

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT
The Honorable H.W. Funderburk, Jr., Administrative Law Judge
Case No. 18-ALJ-15-0032-AP
Appellate Case No. 2019-000553

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MAY 15 2019

SC Court of Appeals

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

v.

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

APPELLANT'S INITIAL BRIEF

Gregory Mackey, #136609
Appellant

200 Prison Road
Enoree, S.C. 29669

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

v.

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


CERTIFICATE OF SERVICE

I, Gregory Mackey, #136609, hereby certify that I have served the within Initial Brief of Appellant dated May 9, 2019, on Respondent by depositing a copy of same in the United States mail, postage prepaid, addressed as follows:

Tommy Evans, Legal Counsel
2221 Devine St., Suite 600
SCDPPP'S P.O. Box 50666
Columbia, S.C. 29250

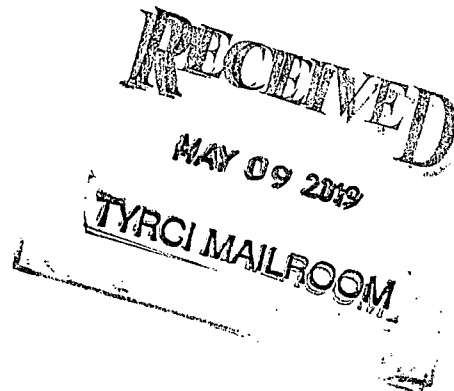
Hon. H.W. Funderburk, Jr.
Judge, Admin. Law Court
1205 Pendleton St., Ste.224
Columbia, S.C. 29201

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



Gregory Mackey, #136609
Appellant

200 Prison Road
Enoree, S.C. 29669



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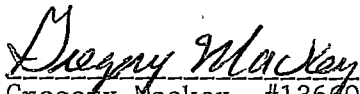
Gregory Mackey, #136609.....Appellant,

v.

S.C. Department of Probation,
Parole and Pardon Sevices.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief complies with Rule 211(b), SCACR. Appellant has no access to colored paper or bind/bounding material without approved in-cell art hobby craft license and is limited to white typing paper only.


Gregory Mackey, #136609
Appellant

May 9, 2019

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STATEMENT OF ISSUES ON APPEAL

DID THE PAROLE BOARD DENY APPELLANT A SUBSTANTIAL RIGHT TO STATUTORILY
CORRECT PAROLE REVIEW AND VIOLATE THE EX POST FACTO CLAUSE IN USE OF
CURRENT VERSION OF PAROLE STATUTE INSTEAD OF VERSION OF STATUTE AT THE
TIME OF OFFENSE?

STATEMENT OF THE CASE

On March 21, 1986, Appellant was arrested and charged with the offense(s) of murder, grand larceny, criminal sexual conduct, and a gun law violation. Through further investigation, Appellant was charged with murder and exonerated from all other charges.

On August 28, 1986, the Appellant appeared before the Honorable William Howell for the offense of murder. Upon the conclusion of this appearance the court sentenced the Appellant to life imprisonment. At the time Appellant committed this offense, South Carolina law provided that an individual serving a life sentence for murder would become eligible for parole following the completion of twenty-years.

Appellant initially appeared before the Parole Board on August 23, 2006. At the conclusion of this appearance the Board decided to deny Appellant parole following that hearing, and on thirteen (13) subsequent occasions.

Appellant's most recent appearance before the Board occurred on September 19, 2018. The Parole Board once again decided to deny Appellant an opportunity to be released on parole. The denial was due to: 1) nature and seriousness of current offense; 2) an indication of violence in this or previous offense.

On September 29, 2018, Appellant requested a reconsideration hearing by the Parole Board and received a letter from the Parole Board on October 5, 2018 informing him that there is no rehearing or appeal process for the routine denial of parole; therefore no action will be taken on your request.

Upon being denied parole reconsideration Appellant filed an appeal in the Administrative Law Court (ALC) asserting that he was denied a substantial personal right to statutorily correct parole review.

On February 26, 2019, the Honorable H.W. Funderburk, Jr. Affirmed the decision of the Parole Board's denial of parole. Upon receiving this decision, Appellant filed a notice of appeal dated March 29, 2019 in the South Carolina Court of Appeals.

Within this appeal the appellant avers that the Board did not use the version of the statute in effect at the time he committed his offense for which he is incarcerated. Also, the ALC erred in its conclusion that the Parole Board lawfully denied Appellant's parole application.

ARGUMENT

APPELLANT CONTENDS THAT HE WAS DENIED A SUBSTANTIAL PERSONAL RIGHT TO STATUTORILY CORRECT PAROLE REVIEW:

The Parole Board is comprised of seven members. S.C. Ann. § 24-21-10(B) (Supp.2012). Appellant interprets the composition of the seven members to mean "the full board". Six of those seven members participated in Appellant's hearing. Three members voted in favor of granting Appellant parole, and three members voted against granting parole.

According to section 24-21-645 of the South Carolina Code, 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. Id. § 24-21-645 (Supp.1984).

When scheduling meetings and hearings of the Board. **b. Violent versus non-violent.** Offenders convicted of a violent crime will be scheduled for parole hearings before the full Board only. Offenders convicted for a non-violent crime may be scheduled for parole hearings before either the full Board or a three-member panel. See Scheduling meetings and hearings of the Board, Policy and Procedure Manual page 14-15.

