed some violation of prison rules before the actual release from prison, the case will be presented to the Board or panel in order to deal with the subsequent misconduct.

- b. New Criminal Charges Against the Prisoner. This is similar to the situation just described above - subsequent misconduct by the prisoner; only the misconduct here is more serious than the violation of a prison disciplinary rule. Here, the misconduct rises to the level of being a violation of the criminal law.
- c. After-Acquired Information About the Prisoner. In this situation, the Board or panel may have acquired some new material and information after it has made its final decision. The information about the prisoner's case appears, in the Board's or panel's judgment, to be so important as to require an immediate reconsideration of the case. In that event, the case will be presented to the Board or panel to review its decision in light of the new information.
- d. Failure of the Prisoner to Meet Conditions of Release. Finally, in the case where the Board has granted parole or provisional parole conditioned on the satisfaction of some requirement, and the prisoner has failed to satisfy that requirement, the Board or panel might want to review the matter in order to look into the facts and circumstances surrounding the prisoner's failure to do what was required.
- e. Requested by the inmate or the inmate's attorney. In these cases, the inmate or the inmate's attorney must submit in writing, within 30 days of the notice of rejection letter, a letter stating why he/she feels that the Parole Board should re-hear this case. The Parole Board will review this information and decide whether or not to grant a re-hearing. A letter will be sent to the inmate or the inmate's attorney notifying them of the Board's decision.

SC Board of Pardons and Paroles, Operations Manual, Part III, Re-hearings of Parole Cases, p. 44.

American Jurisprudence explains that the parole board has inherent power to reconsider a case if there is newly discovered evidence:

The paroling authority has inherent power to reconsider its grant of parole to a prisoner, and to rescind the grant for cause. Thus, a parole board acts properly in rescinding its vote on a parole where, after having initially voted to release the parolee, the parole board discovered that it had failed to avail the victims of the parolee's crime of their statutory right to address the parole board prior to its vote; after reopening the matter to allow such testimony, and after hearing from the parolee and his or her counsel, the board could rescind its earlier vote.

Until a prisoner is actually released, a parole board has the power to reopen and advance, postpone, or deny a parole which has been granted. Reopening of a parole determination may be made to depend on the existence of "new information," either on behalf of, or in opposition to, the granting of parole, even if the new information was in existence,

but was not considered, when the initial parole decision was made. The discovery of an error may be considered "new information" sufficient to justify the reopening of a case.

Observation: Where a determination is reopened on the basis of new information, the reopened hearing must be conducted in accordance with the procedure for an initial hearing; it is not inappropriate for the parole authority to review previously considered allegations in light of the newly received information, and it may come to a different conclusion as to those allegations based on the new information. . . .

59 Am. Jur. 2d Pardon and Parole § 101.

Standard of Review

If the offender is initially granted parole, but the Board subsequently decides to deny parole, there is only a very small window of time in which the Board may do so. American Jurisprudence explains that "[b]efore delivery and acceptance, a pardon may be revoked by the officer or body granting it, but after its delivery and acceptance, a pardon, if not void in its inception, cannot be revoked for any cause, for then it has passed beyond the control of the officer or body granting it, and has become valid and operative act." 59 Am Jur 2d Pardon and Parole § 42.

In the hypothetical posed above, the Board denied parole initially, and one member of the Board desired to change his vote, granting parole. The Operations Manual explains that "[i]f the offender has not been released on parole, **the process is most often initiated by a report that the Board or panel receives from the parole examiner at the prison where the offender is incarcerated.** However, a report could come from any source. **The report itself would set forth the reasons why the Board or panel should conduct a re-hearing in order to reconsider its original parole decision.** A request for a rehearing may also be made by a petition or letter received from the requesting party within 30 days of the parole rejection. This letter or petition must specify the exact reasons why the Board should reconsider its decision. **The decision to grant or deny a rehearing shall be made in the sole discretion of the Board based upon the letter or petition filed by the requesting party and other documents which are made available to the Board from the parole file.** Notice of the decision will be forwarded to the requesting party."

Although the Operations Manual states that the report could come from any source, it does not seem logical that the board itself would request the re-hearing but that the parole examiner would request the re-hearing. Regardless, if a rehearing is necessary, the Operations Manual explains that the "purpose of the hearing is to determine the facts and to gather any other material that may bear on the parole decision one way or the other, and based on all those facts, to determine whether or not the grant of parole should be rescinded, amended or stay the same." In other words, unless additional material is provided, then there would be nothing to evaluate at the rehearing. See, SC Board of Pardons and Paroles, Operations Manual, Part III, Initiating the Process of Rehearing Cases, p. 45-46.

Conclusion

It is the opinion of this Office that a court would likely find that the SC Board of Pardons and Paroles may not conduct a re-hearing and re-vote simply because a member of the board desires to change his or her original vote. The board may only conduct a re-hearing if one of the following occur: 1) subsequent misconduct by the prisoner; 2) new criminal charges against the prisoner; 3) after-acquired information about the prisoner; 4) failure of the prisoner to meet conditions of release; 5) requested by the inmate of the inmate's authority. See, SC Board of Pardons and Paroles, Operations Manual, Part III, Re-hearings of Parole Cases, p. 44; 59 Am. Jur. 2d Pardon and Parole § 101.

Finality is important to maintain a healthy legal system. Therefore, public policy restrains the Board from rehearing a case for no reason other than a member of the board wants to change his or her decision.¹

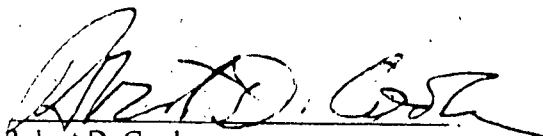
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

¹ If a member of the Board simply needs to correct an error, America Jurisprudence explains that "a parole board has the authority, as an agency performing quasi-judicial functions, to correct a clerical mistake in a parole order which mistakenly reflects the wrong parole release date or release information." 59 Am. Jur. 2d Pardon and Parole § 102. However, it is unlikely that correcting such an error would cause the Board to call a rehearing nor is there any indication in the hypothetical that the board member wishes to change his vote because of a clerical error.

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Green, # 116020,)
)
Applicant,)
)
vs.)
)
South Carolina Department of)
Probation, Parole and Pardon)
Services,)
)
Respondent.)
_____)

Docket No. 13-ALJ-15-042

Honorable Carolyn Matthews

CERTIFICATE OF SERVICE

The undersigned *pro se* Appellant hereby certifies that he has sent a true and correct copy of Appellant's Original Brief to counsel for Respondents by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 20th day of November, 2013, addressed as follows:

Matthew Buchanan, Esq.
Office of General Counsel
S.C. Dep't. of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, SC 292501

Kenneth W. Green

Kenneth Green
#116020
Lieber Corr. Inst. SA-29
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

STATE OF SOUTH CAROLINA
In the Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

KENNETH GREEN, #116020, APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

BRIEF OF RESPONDENT

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**

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Whether the Department of Probation, Parole and Pardon Services incorrectly denied Appellant parole based on the number of votes received at Appellant's eligibility hearing(s), in contravention of South Carolina Constitutional and Statutory Law, in light of the recent South Carolina Supreme Court ruling in Thalma Barton v. South Carolina Department of Probation, Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013)?

STATEMENT OF THE CASE

On October 24, 1982, the Appellant along with his co-defendant was drinking in a bar in Summerville. They observed the victim Mr. Marvin L. Cattles pull out a lot of cash to pay for his drink, then leave. The victim got into his truck, drove away, only to be followed by the Appellant and co-defendant. They proceeded to force Mr. Cattles off of the road along highway 165. Both defendants exited their vehicle, the Appellant, armed with a shotgun shot Mr. Cattles in the head killing him instantly. The Appellant took twenty (\$20.00) Dollars in cash and another shotgun out of Mr. Cattles truck. Family members found Mr. Cattles body on the side of the road the next day.

