

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable H.W. Funderburk, Jr., Administrative Law Court Judge
Case No. 18-ALJ-15-0029-AP

Appellant Case No. 2019-001368

DAVID GEORGE SMITH, #110951.....RESPONDENT

v.

RECEIVED
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SC Court of Appeals

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

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- 1. Did the ALC err in remanding the case for a new parole hearing?**
- 2. Was the Appellant obligated to provide information in the record on appeal that is considered privileged pursuant to South Carolina law?**
- 3. Did a misunderstanding made a member of the Parole Board deny the Appellant an opportunity for parole?**

STATEMENT OF THE CASE

On October 19, 1981, the co-workers of the victim was worried about her not reporting to work as an elementary school teacher so they went to her residence to check on her wellbeing. Once they arrived they noticed the door open, and upon entering observed the victim laying on her back in a pool of blood. Upon making this discovery they immediately notified the authorities. She was declared dead at the scene as a result of multiple stab wounds.

At the time of the murder the Respondent was the boyfriend of the victim. It was known to her friends that there were times he would spend the night at her residence. The authorities noticed no forced entry, nor any items taken. Through their investigation it was determined that a left handed person committed this murder, the Respondent is left handed. After being brought in for questioning, the authorities recognized that his left hand was swollen with fresh cuts. He was later arrested and charged with the offense of murder.

On March 1, 1984, the Respondent appeared before the Honorable Frank Epps for the offense of murder. Upon the conclusion of this appearance the Respondent received a sentence of incarceration for the remainder of his natural life. At the time the Respondent committed this offense South Carolina law allowed a person serving a life sentence for murder parole eligibility upon the service of twenty years. The Respondent made his initial appearance before the Board on June 21, 2000. At the conclusion of this appearance the Board denied the Respondent an opportunity to be released on parole. Since this initial denial the Appellant appeared an additional seventeen times each resulting in a denial of parole. The Respondent's last appearance occurred on August 15, 2018. At the conclusion of this hearing the Board decided to deny parole due to: 1) the nature and seriousness of the offense; 2) an indication of violence in this or a previous offense;

3) the use of a deadly weapon in this or a previous offense; and, 4) a criminal record that indicates poor community adjustment.

Upon being informed of his denial of parole the Respondent requested that the Board reconsider his denial. On September 19, 2018, the Respondent was informed that there exist no rehearing nor appeal process in a routine denial of parole, so his request was denied. After being informed of this denial the Respondent filed a notice of appeal before the Administrative Law Court. Within this appeal the Respondent argued that the Board abused its discretion in denying parole without substantial evidence to support this decision. The Respondent also argued that the Board failed to state its basis for denial thereby violating the Respondent's right to due process; and, the Board mistakenly misunderstood the evidence presented thereby wrongfully denying the Respondent parole. The Appellant argued that substantial evidence was presented revealing that the denial of parole was both fair and reasonable; and, the Board did reveal a reasonable basis as to why parole was denied.

Upon receiving briefs from both parties supporting their positions, the Honorable H.W. Funderburk, Administrative Law Court Judge (ALJ) issued his order on July 24, 2019. Within this order Judge Funderburk ruled that the Board failed to provide evidence received nor considered in the denial of parole. The ALJ ordered this parole decision be remanded for a new hearing; that the misunderstanding be corrected; and, all evidence including policies relied on by the agency, and any matters judicially noticed be included in a complete record to be assembled, served and filed should there be a further appeal. The ALJ also ordered that the Board must include in its record all evidence, documentary or testimonial, that it receives or considers in making its decision in which would form foundations for its findings and conclusions of law.

After receiving the ALJ's order the Appellant immediately filed a notice of appeal before this Court. The Appellant alleges that the ALJ erred in remanding this case back for a new hearing. The Appellant will argue that the Board met the requirements revealing a fair decision was made pursuant to *Cooper*; that due to the privileged nature of the information gathered for the Board to consider it is not subject to release nor is admissible in Court; that the denial of parole was supported by substantial evidence; and, the ALJ erred in remanding this case for a new hearing where no substantial evidence was presented to support that the misunderstanding regarding his prior record was the reason of denial. The brief of the Appellant supporting these arguments follows.

