

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal From The Administrative Law Court

Honorable Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2019-000607

ANTHONY ENRIQUEZ # 215961 APPELLANT,

v.

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

REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Appellant Anthony Enriquez, through undersigned counsel, files this reply to the Initial Brief of Respondent, the Department of Probation, Parole and Pardon Services (PPP). This reply will be short because PPP fails to join issue with the arguments that Enriquez did make. Instead, PPP's brief responds to the substance of arguments PPP assumes Enriquez might have made, had he been given the opportunity to make them before the Administrative Law Court (ALC). Their brief highlights the problem with the ALC's decision to dismiss the appeal without notice, briefing or lodging of the record below: nobody knows yet what arguments Enriquez would have made before the ALC. This is set out most clearly in PPP's assertion that Enriquez "never raised a denial of due process, nor a violation of any other Constitutional right," and Enriquez's "only reason for appeal is in his opinion the decision was unfair and he should have been granted parole." Initial Br. of Resp't 9, June 24, 2019. That claim is refuted by even a casual reading of Enriquez's Opening Brief, which focuses on violations of state law, ALC procedure, and constitutional due process that deprived him of the opportunity to meaningfully challenge the manner and context in which PPP rendered its decision to deny him parole.

Additionally, PPP asserts that the ALC *was required* to dismiss Enriquez's appeal under Rule 62 SCALC because, according to PPP, Enriquez failed to comply with Rule 59(B) SCALC. Initial Br. of Resp't 8. Pursuant to Rule 59(B), an appellant must "include a brief factual basis for each expressly and specifically asserted constitutional violation." PPP acknowledges that Enriquez included a factual basis for his asserted constitutional violation, but claims it was deficient because it related to the reason for parole denial—a matter PPP asserts is beyond the ALC's power to review. Initial Br. of Resp't 8. Thus, according to PPP, because the ALC "may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact,"

S.C. Code Ann. § 1-23-380, it was under a legal obligation to dismiss the appeal. However, Enriquez never asked the ALC to “substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact.” *See id.* The ALC cut off Enriquez’s access to appellate review before he had an opportunity to even invite the type of second-guessing PPP incorrectly suggests Enriquez requested. Again, PPP’s (erroneous) assumption underscores the error in the ALC’s decision to dismiss the appeal with no record or argument before it: absent that information, the ALC could not and did not know if the factual bases supporting Enriquez’s asserted constitutional violations are inconsistent with the Board’s fact-finding.

CONCLUSION

For the reasons set forth above, as well as for the reasons presented in Enriquez’s Initial Brief, this Court should reverse the ALC’s dismissal and remand the case to the ALC to give Enriquez an opportunity to put before the Court a complete record and an initial brief on the merits.

Respectfully submitted,


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July 2, 2019.

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ANTHONY ENRIQUEZ, SCDC#215961

Appellant,

v.

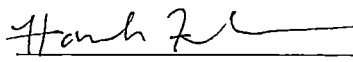
SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Appellant's Initial Brief was served by first class United States mail, postage prepaid, this 2nd day of July 2019, upon the following:

Tommy Evans
SC Dep't of Probation, Parole and Pardon Services
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Hannah L. Freedman

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July 2, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: *Anthony Enriquez v. SC Department of Probation, Parole, & Pardon Services*
Case No. 2019-000607

Dear Ms. Kitchings:

Please find enclosed for filing, along with certificate of service, the original and two copies each of the Reply Brief of Appellant. If you can please clock-in the extra copy and return it to me in the enclosed self-addressed stamped envelope.

If you should have any questions, please feel free to contact our office.

Sincerely,



Hannah L. Freedman

Enclosure

cc: Tommy Evans, Esq.

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JUSTICE (360) ADVANCING EQUALITY IN THE CRIMINAL JUSTICE SYSTEM

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