At the conclusion of their investigation the Appellant and co-defendant were arrested and charged with the offense of murder. On March 9, 1983, the Appellant appeared before the Honorable John Hamilton Smith for the offense of murder. Upon conclusion of this appearance the Court sentenced the Appellant to a term of incarceration for the remainder of his natural life. At the time the Appellant committed this offense South Carolina law allowed a person serving a life sentence for murder parole eligibility upon the service of twenty (20) years.

The Appellant made his initial appearance before the Board on November 18, 1998.¹ Upon the conclusion of this hearing the Court decided to deny parole. Since this initial denial the Appellant has appeared before the Board an additional twelve (12) times each resulting in a denial of parole. His most recent appearance occurred on January 30, 2013. Parole was denied due to: 1) the nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; and, 3) a use of a deadly weapon in this or a previous offense. This is not the rejection that is currently before this court. The decision the Appellant is currently appealing is a denial of parole occurring on November 29, 2000. The Appellant alleges that upon the conclusion of this

¹ Due to good time credits the Appellant became parole eligible upon the service of fifteen (15) years.

hearing he received four (4) affirmative votes, which due to the South Carolina Supreme Court decision of Barton v. S.C. Dept. of Probation, Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013) grants him parole. In response the Respondent argues that the Appellant received four (4) votes in denial not approval so parole was lawfully denied. The decision of the Board should be affirmed. The brief supporting the Respondent's position follows.

ARGUMENTS

1. The Appellant never received the requisite number of votes; therefore, his parole was not unlawfully denied.

The Appellant argues that upon the conclusion of his November, 2000, hearing he should have been granted parole due to him receiving four (4) votes in the affirmative. Actually, the Appellant received four (4) votes against parole so he was lawfully denied.

At the time the Appellant committed this offense South Carolina law stated:

The Board may issue an order authorizing the parole which shall be signed either by a majority of its members or by all three members meeting as a parole panel on the case, ninety days prior to the effective date of the parole.

S.C. Code Ann. §24-21-645 (Supp. 1984)

As part of the Omnibus Criminal Justice Improvement Act of 1986 additional language was added to state, "at least two-thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60" S.C. Code Ann. §24-21-645 (Supp. 2012). The South Carolina Supreme Court recently decided in Barton, that requiring an inmate convicted prior to 1986 a two-thirds vote to be granted parole is a violation of ex post facto. The Appellant argues that due to Barton the Board violated the law by requiring a two-thirds vote for his release. The Appellant argues that he received the required majority allowed under Barton; therefore, he should be awarded parole. According to the records of the Respondent,

the four votes received was against the Appellant being released on parole not for. The Appellant has failed to provide any evidence he received four (4) affirmative votes, so the decision of the Board should be upheld.

In Barton, the Appellant Thalma Barton was serving a life sentence for the offense of murder. She appeared before the Parole Board on January 8, 2012, and of the six members present, four voted in the affirmative to release Ms. Barton on parole. Barton, at 399. The existing laws required a two-thirds vote of all seven (7) members, so the Board determined Ms. Barton failed to receive the required number of votes to be released on parole. Upon receiving the order of denial Ms. Barton appealed. The South Carolina Supreme Court decided that since the law existing at the time the offense allowed a majority, it was unlawful to deny parole. Unlike Barton, the Appellant did not receive the required amount of votes to be granted parole. If the old law was applied in this hearing he would still have been denied parole. There existed no prejudice in applying the existing law so the decision of the Respondent should be affirmed. To warrant reversal the Appellant must show both error of the ruling and the resulting prejudice. Burroughs v. Worsham, 352 S.C. 382, 574 S.E.2d 215 (S.C. App. 2002). For a law to present an ex post facto violation, the law must (1) be retrospective and apply to events taking place prior to its enactment and (2) work to disadvantage of offender. State v. Bryant, 382 S.C. 505, 675 S.E.2d 816 (Ct. App. 2009).

The Appellant alleges he received four (4) affirmative votes at the November 29, 2000 hearing. The affidavit in the record proves that during this hearing all seven (7) members were present but only six voted, four against the Appellant being released on parole. (R. p. 4)

The Respondent has provided evidence of the vote count upon the conclusion of this November, 2000 hearing. The Appellant has failed to provide any evidence revealing he received the requisite number of votes to be released on parole. The burden is upon the Appellant to prove this fact. In

administrative proceedings the general rule is that an Appellant for relief, or a privilege has the burden of proof and the burden of proof test upon who files a claim with an administrative agency to establish that required conditions of eligibility have been met. Leventis v. South Carolina Department of Health and Environmental Control, 340 S.C. 118, 530 S.E.2d 643 (2000). The Appellant has failed to prove he received the sufficient votes to be released on parole; therefore, the Respondent submits the denial of parole should be affirmed.

2. The ALC does not have the authority to reverse the Board's decision or release the Appellant on parole.

Within his brief the Appellant request that the Court either reverse the decision of the Parole Board; remand with instructions the he be released on parole; or, make a findings of facts and conclusion of law. The Respondent argues that the ALC does not have the authority to do what is requested by the Appellant. 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 Department of Probation, Parole and Pardon Services. S.C. Code Ann. §1-23-600 (Supp. 2012). The Supreme Court in the Al-Shabbaz, Furtick, and Cooper decisions only gave the ALJ the authority to remand the case to the Parole Board for further proceedings. The Court never gave the ALC the authority to grant parole. The only entity that has the authority to grant parole is the Parole Board. Parole eligibility is not a matter within the jurisdiction of the trial court, but falls within the province of the Board of Probation, Parole, and Pardon. Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991).

The Appellant also request this Court to issue its own findings of fact and conclusions of law, Though pursuant to South Carolina law each order issued by the Department must have a

finding of fact and conclusion of law separately stated.² That finding is not made by the ALC but the Parole Board. The findings of the Board in 2000 was for a denial of parole. That decision cannot be reversed by the court but only remanded to the Board to conduct further proceedings.

If the Court determines that the Board was in error the Appellant would be treated as other inmates who have been possibly awarded parole pursuant to Barton. Since the Appellant has served more than ten continuous years he must undergo a psychological evaluation before Parole can be awarded.³ Upon completion of this evaluation, a report detailing whether the inmate can conduct himself in society would be forwarded to the board. There is also a risk assessment created by the COMPAS program that would be considered.⁴ Then another "Barton" hearing is conducted, which the Board would take all of the submitted material, and review the previous hearing and vote of the Board. If it is determined by the Board that the Appellant was previously granted Parole, and he presented a successful psychological evaluation, the Board would issue a "Barton" order affirming the vote of the previous board.

The Respondent continues to argue however, that there does not exist substantial evidence revealing that the Appellant received the required number of affirmative votes to be granted parole. The findings of an administrative agency are presumed correct and will be set aside only if supported by substantial evidence. Summersell v. South Carolina Department of Public Safety,

² A final decision shall include findings of fact and conclusions of law separately stated. S.C. Code Ann. §1-23-350(Supp. 2011).

³ Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist. S.C. Code Ann. §24-21-610 (Supp. 2011).

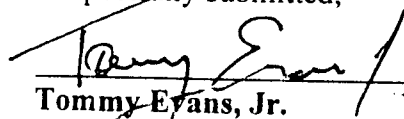
⁴ The Department must develop a plan that establish a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions; including additional objective criteria that may be used in parole decisions. S.C. Code Ann. §24-21-10(F)(1)(Supp. 2012).

334 S.C. 357, 513 S.E.2d 619 (1999). Since the Appellant was lawfully denied, the Respondent respectfully request this Honorable Court to affirm the decision of the Board.

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
December 11, 2013

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

KENNETH GREEN, #116020APPELLANT

v.

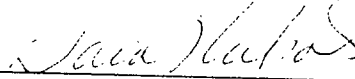
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Respondent, certify that I have served the within *Brief of Respondent*, dated December 11, 2013, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 11th day of December, 2013, addressed to:

Kenneth Green, #116020
Lieber Correctional Institution
PO Box 205
Ridgeville, South Carolina 29472-0205

I further certify that all parties required by Rule 54 to be served have been served.



