

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
SC Department of Probation, Parole and Pardon Services

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FEB 13 2020
SC Court of Appeals

Deborah B. Durden, ALJ

Case No. 2019-002065

Calvin Smith, 090424,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

INITIAL BRIEF OF APPELLANT

Calvin Smith, 090424
KER.CI/HD2293013
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

Other Counsel of Record:

Tommy Evans, Jr,
SCDPPPS Assistant Counsel
P.O. Box 50666
Columbia, SC 29250

TABLE OF AUTHORITIES

Cases:	Page
Cooper v. SCDPPPS, 661 S.E.2d 106 (2008)	2
Jernigan v. State, 531 S.E.2d 507 (2000)	1-2
Rose v. SCDPPPS, WL465696 (2020)	2
Constitution:	
SC Constitution Article 1, §4	2
SC Constitution Article 1, §22	2
US Constitution Article 1, §§9,10	2
Statutes:	
SC Code Ann. §16-3-20	2
SC Code Ann. §24-21-10(F)(1)	2
SC Code Ann. §24-21-645	1-2
Other Authorities:	
Due Process Clause	1-2
Ex Post Facto Clause	1-2
SCDPPPS Criteria Form 1212	2

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues of Appeal	1
Statement of the Case	1
Facts	1
Arguments:	
1. The Parole Procedure Employed by SCDPPPS Violates Appellant's Parole Eligibility Status.	1-2
2. The Parole Officials Considered an Impermissible Factor When Denied Appellant Parole.	2
3. The SCDPPPS Had A Policy Destroying Records of Parole Hearings Between 1986 through 2013, Which Made It Difficult to Determine That Appellant Was Wrongly Denied Parole.	2
Conclusion	2
Designation of Matter	3
Proof of Service	4

STATEMENT OF ISSUES OF APPEAL

1. Whether the Parole Procedure Employed by SCDPPPS Violates Appellant's Parole Eligibility Status?
2. Whether the Parole Officials Considered an Impermissible Factor when Denied Appellant Parole?
3. Whether SCDPPPS had a Policy Destroying Records of Parole Hearings between 1986 through 2013, which made it difficult to determine that Appellant was Wrongly Denied Parole?

STATEMENT OF THE CASE

Appellant appeared before the Parole Board on 1/23/19, in which he was denied parole on fixed immutable factors. The Appellant received his Notice of Rejection dated 1/24/19 a week later. Appellant submitted a request for reconsideration based on *Jernigan v State*, 531 S.E.2d 507 (2000), regarding an increase in punishment because of the change of his parole hearing eligibility review from annually to biannually. As of this date, the Parole Officials have not responded to Appellant's request for a reconsideration. Appellant appealed his notice of rejection to the ALC, but the ALC denied the appeal and affirmed the SCDPPPS notice of rejection. This appeal follows.

FACTS

Appellant has been wrongly denied parole because SCDPPPS has incorrectly calculated his parole hearing eligibility review from annually to biannually, along with incorrectly calculated the votes necessary to receive parole prior to 1986 through 2013, and simply routinely denied parole to him an eligible inmate for parole between 1986 and 2013. In addition, the Board denied Appellant parole for impermissible factors of the immutable fixed criteria except a determination based on his objective and predictive criminogenic factors, because the Appellant does not pose a threat to society, the victim, nor himself. It is undisputed that the Appellant has been a model prisoner, incurring no disciplinary infractions while imprisoned.

ARGUMENTS

1. The Parole Procedure Employed By SCDPPPS DID Violate Appellant's Parole Eligibility Status.

The Appellant asserts that his parole reviews from annually to biannually violates his due process rights under §24-21-645, state-created liberty interest because biannual reviews has produced a sufficient risk of increasing the measure of punishment attached to his offense, and retroactive application constitutes an ex post

facto violation in accordance to U.S. Constitution Article 1, §§9,10, and the S.C. Constitution Article 1, §4. SCDPPPS has alter the punishment of his offense sentencing under §16-3-20, of S.C. Code Ann.. In *Jernigan v. State*, 531 S.E.2d at 511 (2000), the Court determined that the change from annual parole eligibility review to biannual review produced a sufficient risk of increasing the measure punishment attached to covered crimes.

2. The Parole Officials DID Considered An Impermissible Factor When Denied Appellant's Parole.

The Appellant asserts that the Board considered the immutable factors only that does not pertain to his behavior or adjustment while in confinement, including his progress in counseling, therapy, of character base programs designed to encourage him to improve himself in accordance to SCDPPPS Criteria, and §24-21-10 (F)(1), objective and predictive criminogenic factors that was not listed in the notice of rejection issued to him. In *Cooper v. SCDPPPS*, 661 S.E.2d 106 (2008), the Court holds that parole is a privilege and Cooper has no right to be paroled; however, Cooper does have a right to require the Parole Board to adhere to statutory requirements in rendering a decision. He further contends that impermissible immutable factors alone effectively increases the quantum of punishment against the Appellant in violation of Article 1, §22, of S.C. Constitution without a proper review of SCDPPPS unlawful procedures and arbitrary or capricious actions towards the Appellant.

3. The SCDPPPS DID Had A Policy Destroying Records Of Parole Hearings Between 1986 Through 2013, Which Made It Difficult To Determine That Appellant Was Wrongly Denied Parole.

The Appellant incorporates arguments 1 and 2 herein verbatim in this argument. In addition, [he] asserts with emphasis that the Board incorrectly calculated the votes necessary to receive parole prior to 2013 and between 1986 to then, but doing so the Board simply routinely denied his parole to him an eligible prisoner. SEE: *Rose v SCDPPPS*, WL465696 2020. Appellant contends that it is more likely that he have received the majority of votes in favor for parole during the course of his parole hearings prior to 2014 as required in accordance to §24-21-645, of SC Code Ann., and Article 1, §22 of S.C. Constitution, but due to the Board's arbitrary or capricious unlawful procedures it employed to deny him parole by incorrectly calculated the votes necessary to receive parole. The Board stated in *Rose* that there is actual evidence that it does not have any evidence of the vote count in its own records which it destroyed between 1986 through 2013. The matter is not moot and it's not waived because the Board misled the Court with *Cooper* from 2008 through 2013 by saying it followed the criteria, but in violation of §24-21-645.

CONCLUSION

Based on the foregoing this Appellant request that his appeal be granted and be remand for anew parole hearing informing him of the conditions for his parole.

s/ *Calvin Smith*
Calvin Smith, 090424
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Kershaw, SC 29067

February 10, 2020

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PROOF OF SERVICE

I certify that I have served my Initial Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal on the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, on February 10, 2020, addressed to its counsel of record, Tommy Evans, Jr., SCDPPPS, P.O. Box 50666, Columbia, SC 29250.

s/ *Calvin Smith*

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February 10, 2020

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SC Court of Appeals
Jenny A. Kitchings, Clerk
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE: Smith v. SCDPPPS, 2019-002065

Dear Mrs. Kitchings:

Enclosed for filing are the following:

1. Initial Brief of Appellant;
2. Designation of Matter; and
3. Proof of Service.

Thank you for your services.

Sincerely,

s/ *Calvin Smith*

Calvin Smith, 090424
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Kershaw, SC 29067

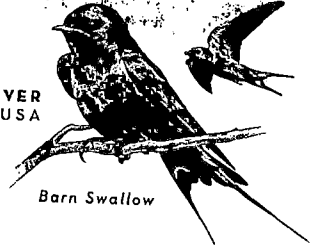
Enclosures

cc: Tommy Evans, Jr., SCDPPPS

Calvin Smith #090424
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