ARGUMENTS

1. The lower Court erred in remanding this case back to the Board for a new hearing.

The lower court remanded the decision back to the Parole Board due to a misunderstanding made by a member of the Board as to what was stated by the Respondent regarding his prior record. No substantial evidence was ever submitted revealing that this misunderstanding had anything to do with the final decision, or was the basis of denial. The Appellant would present that there exists substantial evidence which reveals that all of the mandatory criteria was considered, and this misunderstanding was not the reason for denial.

A final decision shall include findings of fact and conclusions of law, separately stated. S.C. Code Ann. §1-23-350 (2018). The final order of the parole board listed the mandatory statutory and department criteria considered in the final determination, and a separate statement as to the reasons for denial. The order of denial did conform with South Carolina law, and the South Carolina Supreme Court decision of *Cooper v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008). In *Cooper*, the Court decided that if it is revealed

that the mandatory criteria was considered the denial of parole is lawful. In *Cooper*, the Supreme Court decided that a finding of fact was included; however, the Court determined that the Parole Board neither “offered an explanation nor indicated that it considered the statutory criteria of section 24-21-640, nor the fifteen criteria listed on the parole form. *Id.*, at 500.¹ The Supreme Court decided that if the Parole Board fails to consider and apply the statutory-related criteria, it has the effect of rendering an inmate parole ineligible, which warrants review by the ALC. *Id.*, at 502.

In *Cooper*, the Court established what future Parole Board orders shall consist of, in *Cooper* it specifically states:

We emphasize that 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. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board allowed proper procedure.

Id.

Since the *Cooper* decision the General Assembly added another criteria. The Department must create, and the Board must consider a risk assessment. *See*, S.C. Code Ann. §24-21-10(F)(2018). Since this mandatory element was added, a COMPAS risk assessment is performed on each inmate.

In the present case the Board did follow the mandates proscribed by the Supreme Court in the *Cooper* decision. The Respondent argues that the Board failed to recite an explanation as to why parole was denied. In *Cooper*, and South Carolina law all that must be revealed is a finding of fact and conclusion of law separately stated. The finding of fact are the reasons for denial, and the conclusion of law are the mandatory statutory, and departmental criteria considered by the

¹ Due to the mandatory risk assessment, there are now sixteen criteria listed on the parole form.

Board prior to the final decision. There exists no law nor statute that makes it mandatory for the Board recite an explanation as to why parole was denied. This is due to the fact the reasons for denial are self-explanatory. The Respondent was denied parole due to the serious nature of the offense of murder; that fact it was a violent act; that a deadly weapon was used in the commission of this offense; and, that the Respondent's prior record reveals poor community adjustment. These reasons conformed with the mandatory criteria established in South Carolina law and Department policy.

The Court in *Cooper* determined that the order of denial was unlawful due to it not presenting any conclusions of law. It was the opinion of the Court that in order for the Board to prove proper procedures were followed, it must not only state a finding of fact but the statute and policy considered in reaching this conclusion. In the present case the order is clear, the statutory and policy related criteria as well as the risk assessment was considered prior to the final decision.

The reasons for denial followed the mandatory criteria found in statutory law. The South Carolina Code of Laws specifically states:

The board must carefully consider the record of the prisoner before, during and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that, in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of imprisonment; that the interest of society will not be impaired thereby; and suitable employment has been secured for him.

S.C. Code Ann. §24-21-640 (2018)

The prior record of the inmate is only one of numerous criteria that the Board is obligated to consider. There has been no evidence revealing that the misunderstanding made by the Board member lead to the Respondent's parole being denied.

The above referenced criteria is not the only criteria that is considered prior to the final decision. The Board is also mandated to establish their own criteria.² This criteria encompasses the above referenced criteria, but is more specific than the statutory criteria. The Board established criteria are as follows:

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 record and his/her adjustment under any previous programs of 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 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 had made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes living arrangements where he/she will live and who he/she will live with; the character of those with whom the inmate plans to associate in both his/her work hours and his/her off-work hours; and 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;

² The Board must establish written specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include review of a prisoner's disciplinary and other records. S.C. Code Ann. §24-21-640 (2018).