Dawn Nichols
Executive Administrative Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth W. Green, # 116020,)
)
Applicant,)
)
vs.)
)
South Carolina Department of)
Probation, Parole and Pardon)
Services,)
)
Respondent.)
_____)

Docket No. 13-ALJ-15-042

Honorable Carolyn Matthews

APPELLANT'S REPLY BRIEF

Kenneth W. Green, the *pro se* Appellant, enters this Reply Brief to the Brief of Respondents (South Carolina Department of Probation, Parole and Pardon Services ("SCDPPPS")), dated December 11, 2013. Appellant seeks, with brevity, to correct errors of fact and law placed before this Honorable Court in Respondent's Brief in the following:

1. Respondent argues that at the conclusion of the November 29, 2000 eligibility, Appellant did not receive "[t]he requisite number of votes," Brief of Respondent ("Brf. Resp.") at 2, and that "[A]ctually, the Appellant received four (4) votes against parole so he was lawfully denied." *Id.*

Respondent asserts that "[A]ccording to the records of Respondents, the four votes received was against the Appellant being released on parole not for." *Id.* at 2-3.

Appellant contends and suggests that the sole custodian of the records regarding the sequence of calling, collecting and publishing of the votes is Respondent. Respondent has not provided Appellant or this Honorable Court with any form of a written record to support this position. Respondent has failed to make such purported document(s) part of the Record on Appeal here. At the same time, Respondent, being the sole custodian of said records, denies Appellant access to the only written records of the November 29, 2000 hearing and thus, Appellant is unable to present those here. It is thus incumbent upon Respondents to produce the public information that

erroneously deprived Appellant of his vested interest in being released on parole when obtaining four (4) votes.

In addition, Appellant submitted a petition from an Officer of the Court (Tommy Thomas, Esquire) *who was present*, and states the manner in which the parole hearing in question was conducted, and that based upon the audio record of the proceedings, Appellant had four (4) votes in favor of parole, Record on Appeal (“ROA”) at 2.

Appellant suggests, in contravention of Respondent’s assertion, that not only did Counsel (Tommy Thomas, Esquire), who was present, and later interpreted the audiotape of the November 29, 2000 hearing as the votes in favor of parole were reported first¹; but Senator Douglas Jennings, Jr., unequivocally stated that the procedure before the Parole Board at that time was to report the in favor (“yes”) votes first.²

Further, Appellant has submitted affidavits of South Carolina citizens present at the November 29, 2000 hearing who aver that following the hearing in question, the Parole Examiner informed Appellant and his party [Affiants] that “he [Appellant] only got four votes, he missed it by one.”

2. Respondents rely upon the affidavit of Roosevelt Hicks to show “the record proves that during this hearing all seven (7) members were present but only six voted, four against the Appellant being released on parole,” Brf. Resp. at 3.

Appellant suggests that Mr. Hicks simply avers to “have personal knowledge of the procedures and laws that apply to the scheduling and consideration of parole,” ROA at 4, Item # 2. Mr. Hicks does not aver to be an authority on the voting procedures of the board, nor is he qualified to interpret the audiotape in a manner contrary to the statement of an Officer of the Court or Affiants that were personally present.

¹ Appellant’s Original Brief at 6 and Record on Appeal at 2

² Appellant’s Original Brief at 7 and attachment

Appellant suggests that the arbitrary and capricious manner in which the substantial rights of Appellant are determined without a tested procedure in place for voting allows Respondents to manipulate the facts; thus, Appellant would suggest this Honorable Court review the audiotape to assist in the determination of the events of the November 29, 2000.

3. Respondent asserts Appellant failed to present any evidence revealing he received the requisite number of votes to be released on parole. Brf. Resp. at 3.

Appellant contends that sufficient evidence to rebut Respondent's assertions and contravene the Record presented was attached to Appellant's Opening Brief and is sufficient to this Court.

4. Respondent asserts this Court does not have the authority to reverse the Board's decision or release Appellant on parole, Brf. Resp. at 4.

Appellant suggests that where Respondent acted in contravention of South Carolina statutory law (S.C. Code §24-21-645 (Supp. 1984)) and pursuant to *Thalma Barton v. South Carolina Department of Probation, Pardon, and Pardon Services*, 404 S.C. 395, 745 S.E.2d 110 (2013), this Court is vested with jurisdiction and authority to determine Respondents acted outside the scope of their authority on November 29, 2000 and Appellant did receive the requisite number of votes. This Court does not thus order parole, as Respondents suggest; it is Respondents themselves which voted for Appellant to be granted parole by a vote of four [instead of five] to two. This Court is vested with the authority to remand this matter to correct the error of November 29, 2000 where it violated statutory law and was arbitrary and capricious. This does not mean Respondents conduct a *Barton* hearing, as Respondents suggest, Brf. Resp. at 5. Appellant has previously been awarded the requisite number of votes - no further hearing is required. The only remaining matter is for Respondents to exercise their duty to release Appellant on parole.

5. Respondents assert there does not exist substantial evidence Appellant received the required number of votes, Brf. Resp. at 5.

Appellant suggests that the finding by the administrative agency (DPPPS) may not be presumed correct where Appellant has introduced substantial evidence in contravention.

Appellant prays this Honorable Court order Respondents to produce evidence of their assertion where [they] are the sole custodians of those records and Appellant is *at no time* provided that information.

CONCLUSION

Based on the foregoing, Appellant prays this Honorable Court grant the relief prayed for in Appellant's Opening Brief.

Respectfully submitted,

December 17, 2013



Kenneth W. Green

#116020

Lieber Correctional Institution SA-29

P.O. Box 205

Ridgeville, SC 29472

APPELLANT, Pro se

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

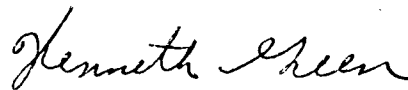
Kenneth Green, # 116020,	)	Docket No. 13-PO-042
)	
Applicant,	)	Honorable Carolyn Matthews
)	
vs.)	
	)	MOTION REGARDING MATTER TO BE
South Carolina Department of	)	INCLUDED IN THE RECORD ON APPEAL
Probation, Parole and Pardon)	
Services,)	
)	
Respondent.)	
)	

This matter is before the Administrative Law Court ("ALC") by Appellant's Motion Regarding Matter to be Included in the Record on Appeal. Pursuant to Rule 58, Rules of Procedure for the Administrative Law Court, the Appellant would respectfully request Respondent South Carolina Department of Probation, Parole and Pardon Services provide the below documents to be included in the Record on Appeal:

1. A copy of Appellant's South Carolina Department of Corrections Record Summary depicting criminal, employment and disciplinary histories;
2. A copy of the South Carolina Department of Probation, Parole and Pardon Services' Operations Manual Section specifying the precise sequence/order in which "yes" and "no" votes were counted, collected and reported for the years 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012 and 2013; and
3. The precise number of "yes" and "no" votes Appellant received for the dates specified in Request Item # 2, above.

Appellant certifies that this information is necessary for the record in that this Court may determine Respondents acted contrary to constitutional and statutory authority by employing an arbitrary and capricious manner of determining parole votes.

Respectfully submitted,



Kenneth Green
#116020
Lieber Corr. Inst. SA-29
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

October 2, 2013

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Green, # 116020,)
)
Applicant,)
)
vs.)
)
South Carolina Department of)
Probation, Parole and Pardon)
Services,)
)
Respondent.)
)

Docket No. 13-PO-042

Honorable Carolyn Matthews

CERTIFICATE OF SERVICE

The undersigned pro se Appellant hereby certifies that he has sent a true and correct copy of Motion Regarding Matter to be Included in the Record on Appeal to counsel for Respondents by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 1st day of October, 2013, addressed as follows:

Matthew Buchanan, Esq.
Office of General Counsel
S.C. Dep't. of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, SC 292501

Kenneth Green
Kenneth Green
#116020
Licher Corr. Inst. SA-29
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

KENNETH GREEN, #116020 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

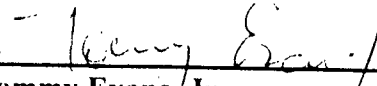
Motion to Deny Appellant's Motion Regarding Matter to be
Included in the Record on Appeal

The Respondent, the South Carolina Department of Probation, Parole, and Pardon Services, respectfully requests this Honorable Court to deny the Appellants request to Expand the Record on Appeal to include additional information. The current record on appeal abides by the rules of the Administrative Court, so the Respondent should not be obligated to provide further documents for addition to the current record on appeal.

