

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
Milton G. Kimpson, Administrative Law Judge

Appellate Case No:2019-001853
Docket No:19-ALJ-15-0015-AP

Emiah Anderson, #173165,

Appellant,

V.

South Carolina Department of Probation, Parole
and Pardon Services,

Respondent,

INITIAL BRIEF OF APPELLANT

1/s/ Emiah Anderson #173165
Mr. Emiah Anderson, #173165
ACI. Bamberg Unit F-4 B#45
1057 Revolutionary Trail Hwy47
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Appellant

Mr. Tommy Evans, Jr. Asst. Gen. Counsel
S.C. Dept. of Probation, Parole,
and Pardon Services
2221 Devine St., Suite#600
P.O. Box 50666
Columbia, S.C. 29250
(803)734-9220

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TABLE OF AUTHORITIES

CASES

- * Barton v. S.C. Dept. of Probation, Parole, and Pardon Services, 404 S.C. 345, 403, 745 S.E.2d. 110, 114 (2013) citing U.S. Const. art#1 § 9 & 10, and S.C. Const. art#1 § 4.
- * Cooper v. S.C. Dept. of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d. 106 (2008).
- * Donka v. Portage Cnty, 523 F.3d. 776, 781 (7th Cir. 2008).
- * Dyer v. Bowlen, 465 F.3d. 280, 288 (6th Cir. 2006).
- * Griffin v. State, 315 S.C. 285, 433, S.E.2d. 862 (S.C. 1993).
- * Harper v. Young, 64 F.3d. 583, 564 (10th. Cir. 1995).
- * Jernigan v. State, 340 S.C. 256, 261, 531 S.E.2d. 507, 509 (2000).
- * State v. Gaster, 349 S.C. 545, 550, 564 S.E.2d. 87, 90 (2002).
- * State v. Huiett, 302 S.C. 169, 394, S.E.2d. 486 (S.C. 1990).
- * State v. Walls, 348 S.C. 26, 30, 558 S.E.2d. 524, 525 (2000).
- * Sullivan v. S.C. Department of Corrections, 355 S.C. 437, 441, 586 S.E.2d. 124, 126 (2008).
- * Swarthout v. Cooke, 131 S.Ct. 859, 862 (2011).
- * Weaver v. Graham, 450 U.S. 24, 101, S.Ct. 960, 67 L.Ed 17 (1981).

STATUTES:

- S.C. Ann. § 24-21-10(F)(1) (Supp. 2018) Form 1212
- S.C. Ann § 24-21-640 Criteria outlined for Review

U.S. Const. and S.C. Const.

- U.S. Const. art#1 § 9 & 10.
- S.C. Const. art#1 § 4.

STATEMENT OF ISSUES ON APPEAL

1). Whether the Board's decision to deny the Appellant's parole was made upon an unlawful procedure?

2). Whether the Board's criteria for parole consideration violated the Ex Post Facto Clauses of the United States and South Carolina Constitutions?

STATEMENT OF THE CASE

The Appellant, made his initial appearance before the Parole Board on May 12th, 2010. Upon the completion of the hearing the Board decided to deny the Appellant an opportunity to be released on parole. The Appellant, asserts that he is entitled under the Sentence Reform Act, to mandatory release a program of Supervised Re-entry (SRP) that will provide a period of transitional community supervision for inmates up to 180 days prior to the maximum sentence of incarceration. The term of supervision is developed by the Department consistent with an evidence based risk and needs assessment.

Since, his initial denial the Appellant, believes that he were being denied for the same hypothetical reasons. At, the time of the Appellant's crime were committed, South Carolina law allowed an individual serving a life sentence for murder parole eligibility upon the service of twenty years.

The most recent appearance occurred on March 20th, 2019, the parole board denied the Appellant, due to the considerations of the board's criteria's.

After, notification of the Board's decision the Appellant, filed his Notice of Appeal, before the Administrative Law Court, on April 3rd, 2019. The case was assigned to the Honorable Milton G. Kimpson, Administrative Law Judge on April 10th, 2019. The Respondent, filed its Record on Appeal on May 17th, 2019, and its brief on July 18th, 2019. Appellant filed his brief on July 26th, 2019. The Order of the Administrative Law Judge was filed on October 25th, 2019. The Appellant's Notice of Appeal was received by the S.C. Court of Appeals on November 6th, 2019. Appeal follows:

FACTS

DISCUSSION

- 1). Appellant, believes that the Department has created a "De-Facto life sentence", sentences that exceeds the offender's life expectancy and has been the trend for the last two decades in this State.

- 2). Bringing Back Parole! The United States Constitution of 1970, Art#1 Sec.2 states that all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.

- 3). However, between the dissolution of parole in the late 70's and the creation of the creation of the "Truth-in-Sentencing-Laws", in the late 90's, has indeed violated the Ex Post Facto Clause and the sentencing objective in the Constitution. As, a result, has created a De-Facto Life Sentence.

- 4). The Rehabilitation Initiative is born from the idea that every offender who rehabilitates himself, through an educational, vocational, and/or self help programs, deserves a meaningful opportunity to earn his/her freedom, especially if those offenders have served in excess of twenty years.