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. The actuarial risk and needs assessment outlined in section 24-21-10(F)(1) of the S.C. Code of laws; which evaluates based on criminal involvement, relationships/lifestyle, personality/attitudes, family, social exclusion and mental health;
16. Other factors considered relevant in a particular case by the Board.

The Respondent was made aware of this criteria prior to the hearing as revealed by the signing of Form 1212 which was made part of the record, before the lower court.

The Respondent argues that a misunderstanding concerning the explanation of his prior record led to his denial of parole. No evidence was presented revealing that this misunderstanding had anything to do with the denial of parole. As the Court would take note, there are numerous criteria that the Board considers other than the inmate's prior record. The Appellant argues that the ALJ erred in making a determination that this misunderstanding was instrumental in the denial of parole, thereby remanding the case for another hearing. There were other reasons for denial that included a consideration of the offense committed. This use of his prior offense as a reason for denial is lawful and followed the above referenced criteria.

The Respondent is currently serving a life sentence for the offense of murder, and he admitted the existence of a prior record. So the use of these as reasons for denial was not done in error. There exists no evidence that reveals that this misunderstanding was a reason as to why parole was denied. There was substantial evidence presented that the Board considered the mandatory criteria and risk assessment prior to the final decision. Since this was revealed this must be considered a routine denial of parole. Pursuant to *Cooper*, if the Board revealed to the Court that they followed and considered the mandatory criteria no further review by the ALC is

necessary. The Parole Board stated in its notice of rejection that it considered the statutory criteria set forth in Form 1212 which is sufficient under *Cooper. Compton v. S.C. Dept. of Probation, Parole and Pardon Services*, 385 S.C. 476, 684 S.E.2d 175 (2009). Since this must be considered a routine denial of parole the Appellant was only obligated to provide reasons for denial and the statutory and Department criteria considered to come to this conclusion. Since this was revealed there exists no reasoning under the law to remand this for another hearing. The ALJ erred in ordering this case remanded for a new hearing when there exist no grounds to do so. No evidence was revealed, showing that the Board failed to consider the mandatory criteria. Pursuant to the *Cooper* and *Compton* decisions, if it is shown that the mandatory criteria was considered it should be upheld. The ALJ erred in remanding this decision back to the Parole Board.

There is no dispute that the Respondent did in fact have a prior criminal record, which must be considered by the Board.³ Within the recording there were three Board members who were discussing the statement made by the Respondent relating to his prior offenses, Mr. Christopher Gibbs, Ms. Kim Frederick, and Mr. Henry Eldridge. At the conclusion of the hearing Mr. Gibbs and Ms. Frederick both voted to deny parole; however, Mr. Eldridge vote yes to grant parole. The final no vote came from Dr. Lonnie Randolph who was entirely not a part of this conversation. This as well as the reasons given for denial reveal that the misunderstanding had nothing to do with the final decision. This reversal by the ALJ due to this reason was made in error.

No substantial evidence was ever provided that revealed the misunderstanding had anything to do with the denial of parole. If anything, the lower Court should have determined that this to be "harmless error." Error is harmless when it 'could not reasonably' have affected the result of the trial. *State v. Trapp*. 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012). This error by the

³ The board must carefully consider the record of the prisoner before during and after imprisonment. S.C. Code Ann. §24-21-640 (2018).

Board had nothing to do with the offense the Respondent committed, nor the facts that occurred in the commission of his offense, the other reasons given for the denial of parole. The Respondent admitted he had a prior record, so any misunderstanding about what was said had no effect on the reason given for denial. This should not have even been considered as a reason for the remand since it was never proven this had anything to do with the final decision. The burden fell on the Respondent to prove to the ALJ that this misunderstanding was a substantial reason for the denial of parole. In administrative proceedings the general rule is that the Appellant for relief, or a privilege has the burden of proof and the burden of proof rest upon the one 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). Since he failed to reveal any substantial evidence proving his allegations this case should not have been subject to remand. The ALJ erred in remanding this case, this decision should be reversed by this court.