Furthermore, the Appellant is requesting some information be included that is in the possession of the South Carolina Department of Corrections.

It is the opinion of the Respondent that the record on appeal filed on this date is complete. Therefore, the Respondent would respectfully request the Court to deny the Appellant's request to include additional information in the Record.

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

Attorney for Respondent

Columbia, South Carolina
October 8, 2013

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

KENNETH GREEN, #116020 APPELLANT

v.

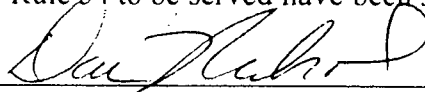
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Respondent, certify that I have served the within *Motion to Dismiss*, dated October 8, 2013, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 8th day of October, 2013, addressed to:

Kenneth Green, #116020
Lieber Correctional Institution-SA-29
PO Box 205
Ridgeville, South Carolina 29472

I further certify that all parties required by Rule 54 to be served have been served.



Dawn Nichols
Executive Administrative Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Green, # 116020,	)	Docket No. 13-ALJ-15-042
)	
Applicant,	)	Honorable Carolyn Matthews
)	
vs.)	
)	
South Carolina Department of	)	APPELLANT'S REPLY TO RESPONDENT'S
Probation, Parole and Pardon	)	MOTION TO DENY MATTER TO BE
Services,	)	INCLUDED IN RECORD ON APPEAL
)	
)	
Respondent.)	
_____)	

The *pro se* Appellant, Kenneth Green, respectfully requests this Honorable Court to deny Respondent's Motion in opposition to matter to be included in the Record on Appeal for the following reasons:

- 1) Although Respondent is technically correct the Record on Appeal submitted may comport to the Administrative Law Court Rules, it is insufficient to allow a determination on the issue before this Court that require the validation of the materials requested in Appellant's October 2, 2013 Motion.
- 2) Respondent provides records only for Appellant's 2013 parole eligibility hearing; but the information requested for the hearing from the years 1998 to 2012 are properly before this Court on questions of contravention of South Carolina Constitutional and Statutory law.
- 3) The Affidavit of Parole Board Support Services Supervisor, Roosevelt Hicks, avers the audiocassette of the November 2000 hearing was reviewed, indicating Respondents are capable of complying with the requested designated matter with little to no effort.
- 4) The affidavit of Mr. Hicks avers, "While all seven members appear to be present at the hearing, the Chairman indicates that four members voted to reject Mr. Green and two voted in

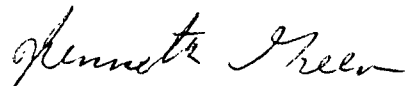
favor..." It is for this contradiction of methods in vote counting and reporting that the interests of justice require Respondents include the matter requested in the ROA for this Court's determination.

- 5) The Operations Manual of Respondents, a matter of public information, will highlight the conundrum created by the conflicting inconsistencies employed by Respondents in collecting, counting and reporting parole-hearing votes in a spurious attempt to comply with minimal due process.
- 6) Appellant challenges the veracity of those procedures and submits Respondents bear the burden of showing that state agency complies with the Administrative Procedures Act in an equitable manner.
- 7) Respondents and the Department of Corrections operate jointly in the realm of parole eligibility process and the Record Summary Appellant requests in the ROA is available and used by Respondents in the parole determination process.

CONCLUSION

WHEREFORE, based on the foregoing facts, the Appellant respectfully prays this Honorable Court deny Respondent's Motion and order Respondents to include/supplement the requested matter in the Record on Appeal before this Court in the interest of justice and due process.

Respectfully submitted,



Kenneth Green
#116020
Lieber Corr. Inst. SA-29
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

October 16, 2013

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Green, # 116020,)
)
 Applicant,)
)
 vs.)
)
 South Carolina Department of)
 Probation, Parole and Pardon)
 Services,)
)
 Respondent.)
 _____)

Docket No. 13-ALJ-15-042

Honorable Carolyn Matthews

CERTIFICATE OF SERVICE

The undersigned pro se Appellant hereby certifies that he has sent a true and correct copy of Appellant's Reply to Respondent's Motion to Deny Matter to Be Included In The Record On Appeal to counsel for Respondents by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 16th day of October, 2013, addressed as follows:

Matthew Buchanan, Esq.
Office of General Counsel
S.C. Dep't. of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, SC 292501

Kenneth Green

Kenneth Green
#116020
Lieber Corr. Inst. SA-29
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Green, # 116020,)
)
Applicant,)
)
vs.)
)
South Carolina Department of)
Probation, Parole and Pardon)
Services,)
)
Respondent.)
_____)

Docket No. 13-ALJ-15-042

Honorable Carolyn Matthews

**APPELLANT'S MOTION TO
EXPAND THE RECORD**

The *pro se* Appellant, Kenneth Green, respectfully requests this Honorable Court to expand the record before this Court to include the Affidavit of Senator Douglas Jennings, Jr. Appellant would show this Court the following:

- 1) Senator Jennings is an attorney licensed in the State of South Carolina and is an Officer of the Court.
- 2) Petitioner's Initial Brief placed this Court and Respondent's on notice that Senator Jennings' affidavit would be forthcoming.
- 3) Senator Jennings' affidavit is relevant to the issue(s) before this court in determining the sequence of vote collecting and reporting before the South Carolina Parole Board.
- 4) Senator Jennings' affidavit personally and directly contradicts the assertions of Respondents regarding the sequence of vote collecting and reporting.
- 5) Senator Jennings' affidavit allows this Honorable Court to remand this matter to Respondents with instructions to grant parole pursuant to S.C. Code §24-21-645 (Supp. 1984) and *Thalma Barton v. South Carolina Department of Probation, Pardon, and Pardon Services*, 404 S.C. 395, 745 S.E.2d 110 (2013).

CONCLUSION

WHEREFORE, based on the foregoing facts and the enclosed affidavit, the Appellant respectfully prays this Honorable Court expand the record to include the affidavit of Senator Jennings and order the relief requested by Appellant.

Respectfully submitted,



Kenneth Green
#116020
Lieber Corr. Inst. SA-29
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

February 3, 2014

January 27, 2014

VIA PRIORITY MAIL
LEGAL MAIL - CONFIDENTIAL

Mr. Gene Ray Richardson (SCDC #: 93614)
Stono A-3
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

RE: Enclosed Affidavit

Dear Gene:

Per your request, I provided via e-mail today to Tommy Thomas a copy of the attached sworn Affidavit. Enclosed is a copy for your use, and it is my understanding that Tommy and you will be including it within the documents you will be filing in the ALJ Court.

I am happy to provide this Affidavit, and I am comfortable that it honestly states the truthful facts as I review them.

By copy of this letter to Tommy Thomas and to Tommy Evans, Jr., who represents SCDPPTS in this pending matter, I am also furnishing each of them with a "hard copy" of my Affidavit.

I wish you the best of luck and with kindest regards, I am

Sincerely,


Douglas Jennings, Jr.