ARGUMENTS

1. The Board's decision to deny the Appellant's parole was a decision made upon an unlawful procedure.

(a). The Appellant argues that the procedure used in statutory criteria of section §24-21-640, set forth in Form 1212, prejudiced the Appellant, because it had not been subsequently amended into law since 1985. Therefore, since his incarceration the South Carolina law that was established allowed individuals serving a life sentence for murder parole eligibility upon the service of twenty years.

(b). The Rehabilitation Initiative is born from the idea that every offender who rehabilitates himself through an educational, vocational or self-help programs deserves a meaningful opportunity to earn his/her freedom especially if those offenders have served in excess of twenty years.

(c). The criteria section §24-21-640, has disadvantaged the Appellant, and he believes that he is entitled to relief. See * State v. Gaster, 349 S.C. 545, 550, 564 S.E.2d 87, 90 (2002) citing * Jernigan v. State, 340 S.C. 256, 261, 531 S.E.2d. 507, 509 (2000).

(d). Appellant argues that he has a liberty interest in retaining parole. See * Donka v. Portage Cnty., 523 F.3d. 776, 781 (7th Cir. 2008), * Harper v. Young, 64 F.3d. 563, 564 (10th Cir. 1995), * Swarthout v. Cooke, 131 S.Ct. 859, 862 (2011), and * Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 441, 586 S.E.2d. 124, 126 (2003).

ARGUMENTS CONTINUED

2. The Board's criteria for parole consideration did violate the Ex Post Facto Clauses of the United States and the South Carolina Constitutions.

(a). Appellant argues that the Board's criteria section §24-21-10(F)(1) (Supp. 2018) and Section §24-21-640, that authorizes the Parole Board discretion to deny the Appellant's parole falls within the ambit of an Ex Post Facto prohibition and therefore, constitutes a statute or provision that is either criminal or penal in purpose. See * State v. Huiett, 302 S.C. 169, 394 S.E.2d. 486 (S.C. 1990), * Griffin v. State, 315 S.C. 285, 433 S.E.2d. 362 (S.C. 1993), * Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d. 17 (1981) citing U.S. Const. art#1 § 9 & 10, and S.C. Const. art#1 § 4, and See * Barton v. South Carolina Department of Probation, Parole, and Pardon Services, 404 S.C. 395, 403, 745 S.E.2d. 110, 114 (2013) citing U.S. Const. art#1 § 9 & 10, and S.C. Const. art#1 § 4, It is well recognized that an 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 after the crime was committed.

CONCLUSION

WHEREFORE, the Appellant, Emiah Anderson, #173165, respectfully asks this Honorable Court to grant relief of mandatory release on supervision community re-entry as an alternative to incarceration based upon the Sentencing Reform Act, and participation into an rehabilitative program held at the Allendale Correctional Institution and any other form of relief that the Appellant may be entitled to as a matter law.

Dated: 12-4-19

Respectfully submitted,

/s/ Emiah Anderson # 173165

Mr. Emiah Anderson, #173165
ACI. Bamberg Unit F-4 B#45
1057 Revolutionary Trail Hwy47
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Appellant

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Appellant,

v.

South Carolina Department of Probation, Parole,
and Pardon Services,

Respondent,

PROOF OF SERVICE

I, Emiah Anderson, #173165, hereby certify that I have served a true copy of the Initial Brief of Appellant, along with the Designation of Matter to be included in the Record on Appeal, by depositing into the Allendale Correctional Institution mailroom on this 4th day of December, 2019, addressed to: Mr. Tommy Evans, Jr., Asst. General Counsel, S.C. Department of Probation, Parole, and Pardon Services, 2221 Devine St., Suite #600, P.O. Box 50666, Columbia, S.C. 29250.

Dated: December 4th 2019

Respectfully submitted,

1s Emiah Anderson #173165

Mr. Emiah Anderson, #173165
ACI. Bamberg Unit F-4 B#45
1057 Revolutionary Trail Hwy47
P.O. Box 1151

Fairfax, S.C. 29827

Pro-Se Appellant

Dated: 12-5-19

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

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RE: To file the Appellant's Initial Brief, Designation of Matters to be included in the Record on Appeal, along with an Proof of Service.

Emiah Anderson, #173165, Appellant, v. South Carolina Department of Probation, Parole, and Pardon Services, Respondent,
Appellate Case No: 2019-001853, Docket No: 19-AW-15-2015-AP

Dear Ms. Kitchings,

Enclosed you will find the Initial Brief, Designation of Matter to be included, along with an Proof of Service. Please file and send back an clocked stamped copy for my records.

Sincerely
xEmiah Anderson #173165
Mr. Emiah Anderson #173165
ACT. Bamberg Unit F-4 B#45
P.O. Box 1151
Fairfax, S.C. 29827

Mr. Emiah Anderson, #173165
ACI, Bamberg Unit F-4 B#45
1057 Revolutionary Trail Hwy 47
P.O. Box 1151
Fairfax, SC, 29827

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The Honorable Jenny A. Kitchings
Clerk, of the S.C. Court of Appeals
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