2. The ALJ erred in ordering that the Board include within the record on appeal statutory privileged information.

The ALC ordered this case be remanded and in the record the Board shall include all evidence, documentary or testimonial that it receives and considers in making its decision. The information gathered by the agents and relayed to the Board is in the discharge of their official duty; therefore, considered privilege pursuant to South Carolina law. The South Carolina Code of Laws specifically states: "all information and data obtained in the discharge of his official duty by a probation agent is privileged information, is not receivable as evidence in a court, and may not be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive reports unless ordered by the court or the director." S.C. Code Ann. §24-21-290 (1993). The Supreme Court has also ruled that this information is not admissible in Court due to

its privileged nature. The statute relating to the privileged nature of information received by a probation officer in his official capacity does not allow the admission of a probationer's statement as evidence in court simply because the judge orders it. *State v. Hook*, 356 S.C. 421, 590 S.E.2d 25 (2004).

This information must remain privileged due to what is gathered by the Department. The names and addresses of victims and other individuals who have expressed objections of an inmate in Department records. The release of this information would make these individuals more reluctant to express their opinions. Therefore, this information must be kept away from inmates, especially since it does not reveal if the Board has considered the mandatory criteria, which is all the ALJ should be considering when it comes to a denial of parole pursuant to *Cooper*.

Not only is this information privileged but the ALJ is only allowed to judge the case with evidence placed in the record. The Respondent argues that insufficient information was placed in the record; however, the ALJ is only allowed to discover if the Board has followed the criteria, they are not in the position to judge questions of fact. The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on question of fact. S.C. Code Ann. §1-23-380 (2018) The Respondent originally argued that his parole was denied due to the fact a Board member misunderstood a statement made regarding his prior record. The Respondent's prior record was not the only reason for the denial of parole. The Respondent also admitted to prior criminal convictions which the Board could use in the denial of parole.

In error, the ALJ remanded the case because 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) clear erroneous in view of the reliable, probative and substantial evidence;
- f) arbitrary or capricious or characterized by abuse or discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. §1-23-380 (a-f)(2018).

There has been nothing provided that reveals that the Board has violated any of the Respondent's Constitutional rights. The Board was within its statutory authority to deny parole for the reasons given. There exists no evidence that the misunderstanding had anything to with the denial of parole, so there exist no wrongdoing in the denial of parole. The Respondent never provided any substantial evidence revealing that the mandatory criteria was not considered. The fact he was denied parole due to his conviction of murder and his prior record is not erroneous and there is substantial evidence in the record that the Board considered the mandatory criteria.

There is no evidence that the decision of the Board was arbitrary or capricious, nor an abuse of discretion. The denial of parole was done after a review of all of the criteria found in statutory law and department policy. This was revealed in the order of denial pursuant to *Cooper*. The reasons given for denial was due to the offense of murder, and the events that occurred surrounding the commission of this offense. This cannot be considered an arbitrary decision since it follows the law and criteria given to the Board by the General Assembly and the South Carolina Supreme Court. There also exists no abuse of discretion since nothing was presented revealing that the misunderstanding made by the Board member had any effect with the denial of parole. There were three other valid reasons for denial that were in no way related to this misunderstanding. If that one reason was removed the Respondent would still have been denied parole.

There also exists no prejudice in the denial of this parole because there were other reasons other than the Respondent's prior record that led to his denial, this case should have been upheld

because there exists no error nor resulting prejudice. To warrant reversal the Appellant must show both error of the ruling and resulting prejudice. *Burroughs v. Worsham*, 352 S.C. 382, 574 S.E.2d 215 (S.C. App. 2002).