DJ;JR:cbd

Enclosure

cc: Tommy A. Thomas, Esquire
Tommy Evans, Jr., Esquire

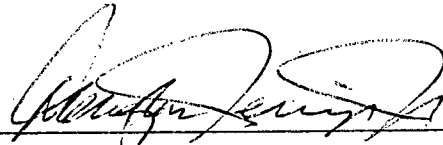
7. When the vote was announced, Chairman Bellamy did not specify which other Board member voted in favor of parole along with McLain, Hodges and Rembert. However, he did announce that parole "is rejected 4 to 2". Not only would it be impossible for the 4 votes to have been against parole, given the fact that 3 Board members clearly stated their vote in favor of parole, but also my notes indicate that the fourth favorable vote was in fact Chairman Bellamy. After the hearing, I was told by a staff member of SCDPPPS who was in the Board room during the vote that we had come very close and had gotten four (4) votes in favor, but he was rejected by a 4-2 vote under the then-existing Board policy which required five (5) favorable votes even when a Board member was absent.

8. In addition to the unambiguous statements on the tape by three (3) Board members who clearly stated they were voting "yes", which makes it utterly and completely impossible for the final 4-2 vote to have consisted of four (4) votes against parole, my notes indicate that during the week after the parole hearing, I had a conversation with former Board member J. P. Hodges (now deceased) during which he complimented us on an excellent presentation and told me that we had fallen just shy of the necessary five (5) votes by getting four (4) votes in favor. He reiterated that the four favorable votes were Bellamy, McLain, Rembert and himself.

9. I submit this sworn Affidavit under the penalties of perjury, and avowing that it is true and correct. I would be happy to testify before any tribunal to this effect, and would

submit my testimony to direct and cross examination.

Further deponent sayeth not.



Douglas Jennings, Jr.
Douglas Jennings Law Firm, LLC
P. O. Box 995, 151 Broad Street
Bennettsville, SC 29512

SWORN to before me this
27th day of January, 2014

Carol B. Dudley (L.S.)

Notary Public for South Carolina

My Commission Expires: 11-27-16

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

KENNETH GREEN, #116020 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

**MOTION TO DENY MOTION TO EXPAND
RECORD ON APPEAL**

The Respondent the South Carolina Department of Probation, Parole and Pardon Services, respectfully requests this honorable court to deny the Appellant's motion to expand the record on appeal. The current record on appeal abides to the rules of the Administrative Court, so the Respondent should not be obligated to provide further documents for addition to the current record on appeal.

Within his motion the Appellant requests that the ALC order the inclusion of an affidavit from attorney Douglas Jennings. The Respondent now objects as to this information being included due to the fact that it is not necessary for the ALC to make an informed decision as to the legality of the denial of parole.

In the opinion of the Respondent, sufficient evidence was included in the record regarding the consideration of the Parole Board, and if the mandatory criteria was applied. In Cooper v. South Carolina Department of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008), the Supreme Court expanded the jurisdiction of the ALC regarding the application of the criteria prior to denial. However, a very limited review of the denial of parole was given to the ALC. The Supreme Court did not give the ALC the right to determine if an inmate should have been awarded parole, but only to determine if the criteria was followed prior to denial. According to Cooper, if the Department states within its order that the criteria was followed, no further review is necessary, Cooper specifically states:

In future parole review hearings the Parole Board may avoid the result in the instant case if it clearly states in the order denying parole that it considered the factors outlined in Section 24-21-640 and the fifteen factors published in its parole form.

Id., at 500

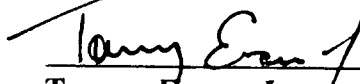
The order is included within the record, and it clearly reveals that the mandatory criteria was considered and the reasons for the denial. Therefore, the order given to the Appellant stated a findings of fact and conclusion of law. According to Cooper, this is all that is needed for a lawful denial of parole, no other information is needed in the record. 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. Compton v. South Carolina Department of Probation, Parole and Pardon Services, 385 S.C. 476, 685 S.E.2d 175 (2009).

Furthermore, Appellant believes that he received the required number of votes pursuant to the Barton decision to be granted a conditional parole. Respondent disagrees. (See page four of

the Record on Appeal).

This record has included the proper information for the ALC to make a reasonable decision regarding the denial of the Appellant's parole. It is the opinion of the Respondent that the record on appeal is complete. Therefore, the Respondent would respectfully request the Court to deny the Appellant's motion to expand the record on appeal.

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

Attorney for the Respondent

Columbia, South Carolina
February 11, 2014

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

KENNETH GREEN, #116020 APPELLANT

v.

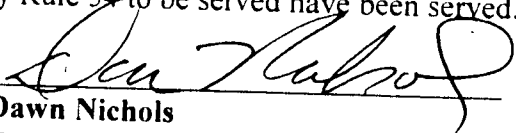
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Respondent, certify that I have served the within *Motion to Dismiss Appellant's Motion to Expand Record*, dated February 11, 2014, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 11th day of February, 2014, addressed to:

Kenneth Green, #116020
Lieber Correctional Institution-SA-29
PO Box 205
Ridgeville, South Carolina 29472

I further certify that all parties required by Rule 54 to be served have been served.


Dawn Nichols
Executive Administrative Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Green, # 116020,)
)
 Applicant,)
)
 vs.)
)
 South Carolina Department of)
 Probation, Parole and Pardon)
 Services,)
)
 Respondent.)
 _____)

Docket No. 13-ALJ-15-042

Honorable Carolyn Matthews

**APPELLANT'S MOTION FOR
RESPONDENT'S TO PROVIDE A
CERTIFIED TRANSCRIPT**

The *pro se* Appellant, Kenneth William Green, respectfully moves this Honorable Court for an Order for Respondent South Carolina Department of Probation, Parole, and Pardon Services to provide a Certified Transcript of Appellant's November 29, 2000 Parole Hearing to comply with this Court's February 24, 2014 Order. In support of this motion Appellant would show this Court the following:

- 1) The record "must consist of the following: ...(f) the transcript of the testimony taken during the proceeding," pursuant to Rule 36(B), ALJDRP;
- 2) That within 30 days after service of the petition, or within time allowed by the court, the agency must transmit to the reviewing court, the original or a certified copy of the entire record of the proceeding under review;
- 3) The ALC may require corrections to the record, pursuant to S.C. Code Ann. § 1-23-380(A)(3);
- 4) The transcript of the November 29, 2000 hearing provided by Respondents as the "Amended Record On Appeal," on March 3, 2014 is not certified and bears no indication of the individual or entity that transcribed the proceeding;

- 5) That transcription of the November 29, 2000 hearing tape by an employee of Respondents is a conflict of interest and bears certain evident implications of bias where the transcript is not a true or complete product of the November 29, 2000 hearing tape and there currently exists controversy of the contents and context of the proceedings;
- 6) That Tommy Thomas, Esq., present during the proceedings, and who listened to the taped transcript, would disagree with the contents of the transcript provided as significant portions are absent or incorrect;
- 7) That Appellant is entitled to a true and correct record upon which a determination can be made that Respondent's November 29, 2000 decision was arbitrary and capricious, was an error of statutory authority, and wrongfully deprived Appellant of his parole and liberty interest therein; and

CONCLUSION

WHEREFORE, based on the foregoing facts, the Appellant respectfully moves this Honorable Court to Order Respondent to Provide a Certified Transcript of the ^{November 29,} ~~June 20,~~ 2000 Parole Hearing Transcript of Appellant and make same part of the Record On Appeal, in the interest of justice and due process.

Respectfully submitted,



Kenneth Green
#116020
Lieber Corr. Inst. SA-29
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

March 11, 2014

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Green, # 116020,	)	Docket No. 13-ALJ-15-042
)	
Applicant,	)	Honorable Carolyn Matthews
)	
vs.)	
)	
South Carolina Department of	)	APPELLANT'S MOTION TO PERMIT
Probation, Parole and Pardon	)	SUBSEQUENT ADDITION TO THE
Services,	)	RECORD PURSUANT TO
	)	S.C. CODE ANN. § 1-23-380(A) (3)
)	
Respondent.)	
)	

The *pro se* Appellant, Kenneth William Green, respectfully moves this Honorable Court to add the sworn Affidavit of Senator Douglas Jennings, Jr., to the Record, pursuant to S.C. Code Ann. § 1-23-380(A) (3), (4) and (5). In support of this motion the Appellant would show this court the following:

- 1) The Record supplied by Respondents is not certified, is unreliable, and is absent of testimony and/or discussion concerning votes;
- 2) The affidavit of Senator Jennings is completely relevant to the issues before this Court regarding voting practices and procedures of the Parole Board and the manner in which votes were collected and reported "in favor of" or "against" during the period encompassing November 29, 2000, where Respondents are completely unable to provide this information necessary for a fair determination of Appellant's liberty;
- 3) The affidavit of Senator Jennings rebuts the procedure implied by Respondents and substantiates a controversy that must be made part of the Record; and

4) South Carolina Code Ann. § 1-23-380 (A) (3), (4) and (5) address issues related to the presentation of additional evidence and permits subsequent corrections or additions to the record.

