

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Administrative Law Court Docket No. 18-ALJ-15-0032-AP

Gregory Mackey, #136609.....Appellant,

v.

S.C. Department of Probation
Parole and Pardon Services.....Respondent.

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NOTICE OF APPEAL

In accordance with South Carolina Appellate Court Rule 203 and the provisions of S.C. Code Ann. § 1-23-610(A)(1), Gregory Mackey, #136609, appeals the February 26, 2019 Final Order issued by the Honorable H.W. Funderburk, Jr., Administrative Law Judge.

Appellant received written notice of the entry of Judge Funderburk's February 26, 2019 Order on March 1, 2019.

By his February 26, 2019 Final Order, Judge Funderburk affirmed the final decision issued by the Respondent.

Appellant appeals the following ruling from Judge Funderburk's February 26, 2019 Final Order:

Appellant argues that the Board did not use the version of the statute in effect at the time he committed the offense for which he is incarcerated.

The South Carolina Supreme Court has stated that "[a]n ex post facto violation occurs when a change in the law retroactively alters the definition of a crime or increases the punishment for a crime." Jernigan v. State, 340 S.C. 256, 261, 531 S.E.2d 507, 509 (2000) (citations omitted). If the change in law only produces a "speculative and attenuated possibility" of increasing inmate's punishment, then there

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is no ex post facto violation." Barton v. S.C. Dep't of Prob., Parole and Pardon Servs., 404 S.C. 395, 403, 745 S.E.2d 110, 114 (2013) (citing Jernigan at 261, 531 S.E.2d at 509). Also, a change in the law does not violate the ex post facto clause if it only affects a mode of procedure and does not alter substantial personal rights. State v. Huiett, 305 S.C. 169, 172, 394 S.E.2d 486, 487 (1990).

In Barton the Supreme Court held that, in the absence of a statutory provision to the contrary, "the common-law rule that a majority of the whole board is necessary to constitute a quorum applies" to the Parole Board. Id. at 417, 122. In this case, six members of the Board participated in the decision. That is a legal quorum. As indicated in Barton, the controlling version of § 24-21-645 is the version in effect at the time Appellant committed the offense. Id. at 403, 114. Appellant argues and Respondent admits that, in this case, that means a majority of the participating Board members is required to authorize parole. However, in this instance the six participants split, three for parole and three against.³ This constitutes a valid vote by a quorum of the Board. Since Appellant did not obtain the majority required for parole to be granted, parole was properly denied.

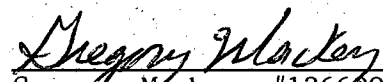
ORDER

IT IS THEREFORE ORDERED that the Board's decision denying the Appellant parole is **AFFIRMED**.

AND IT IS SO ORDERED.

RESPECTFULLY SUBMITTED:

March 29, 2019


Gregory Mackey, #136609
(Pro Se Appellant)

Tyger River Correctional
Institution U-1 B-118
200 Prison Road
Enoree, S.C. 29335

Respondent:

Tommy Evans, Jr.
Assistant General Counsel
S.C. Carolina Department
of Prob. & Parole Pard. Servs.
P.O. Box 50666
Columbia, S.C. 29250

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In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2018-15-0032

Gregory Mackey, #136609.....Appellant,

v.

S.C. Department of Probation
Parole and Pardon Services.....Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal in the above referenced matter upon the Clerk of the South Carolina Administrative Law Court ["ALC"] by depositing a copy of it in the U.S. Mail, Postage Pre-Paid on March 29, 2019. A copy of the same bearing and ALC file-stamp accompanies the instant proof of service. I also certify that I have served the above-described items on Respondent by mailing copies to them, postage pre-paid, at the following address:

Tommy Evans, Jr.
Assistant General Counsel
S.C. Carolina Department of
Prob., Parole & Pard. Servs.
P.O. Box 50666
Columbia, S.C. 29250

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March 29, 2019

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Gregory Mackey
Gregory Mackey, #136609
(Pro Se Appellant)

Tyger River Correctional
Institution U-1 B-118
200 Prison Road
Enoree, S.C. 29335

Gregory Mackey, #136609
Tyger River Correctional
Institution Unit 1 B118
200 Prison Road
Enoree, S.C. 29335

March 29, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, S.C. 29201

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RE: Notice of Appeal of the Administrative Law Court's Final Order in
Gregory Mackey, Appellant v. S.C. Dept. of Prob., Parole and Pard.
Servs., Respondent, ALC Docket No. 18-ALJ-15-0032-AP.

Honorable Kitchings:

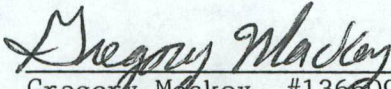
Enclosed for filing is a Notice of Appeal submitted by Gregory Mackey,
#136609, Appellant in the above-captioned case.

I also enclosed a proof of service of the Notice of Appeal on the
Respondent and a copy of the ORDER which is to be challenged on appeal.

Appellant respectfully request that you return a filed stamped copy of
these documents to him at his address as listed above.

Thank you kindly for your consideration of this matter.

Sincerely,


Gregory Mackey, #136609

(Pro Se Appellant)

Tyger River Correctional
Institution U-1 B-118
200 Prison Road
Enoree, S.C. 29335

Gregory Mackey, 3136609
Tyger River Correctional
Institution Unit 1 B-113
200 Prison Road
Auree, S.C. 29335



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Honorable Jenny Abott Litchings
Clerk of Court
S.C. Court of Appeals
1015 Sumter Street
P.O. Box 11529
Columbia, S.C. 29201

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