3. The denial of parole was lawful and supported by substantial evidence.

The Respondent argues that the Board member's misunderstanding caused his denial of parole so this matter should be remanded to correct this misunderstanding. The ALJ agreed with this argument and decided to remand the case back to the board. The Appellant argues that this decision was made in error due to the fact it was proven with substantial evidence that the Board considered all of the mandatory criteria, and gave valid and lawful reasons for denial. The Respondent failed to reveal any substantial evidence revealing that this misunderstanding had anything to do with the final decision of the parole board. The substantial evidence rule is what is applied to all Administrative Law Court hearings.⁴ Substantial evidence must be provided in order to reverse the decision of an administrative agency. The findings of the administrative agency are presumed correct and will be set aside only if supported by substantial evidence. *Summersell v. South Carolina Department of Public Safety*, 334 S.C. 357, 513 S.E.2d 619 (1999).

Substantial evidence is evidence which considering the record as a whole would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action. *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 304 (1981). The Appellant was denied parole due to the nature and seriousness of the offense of murder; the use of a knife in committing this offense; the amount of violence that occurred in the commission of this offense; and a prior record that indicated poor community adjustment. The Respondent would admit that he is currently

⁴ The South Carolina Administrative Procedures Act, S.C. Code Ann. Sections 1-23-310 – 400 (2005), establishes the "substantial evidence" rule as the standard for judicial review of a decision of an administrative agency. *S.C. Dept. of Motor Vehicles v. Nelson*, 364 S.C. 514, 518, 613 S.E.2d 544, 546 (2005).

incarcerated for the offense of murder, and he never objected to the facts of the crime. The Respondent also admits that he does have a prior criminal record. The length or seriousness of his prior this record does not matter, this is due to the fact it is up to the Board and not the courts to decide the weight on questions of fact. If the Board believes his record indicated poor community adjustment they are obligated to deny parole. This decision should have been upheld by the ALJ. If the substantial evidence test was applied the ALJ would have found that a reasonable person would have denied parole for these reasons. Nothing was presented that revealed that this misunderstanding was instrumental to the Respondent's denial of parole. The ALJ erred in making the determination that this case should be remanded for a new hearing to clear up a misunderstanding that was not shown to be relevant to the final decision.

The Respondent argued that he was denied due process due to the amount of information placed in the record. The ALJ is only obligated to make a decision regarding if the Board considered all of the mandatory criteria. The record provides sufficient information revealing that the mandatory criteria was considered prior to the final decision. The misunderstanding was not a determining factor in the denial of parole. The factors that did determine this decision was the violent crime that the Respondent committed, the violent nature in how it was committed, the use of a deadly weapon, and the fact he committed prior offenses that reveals an inability for community adjustment. These are valid and lawful reasons for denial. The Board must be completely satisfied that the inmate would not be a threat to society if released. A decision that remains solely up to the Board and not the Courts. 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 Respondent was allowed a

hearing where he was represented by competent counsel and allowed to present any evidence in mitigation, so he was never denied due process.

The Appellant admits there was a misunderstanding about what was stated about the Respondent's prior record. However, there exists no proof that the denial of parole was due to this misunderstanding. The record reveals that this did not have any bearing on the final decision. The Respondent was denied parole due to the offense committed and the prior record that he admitted to having. If the Respondent had no criminal record and one of the reasons given for denial was due to a prior criminal record there would exist a more valid reason for this case to be remanded. But this is not case; there was no mistake in the decision of the Parole Board. The Respondent does have a prior record, which regardless of what it contains can be used as a valid reason for denial. The ALJ's reasoning for remand was due to the fact no evidence of a prior record was placed in the record. The Respondent admitted that he has a prior record. There is no mentioning by the Board that his prior record was so violent that parole was denied. The Board never placed any reason on the order of denial that the Respondent did not admit to. There is no reason to place his prior record in the record on appeal when it was admitted by both parties. There exists no error, nor was the Appellant obligated to include this into the record, because it was stipulated by the Respondent that he did in fact have a prior record.