Appellant suggests the inclusion of Senator Jennings' affidavit in the Amended Record On Appeal in this matter is relevant, would not prejudice Respondent in any manner, and would allow a fair determination of the proceedings of November 29, 2000.

CONCLUSION

WHEREFORE, based on the foregoing, the Appellant respectfully moves this Honorable Court for an Order to include the affidavit of Senator Douglas Jennings, Jr. in the Record before this Court in this matter.

Respectfully submitted,



Kenneth Green
#116020
Lieber Corr. Inst. SA-29
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

March 11, 2014

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Green, # 116020,)
)
 Applicant,)
)
 vs.)
)
 South Carolina Department of)
 Probation, Parole and Pardon)
 Services,)
)
 Respondent.)
 _____)

Docket No. 13-ALJ-15-042

 Honorable Carolyn Matthews

**APPELLANT’S MOTION FOR AN ORDER
FOR RESPONDENTS TO PROVIDE THE
SECRETARY’S BOARD MINUTES
AFFECTING PAROLE BOARD VOTING
PROCEDURES**

The *pro se* Appellant, Kenneth William Green, respectfully moves this Honorable Court for an Order for Respondent South Carolina Department of Probation, Parole, and Pardon Services to provide the Secretary’s Board Minutes Affecting Parole Board Voting Procedures as to “yes” and “no” votes being reported.

Respondents have alleged in their affidavit of Roosevelt Hicks and their responsive pleadings that Parole Board voting procedures were changed for a brief period from reporting “yes” (“in favor of”) votes first, to reporting “no” (“against”) votes first. Respondents alleged this period was during the time frame when Appellant received votes of 4 - 2.

Appellant contends that the burden is upon Respondent to substantiate the allegation of procedural change where it is not reported in Respondent’s Operations Manual.¹

Appellant begs this Honorable Court for an order for Respondents to provide:

- 1) The Minutes of each public or Board meeting or proceeding where the sequence of collecting and reporting “in favor of” and “against” votes was changed between 1999 and 2002; and

¹ South Carolina Board of Pardons and Paroles Operations Manual, January 2014

2) The written record(s) regarding the specific votes of Parole Board Members in attendance at Appellant's November 29, 2000 Parole Hearing.

Appellant submits that these records are required to be maintained pursuant to Respondent's Operations Manual, *id.*, **CHAIR OF THE BOARD, 2. GENERAL RESPONSIBILITIES, § G. Minutes**, pg. 14; and **RESPONSIBILITIES OF THE DEPARTMENT'S DIRECTOR, AND STAFF, 7. MAINTAINING THE OFFICIAL RECORDS OF THE BOARD** (Original emphasis).

Appellant further submits that these records, made part of the Amended Record On Appeal in the instant matter, would clarify the issues presently before this court for all parties and allow a just and equitable determination.

CONCLUSION

WHEREFORE, based on the foregoing, the Appellant respectfully moves this Honorable Court for an Order to provide the records enumerated above to be made part of the Amended Record On Appeal.

Respectfully submitted,



Kenneth Green
#116020
Lieber Corr. Inst. SA-29
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

March 11, 2014

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Green, # 116020,)
)
Applicant,)
)
vs.)
)
South Carolina Department of)
Probation, Parole and Pardon)
Services,)
)
Respondent.)
_____)

Docket No. 13-ALJ-15-042

Honorable Carolyn Matthews

CERTIFICATE OF SERVICE

The undersigned *pro se* Appellant hereby certifies that he has sent a true and correct copy of Appellant's Motion for Certified Transcript; Motion to Provide Board Minutes Affecting Parole Board Voting Procedures, and Motion to Permit Subsequent Addition To The Record Pursuant To S.C. Code Ann. § 1-23-380(A)(3) by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 11th day of March, 2014, addressed as follows:

Tommy Evans, Esq.
Office of General Counsel
S.C. Dep't. of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, SC 292501



Kenneth Green
#116020
Lieber Corr. Inst. SA-29
P.O. Box 205
Ridgeville, SC 29472

APPELLANT. Pro se

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Green, SCDC#116020,	)	Docket Number 13-ALJ-15-042
)	
Applicant,)	
)	
v.)	
	)	MOTION TO DISMISS
South Carolina Department of Probation, Parole, and Pardon Services,)	
)	
Respondent.)	
<hr/>		

The Respondent, the South Carolina Department of Probation, Parole and Pardon Services respectfully submits this motion to dismiss the Applicant's motion to provide a certified transcript. The Respondent submits this motion due to the fact that there exist no transcript of testimony, so a certified transcript does not exist. The Respondent will also argue that if the Applicant wishes a certified copy to be included in the record, it is his responsibility provide one.

PROCEDURAL AND FACTURAL HISTORY

On March 9, 1983, the Applicant was convicted of the offense of murder. Pursuant to South Carolina law existing at the time the offense was committed, he was allowed to appear before the Parole Board upon the service of twenty years. His initial hearing occurred November 18, 1998, and upon the conclusion of this hearing the Board decided to deny the Applicant an opportunity to be released on parole. Since this initial hearing the Applicant was allowed to appear an additional twelve (12) times, each resulting in a denial of parole.

The Applicant filed a notice of appeal before the Administrative Law Court. He alleges that he should have been awarded parole at the conclusion of his November 29, 2000 hearing. It is his position that he received four (4) affirmative votes which would grant parole pursuant to the

South Carolina Supreme Court decision of Barton v. S.C. Dept. of Probation, Parole, and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013).

On February 24, 2014, this Court issued an order for the Respondent to include within the record a transcript from the November 29, 2000 hearing. Since there exist no official transcript, the Respondent's paralegal Dawn Nichols had to transcribe from a copy of the audio tape provided by the Applicant's attorney Tommy Thomas.¹ The transcript was made a part of the record on March 3, 2014.

Upon receipt of this amended record the Applicant now request this court order a certified transcript be made a part of the record. The Respondent now moves before this Court to dismiss the Applicant's motion to provide a certified transcript. The Respondent argues that a certified transcript does not exist; therefore, it is not required under the rules of the Administrative Law Court. The Respondent will further argue that if the Applicant wishes a certified transcript be made a part of the record, he is responsible for the hiring, and payment of a certified court reporter. The Respondent also provides that the audio recording can be provided by the Applicant's attorney which is the best evidence available.

ARGUMENT

- 1. Since no transcript is made of any parole hearing there exist no certified transcript, so this motion should be subject to dismissal.**

The Applicant argues that he should have been provided a certified transcript of his parole hearing. There exist no certified transcript; therefore, this motion should be subject to dismissal. The ALC ordered a transcript be made and provided as part of the record. All parole hearings are audio recorded, there is never a written transcript of testimony. This is due to the fact that monetary

¹ The Respondent only kept audio recordings of hearings from 2001; therefore, the original recording of the 2000 hearing was erased.

constraints restrict the Department's ability to hire a Court reporter for parole hearings. The Respondent's intent was to abide to the order of the ALC. The only way this could have been accomplished is for our paralegal to make a transcription of the audio tape provided by the Applicant's attorney. The Applicant now request a certified transcript, no transcript is ever made of a parole hearing, so a certified transcript is not available.