In all cases properly decided before a three member panel of the Board, a unanimous vote is required to grant parole or to revoke parole of EPA 1. A unanimous vote of a panel constitutes the final decision of the Board. (Any vote of a panel which is not unanimous "must" be referred to the full Board for a final decision). See Parole Board Policy and Procedure Manual, page 13-2. Statutory Powers a. Vote.

Appellant has always been considered a violent offender by SCDC and the Parole Board since the Omnibus Criminal Justice Improvement Act of 1986 and is currently considered a "violent offender". This law was created after Appellant committed his offense. See, Section 16-1-60. S.C. Code Ann. (Supp. 2010). However, Appellant argues that he appeared before a six (6) member panel of the parole board and received a split decision, 3 votes in favor of granting parole and 3 votes denying parole. Any vote of a panel which is not unanimous must be referred to the "full board" for a final decision. See, Parole Board Policy and

Procedural Manual, page 13-2. Statutory Powers a. Vote.. S.C. Code Ann. §24-21-220 (1993).

Both the Parole Board and the ALC erred in applying the current version of section 24-21-645 instead of the version of that statute in effect at the time Appellant committed his crime. The Supreme Court, Toal, C.J. held that:

(1) statutory amendment requiring that the parole for persons convicted of a violent crime be approved by at least two-thirds of the members of Parole Board, in contrast to prior version of statute allowing Parole Board to authorize parole by a majority of its members, violated federal and state Ex Post Facto Clauses as applied retroactively; and (2) authorization of the parole for persons convicted of a violent crime does not require a vote of at least two-thirds of the seven-member board without regard to how many members actually attend a parole hearing, but instead requires only a two-thirds vote of the members participating in a hearing. Barton, 745 S.E.2d 110.

See, U.S.C.A. Const. Art. 1, § 10, cl. 1; Const. Art. 1, § 4; Code 1976, § 24-21-645.

CONCLUSION

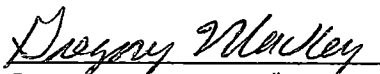
The Parole Board denied Appellant parole by a statutory amendment requiring that parole for persons convicted of a violent crime, Section 16-1-60, be approved by at least a two-thirds of the members present at his hearing, in contrast to prior version of statute allowing Parole Board to authorize parole by a majority of its members.

Although, Section 24-21-645 does not specify a quorum for Parole Board meetings but "in the absence of any statutory or other controlling provision, the common law rule that a majority of the whole board is necessary to constitute a quorum applies, and the board may do no valid act in the absence of a quorum." Garris, 333 S.C. at 453, 511 S.E.2d at 59.

In the instant case, there was no absence of a statutory or controlling provision. The statutory and controlling provision was the Parole Board Policy and Procedure. (Any vote of a panel which is not unanimous "must" be referred to the full Board for a final decision). See, Parole Board Policy and Procedure Manual, page 13-2. Statutory Powers a. Vote.

The Parole Board failed to reach a unanimous decision and decided to deny Appellant parole by an invalid act and in doing so, violated the Parole Board own policy and procedures as well as the "ex post facto laws" as applied retroactively. In violation of this constitutional and statutory provision; Appellant should be granted parole or in the alternative have his case referred to the seven (7) member full Board for a final decision.

Respectfully submitted,


Gregory Mackey, #136609
Appellant

200 Prison Road
Enoree, S.C. 29335

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CERTIFICATE OF SERVICE

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I, Gregory Mackey, #136609, (The Appellant) being duly sworn upon my oath, depose and state that, I have served the within Motion to Accept Filing of Appellant's Initial Brief and Designated Matter Out-of-Time dated May 9, 2019, on Respondent by depositing a copy of same in the United States mail, postage prepaid, addressed to Tommy Evans, Jr., Assistant General Counsel of the S.C. Dep't of Prob., Parole and Pardon Services, located at 2221 Devine St., Suite 600, P.O. Box 50666, Columbia, S.C. 29250. Also, a copy of same to H.W. Funderburk, Jr., Judge of the Administrative Law Court, 1205 Pendleton St., Suite 224, Columbia, S.C. 29201.

Respectfully submitted,

Gregory Mackey
Gregory L. Mackey
Appellant

200 Prison Road
Enoree, S.C. 29335

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MAY 09 2019

TYRCI MAILROOM

This 9, Day of May 2019,
at Enoree, South Carolina.

Gregory Mackey, #136609
Tyger River Correctional
Institution Unit 1 A118
200 Prison Road
Enoree, S.C. 29335

May 9, 2019

V. Claire Allen
Deputy Clerk
P.O. Box 11629
Columbia, S.C. 29211

RE: Gregory Mackey v. SCDPPPS
Appellate Case No. 2019-00053

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SC Court of Appeals

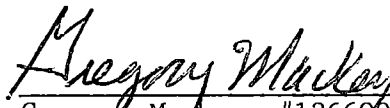
Honorable Allen:

Enclosed is seven (7) copies of Appellant's Motion to accept filing of Appellant's Initial Brief and Designation of Matter Out-of-Time, along with Motion to Proceed in Forma Pauperis and Certificate(s) of service.

If any deficiency have occurred in the matter of the filing of these documents please advise and allow for correction under SCACR rules.

Please return to me a clock-stamped copy of the pleadings for my personal file. Thank you in advance for your invaluable time in this matter.

Sincerely,


Gregory Mackey, #136609
Appellant

Gregory Mackey, #136609
Tyger River Correctional
Institution Unit 1 A118
200 Prison Road
Enoree, S.C. 29569



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