The Respondent argued that the Appellant should be responsible for reciting an explanation in the record as to why parole was denied. In *Cooper*, Supreme Court clearly decided what the Board must include a finding of fact and conclusion of law separately stated. This was included in the order of denial. Nothing in *Cooper* or any statutory law states that the Board is obligated to recite an explanation for the denial of parole. This is due to the fact the reasons are self-explanatory. The Respondent was denied parole due to the violent act of murder and his past

criminal record which the Board believes reveals he cannot function in the community. It is obvious that the Respondent was denied parole due to the nature and seriousness of the offense and his prior record. These are valid reasons for denial. Any explanation as to why the Board came to this conclusion is unnecessary because the reasons were clearly displayed in the order of denial which pursuant to *Cooper* is the only thing needed to validate this decision.

There exists no law that states the consideration must be stated on the record. According to *Cooper* all that must be revealed is that the criteria was considered and the reasons as to why parole was denied. These must be in writing and separately stated. *See*, S.C. Code Ann. §1-23-350 (2018). There is also no particular format that it must be written. An administrative agency's findings of fact and conclusions of law need not be presented in a particular format, as long as they are sufficiently detailed to enable reviewing court to determine whether factual findings are supported by evidence and whether the law has been correctly applied. *Cloyd v. Mabry*, 295 S.C. 86, 367 S.E.2d 171 (1988). The order of denial was quite detailed as to which criteria was considered and what were the reasons for denial.

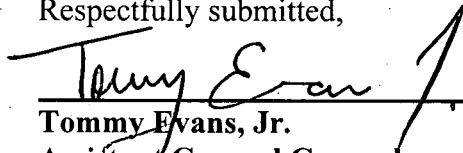
No misunderstanding caused the Board to deny parole. The Respondent was denied parole due to the serious offense of murder; that it was committed in a violent manner; the fact a knife was used in the commission of this offense; and a prior record that reveals poor community adjustment. What this prior record consists of is irrelevant for a review by the ALJ. That is because the weight given to a question of fact are decided by the Board and not the courts. It would have been a different situation with an inmate having no prior record and the Board used this as a reason for denial. That would have created a valid argument regarding the unlawful use of a reason for denial. However, the Respondent acknowledged he does have a prior criminal record, so no error exists. The reasons given were valid and lawful reasons for denial.

No substantial evidence was presented revealing that the misunderstanding made by the member of the Parole Board caused the denial of parole. There was substantial evidence revealing that the Board considered all of the mandatory criteria, and the reasons for denial were lawful and valid. Due to an error made by the ALJ remanding the case back to the Parole Board the Appellant would respectfully request this Court reverse the decision of the ALJ.

CONCLUSION

No substantial evidence revealed that the Respondent's denial of parole was due to a misunderstanding regarding his prior record. Since the Board has revealed all of the mandatory criteria was considered the ALJ erred in remanding this case back to the Parole Board. The Appellant would not respectfully request this Court to reverse the decision of the ALJ.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant, hereby certify that this 14th day of October, 2019, I served the Initial Brief of Appellant and Designation of Matter by first class mail, postage prepaid as follows:

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



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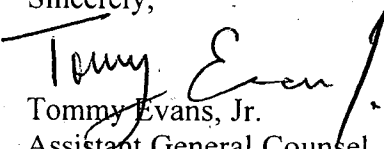
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RE: David George Smith v. SCDPPPS

Dear Mr. Andrews:

Please find enclosed copies of the matter we designated for inclusion in the Record on Appeal.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

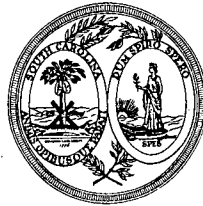
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cc: The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals

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October 14, 2019

The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

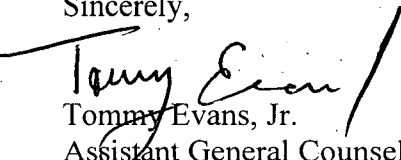
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Re: David George Smith v. SCDPPPS

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Appellant and Designation of Matter dated October 14, 2019, along with proof of service in the above referenced case.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures

cc: Stuart Andrews, Esquire

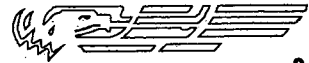
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