The rules of the Administrative Law Court does not provide that a transcript be certified in order for it to become a part of the record. The rules provide that a, "transcript of the testimony taken during the proceeding, if prepared," must be made a part of the record. Rule 30 SCRALC. The Respondent provided a transcript to the best of their ability since one was not created during the hearing. The Respondent argues that if the Applicant wishes to have a certified transcript made a part of the record, it is his responsibility to make arrangements to with a certified court reporter to transcribe the audio tape. The cost of preparing a copy of a transcript shall be borne by the party requesting the transcript. Rule 32 SCRALC.


The Respondent further argues that the rules of the Administrative Law Court excludes any transcript of parole hearings for two reasons: 1) No statement is ever taken under oath so there exist no transcript of testimony; 2) no transcripts are made at a parole hearings, so no transcripts are "prepared."

A transcript was completed by the Respondent and made a part of the record per order of this Court. The Respondent feels sufficient evidence was included in the record for the ALC to make an informed decision. The Respondent respectfully request the ALC to dismiss this motion.

CONCLUSION

Due to the Respondent having provided a transcript per order of this court, and there being sufficient evidence within the record for the Court to make an informed decision, the Defendant respectfully requests this motion be dismissed with prejudice.

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
March 19, 2014

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

KENNETH GREEN, #116020 APPELLANT

v.

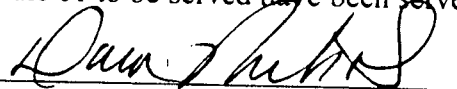
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Respondent, certify that I have served the within *Motion to Dismiss*, dated March 19, 2014, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 19th day of March, 2014, addressed to:

Kenneth Green, #116020
Lieber Correctional Institution-SA-03
PO Box 205
Ridgeville, South Carolina 29472

I further certify that all parties required by Rule 61 to be served have been served.



Dawn Nichols
Executive Administrative Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

KENNETH GREEN, #116020 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

RECORD ON APPEAL

**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**

ATTORNEY FOR RESPONDENT

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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

January 31, 2013

Mr. Kenneth Green #00116020
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

RE: NOTICE OF REJECTION

Dear Mr. Green:

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

Sincerely,

A handwritten signature in cursive script that reads "Catherine Cooper".

Catherine Cooper
Director of Parole Board Support

84

1/30/2013

THE STATE OF SOUTH CAROLINA
DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES

In the matter of)
)
Kenneth Green #116020,)
Petitioner,)
_____)

PETITION FOR RELEASE

Now comes, Tommy A. Thomas, Attorney for Kenneth Green #116020, petitioning the Parole Board of and for the State of South Carolina for Release.

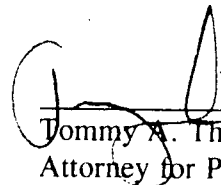
1. Mr. Green appeared before this Board on November 29, 2000. At that hearing, Mr. Green received four parole votes and two reject votes (a copy of the Parole Hearing tape is attached hereto).

2. Mr. Green was convicted to twenty (20) years to life and his sentence began on October 26, 1982.

3. That on July 3, 2013, the South Carolina Supreme Court decided the case of Thalma Barton v. South Carolina Department of Probation Parole and Pardon Service

4. That pursuant to the Supreme Court's recent ruling in Barton the Petitioner would respectfully request that he be released on Parole.

WHEREFORE, the Petitioner respectfully requests that he be released.

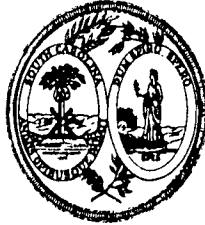


Tommy A. Thomas, Esq.
Attorney for Petitioner

August 13, 2013

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

August 27, 2013

Tommy Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063


RE: Kenneth Green,

Dear Mr. Thomas:

I am in receipt of your Petition for Release and audio cassette tape regarding Mr. Green. Our office of Board Support has reviewed this information and verified the contents of the tape. The seven members present at this hearing were Mr. Baxter, Mr. Elliott, Mr. Bellamy, Mr. Hodges, Bishop Rembert, Ms. Shissias, and Ms. McClain. While all seven members appear to be present at the hearing, the Chairman indicates that four members voted to reject Mr. Green and two voted in favor, therefore, the required number of votes were not received and Mr. Green will not be conditionally paroled pursuant to Barton decision.

Should you have any questions, please do not hesitate to contact me.

Sincerely,


Matthew C. Buchanan
General Counsel

MCB:dn

cc: Larry Patton, Director of Parole Board Support

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

PERSONALLY appeared before me, Roosevelt Hicks, who, after being duly sworn, deposes as follows:

1. I am an employee of the South Carolina Department of Probation, Parole & Pardon Services where I hold the position of Supervisor in the Office of Board Support Services.
2. I have personal knowledge of the procedures and laws that apply to the scheduling and consideration of parole.
3. I have reviewed the audio cassette of Mr. Kenneth Green from his hearing held on November 29, 2000, as well as reviewed all paperwork involved with his November 29, 2000, hearing. The seven members present at this hearing were Mr. Baxter, Mr. Elliott, Mr. Bellamy, Mr. Hodges, Bishop Rembert, Ms. Shissias, and Ms. McClain. While all seven members appear to be present at the hearing, the Chairman indicates that four members voted to reject Mr. Green and two voted in favor, therefore, the required number of votes were not received in order to be conditionally paroled pursuant to the Barton decision.
4. Furthermore, as indicated on the audio cassette tape, the reading of the votes of four to two meant four votes to reject parole and two votes in favor of parole as it was the practice of the Board at that time to read the rejection votes first.

FURTHER AFFIANT SAYETH NOT.

Roosevelt Hicks
Roosevelt Hicks
Supervisor, Office of Board Support Services
South Carolina Department of Probation,
Parole & Pardon Services

SWORN to before me this 23rd
day of September, 2013

Marguerite R. Brown
Notary Public for South Carolina
My Commission Expires: 7/26/2021

**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 <i>Kenneth Green</i>	SCDC # <i>116020</i>
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401 1.30

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.

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

Inmate's Signature <i>Kenneth W. Greer</i>	Date <i>9-26-12</i>	Witness <i>[Signature]</i>	Date <i>09-26-12</i>
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STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

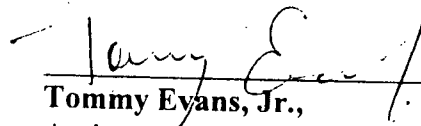
KENNETH GREEN, #116020 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.



Tommy Eyans, Jr.,
Assistant General Counsel

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

October 8, 2013

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

KENNETH GREEN, #116020APPELLANT

v.

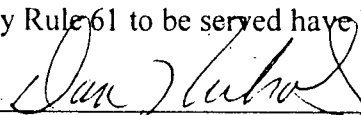
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Respondent, certify that I have served the within *Record On Appeal*, dated October 8, 2013, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 8th day of October, 2013, addressed to:

Kenneth Green, #116020
Lieber Correctional Institution
PO Box 205
Ridgeville, South Carolina 29472-0205

I further certify that all parties required by Rule 61 to be served have been served.



Dawn Nichols
Executive Administrative Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

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SEP 05 2014
SC COURT of Appeals

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

KENNETH GREEN, #116020 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

AMENDED RECORD ON APPEAL

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**

ATTORNEY FOR RESPONDENT

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November 29, 2000 Parole Hearing of Kenneth Green, #116020

Board Members Present: Chairman, David Baxter; JP Hodges; Orton Bellamy; Jay Elliott; Sanco Rembert; June Shissas; and Marlene McClain

Gwen Bright (Board Liaison) – Good morning Susan, Case Number 37, Kenneth Green, we have opposition in this case, the victim's son.

Chairman- Kenneth Green.

Mr. Green- Yes, sir.

Chairman- Other than your attorney, who came in with you please.

Mr. Green- My father, James M. Green, Sr., my brother, James M. Green, Jr., and his wife Tina Green.

Chairman- Would you like for Mr. Thomas to go ahead and present your case?

