

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Judge H.W. Funderburk, Jr.

Case No. 2019-000532

RECEIVED
MAY 02 2019
SC Court of Appeals

CHARLES TYSON, #113360.....APPELLANT

V.

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

BRIEF OF APPELLANT

Charles Tyson
Appellant, pro-se

Lee Correctional Institution
990 Wisacky Hwy
Bishopville, SC 29010

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STATUTES

S.C.Code Ann § 1-23-380(5) (d)

STATEMENT OF ISSUE ON APPEAL

1. Did the Court error when it ruled Appellant Issue I could not be raised on appeal to the ALC, constitutes an attack on the jurisdiction of the trial court and is a matter for direct appeal and not for Respondent or the ALC?

STATEMENT OF THE CASE

On August 8, 1981 Charles Tyson, ("Appellant"), was arrested in Florence County South Carolina for murder, armed robbery and aggravated resisting arrest. On October 29, 1981 the grand jury of Florence indicted him for those offenses. Appellant was convicted only for murder and armed robbery on September 19, 1982. On September 21, 1982 the Honorable John Hamilton Smith Jr., sentence Appellant to life for the murder and twenty-five years for armed robbery. The armed robbery sentence was to run consecutively to the life sentence. At the time of Appellant conviction South Carolina law provided that an individual serving a life sentence for murder would become eligible for parole following completion of twenty years of his sentence. Appellant initially appeared before the South Carolina Department of Probation, Parole and Pardon Board ("Respondent") on April 28, 1999 after completing twenty years of his sentence through the award of earned work credits. Respondent denied parole following that hearing and on sixteen subsequent occasions.

On July 18, 2018 Appellant once again had a parole hearing and was denied. On August 22, 2018 Appellant wrote the Respondent requesting that it reconsider its earlier decision and grant another hearing. On September 18, 2018 the Respondent denied the request. On October 17, 2018 Appellant filed Notice of Appeal with the South Carolina Administrative Law Court ("ALC"). On January 2, 2019 Appellant filed his initial brief challenging among other things the Respondent authority or jurisdiction to grant or deny him parole, where Respondent authority or jurisdiction to do so is based upon a state court judgment that is void as a matter of federal and state law. (R. p.4.). Appellant argued and presented evidence that the jury in his criminal trial

returned their verdict and the trial judge pronounced that judgment on September 19, 1982, which is a Sunday, and that federal and state law holds such judgments void when issued on a Sunday. (R. p. 6-8,12-17).

In response to this issue, the Respondent argued 1. That there exist no law that disallows a conviction due to it occurring on Sunday, and that once a case is indicted by the grand jury, the Circuit Court has jurisdiction. 2. That if Appellant conviction was unlawful it should have been previously argued pursuant to SCACR Rule 203(2). 3. That Appellant is appearing before the Parole Board pursuant to S.C. Code Ann § 16-1-60 (1981), and that the issue is waived due to it not being raise before the Court of Appeals in 1984. 4. That Appellant has created a new argument which is not relevant and should not be considered by the ALC. (R. p. 23-24).

The ALC first claimed that Appellant raised only two grounds, then changed direction and addressed Appellant Issue I. (R. p. 31-32). In deciding Issue I the ALC held that "the ground was not raise in the case before the Board nor included in the grounds raise on appeal to the ALC, that the issue was an attack on the jurisdiction of the trial court, is a matter for direct appeal and could not be considered in the Department's parole hearing nor by the ALC in its administrative reviewing of that proceeding. (R. p. 32).

The Appellant will argue that the ALC erred when it ruled Appellant Issue I could not be raised on appeal to the ALC, constitutes an attack on the jurisdiction of the trial court and is a matter for direct appeal and not for Respondent or the ALC. The Appellant brief supporting his argument follows.

ARGUMENT

1. The court erred when it held Appellant Issue I could not be raised on appeal to the ALC, constitutes an attack on the jurisdiction of the trial court and is a matter for direct appeal and not for Respondent or the ALC.

The record shows that Appellant raised Issue I in his brief before the ALC. The record further shows that Appellant presented argument and evidence that the jury in his criminal trial returned their verdict and the trial judge pronounced judgment on Sunday September 19, 1982 which voids that jury verdict and judgment according to federal and state law. *Ball v. United States*, 140 U.S. 118, 11 S.Ct. 761 (1891); *Hiller v. English*, 4 Strob, 486 (S.C.App.L.1848); *Shaw v. McCombs*, 2 Bay 232 (S.C.Const.App. 1799). Appellant furthered argued that because the trial court verdict is void, the Respondent lacked authority or jurisdiction to grant or deny him parole because the power to do so is based upon a judgment that has no legal force or effect and is regarded in law as a nullity. *Ellot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828). Appellant contends that the only reason he appears before the Respondent for a parole hearing is because of said void judgment.

Appellant Issue I is not an attack on the jurisdiction of the trial court but one upon Respondent power to grant or deny parole pursuant to a state court judgment that is void because the judgment took place on a Sunday in violation of *Ball*, *Hiller*, and *Shaw*. This species of error which cause a court judgment to be void and the case law cited, does not address a court's jurisdiction, but a certain day which is a Sunday.

Appellant Issue I does not have to be presented to Respondent below or attacked directly on appeal because a void judgment is a judgment that has no legal force or effect, the invalidity of which may be asserted by any party

whose rights are affected at any time and any place, whether directly or collaterally. From its inception, a void judgment continues to be absolutely null. It is incapable of being confirmed, ratified, or enforced in any manner or to any degree. See: Black Law Tenth Edition p. 973 Void Judgment. Also, under federal law which is applicable to all states, the U.S. Supreme Court stated "that if a court is without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to recovery sought even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgment or sentence are considered in law as trespassers." *Ellot v. Piersol*, supra.

While case law holds that a void judgment can be attacked at any time and any place, the ALC has held Appellant must not be allowed to do so, and must continual to suffer the effects of the void judgment because he did not attack it during his direct appeal in 1984. Further, in Appellant Issue I, he is basically claiming that his parole hearing is affected by an error of law, which the ALC has authority to review pursuant to S.C. Ann § 1-23-380(5) (d).

CONCLUSION

For all of the reasons stated this court should reverse the ALC.

Respectfully submitted


Charles Tyson, Pro-se

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CERTIFICATE OF SERVICE

I, Charles Tyson, Appellant pro-se, certify that I have served a copy of the Brief of Appellant, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, this date _____ 2019, address to:

Tommy Evans, Jr.
Assistant General Counsel
Department of Legal Services
S.C. Dept., PPP Services
P.O. Box 50666
Columbia, SC 29205

Charles Tyson
Lee Correctional Institution
990 Wisacky Hwy
Bishopville, SC 29010

April 25, 2019

Hon. V. Claire Allen, Deputy Clerk
Post Office Box 11629
Columbia, SC 29211

Re: Charles Tyson v. SCDPPPS
Appellate Case No. 2019-000532

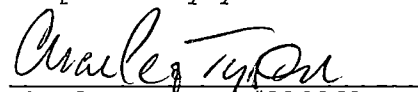
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Dear Ms. Allen:

Please find enclosed a copy of my Appellant Brief along with the Record on Appeal to be filed with the court.

Thanking you in advance for your assistance in this matter.

Respectfully your's


Charles Tyson, #113360

CC: Tommy Evans, Jr., Esquire

Mr. Charles Tyson #113360
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Bishopville, SC 29010



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