Mr. Green- Yes sir, if you don't mind.

Chairman- Go ahead

Attorney Tommy Thomas- All right, Mr. Baxter, members of the Board, good morning. This is Kenneth Green. Kenneth is 40 and he is serving for a murder charge. He has a life sentence received at trial. This is the first time that he has ever been in prison that I am aware of. He has served eighteen years and one month. He had a minor prior record, I think he had a forgery charge and a driving under suspension. He's had 2 disciplinaries that I know of since he's been in the system. One in 87 and one in 88. He is in minimum custody. He has worked outside of the fence from 1987 to 1999 for ten years and the only reason they moved him, of course, was when Mr. Moore came in and changed the policy it was not for disciplinary reasons. He got his GED in the system and was a ninth grade graduate prior to that. He has worked on an associate arts degree. He has a job with a lumber company and would be living with his dad in Summerville. It is my understanding that the co-defendant that he had in this case was released on parole in 1994. He has a tremendous amount of support in the community. Numerous petitions from folks. Also letters from a lot of different people in the area. Kenneth was not the individual in this case..... um the victim in the case was shot and killed. Kenneth had some knowledge that the co-defendant was going to rob this gentleman and what he thought was that he was going to get some money out of this and he was 21 years old at the time. The police couldn't really determine who was the shooter. They cut a deal with the co-defendant. The co-defendant for preferential treatment testified against Kenneth and that's why they had the trial with Kenneth saying he was the person who killed this gentleman. He was involved because he knew there was going to be a robbery but he was not the person who was the one who actually pulled the trigger. Um ... Kenneth's family is here. I knew they wanted to speak on his behalf and then Kenneth would like to address the Board.

Chairman- Ok, go ahead please.

James M. Green, Sr. - I'm Kenneth Green's dad. Since Ken's been incarcerated, he's told me many a times that he feels great remorse for this. He's taken a lot of the courses and everything that you people have had to offer him. He graduated out of Clemson through the Horticulture Class that he had and all these other courses. If he should make parole, which I hope he does, I've talked with Sheriff Nash and he said he has no problem what so ever with him coming back to the county. Also his Sunday school teacher which is William, US Senator. He used to teach him in Sunday school and he said he would more than welcome him back in the community. I thank you.

Chairman- Anybody else?

James M. Green Jr., - Yes sir. I'm James M. Green, Jr., Kenneth's brother. Uh.. the years my brother's been incarcerated, he had showed remorse. That was a very grave and saddening thing happen. He has.... the way I feel honestly in my heart He's taken all the courses everything the institutes have gave to offer him. He would be a tremendous support back to the community and my father and myself as well. Uh... the victims... the victim's son I've talked with. They've showed me that they at the time wouldn't have any problem with Ken coming back into the community. They might have changed a little bit over that You have a petition in front of you that we filled out. At the time, they said they weren't going to do it but I believe they've put one out now. I just hope Ken makes parole this time and is able to come home sir.

Chairman- OK. All right one more person.

Tina Green- Hi, I'm Tina Green. I'm Mike's wife. I just want to say I've only known Ken for a short time. I didn't know him prior. I met him the last three years being married to Mike and I have seen remorse he... um.... is respectful to his father, his brother, he loves them very much. I have lived in the Charleston surrounding area all my life. My family is in Charleston and we would welcome him back into the community with open arms.

Chairman-OK. All right. Kenneth, what do you want to tell us today, sir.

Kenneth Green- Ladies and Gentleman, first and for most, I would like to apologize sincerely to the family and friends of the victim and also to the family .. my family and friends for all the hardship and pain and sorrow this crime has caused but since my incarceration, I've tried to do everything. Tried to stay out of trouble. I've kept numerous jobs. The classes they've offered, I've taken every one of them some of them I've taken twice and three times to try to improve the quality of my life to try understand or have a better understanding of how the world works. I have plenty of community support if I were am released which I'm hoping for. I've had numerous jobs with Clemson University. I got a degree their the Horticulture Program Master Gardner Program where I served 40 hours community service hours on the street. They had A custody for numerous years until like my lawyer said, they took that away from us. But I've hardly been in any trouble since I've been in. I would really like to make parole. I just appreciate all the concern consideration y'all would give me to go home.

Chairman- All right. Thank you so much for your comments.

Board member- you actually have a degree in Horticulture?

Kenneth Green- Yes sir. I have a degree in Master Gardening from Clemson Extension University.

Chairman- OK. Step outside sir we'll let you know something.

Tommy Thomas- Thank you very much.

Chairman- Let's see your votes. I don't see any we might want to hear from the victims.

Gwen Bright- We do have a petition. Several hundred names opposing parole.

Chairman- You all are here to oppose the parole of Kenneth Green?

(Victims) Yes sir.

Chairman- Ok, can you state your names for the record.

(Victims)- John Cattles, Shirley Cattles Ward.

Chairman- We haven't made a final decision on this case yet so we're wondering if anyone would like to make a statement please.

John Cattles- Yes, I would. My name is John Cattles. I'm the oldest son and I'm here to just

Board Member- Speak a little louder please.

John Cattles- I'm here to deny parole of Kenneth Green I speak for my several brothers and sisters. At the sentence, I was there and the Judge said he wouldn't be eligible for 20 years there's some kind of litigation that allows him to come up before then. Kenneth Green shot my father in cold blood through the windshield of the car with a double buck shot gun...that's cold blood for just a few dollars. My father was a good man just as I am. He would have given the man whatever assistance he needed. Then he left him there on the side of the road and Kenneth Green and no time has contacted anybody in the family to express any remorse. I also fear for my family if he's released cause we live on the same proximity and my brother has talked to Kenneth's father and his brother and they don't want him up cause he's always been a bad boy, a trouble maker so what I ask is to keep him in prison where he belongs cause I see a volatile situation if he's released.

Chairman- All right, mam, would you like to say something?

Shirley Cattles Ward- Yes, we just recently lost our mother in January and you know how your life goes before you well she was still calling for daddy when she died and I agree with my brother, I don't think he should be out.

Chairman- OK, we thank you so much for your comments. If you will step outside, we will let you know something.

Board member- Have you voted yet?

Chairman- OK, let's see our votes please. OK. Kenneth William Green is rejected by a vote of four to two. Number 1, 2, 3 and 4.

Hearing Concluded.

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

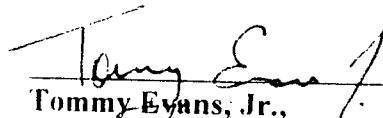
KENNETH GREEN, #116020 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Amended Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.


Tommy Evans, Jr.,
Assistant General Counsel

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SEP 05 2014

SC Court of Appeals

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

March 3, 2014

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 13-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

KENNETH GREEN, #116020 APPELLANT

v.

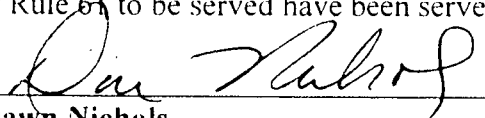
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Respondent, certify that I have served the within *Amended Record on Appeal*, dated March 3, 2014, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 3rd day of March, 2014, addressed to:

Kenneth Green, #116020
Lieber Correctional Institution-SA-03
PO Box 205
Ridgeville, South Carolina 29472

I further certify that all parties required by Rule 61 to be served have been served.


Dawn Nichols
Executive Administrative Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

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SEP 05 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Carolyn C. Matthews, Administrative Law Court Judge

Appellate Case No. 2014-000773

Kenneth William Green, #116020. Appellant

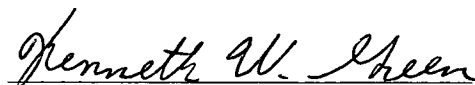
v.

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

CERTIFICATE OF *PRO SE* COUNSEL

The undersigned hereby certifies that pursuant to Rule 210(g), SCACR, the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 2, 2014



Kenneth William Green
#116020
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

Appellant, *pro se*

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SEP 05 2014

SC Court of Appeals