

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT  
Deborah B. Durden, ALJ  
Appellate Case No. 2019-002065

Calvin Smith, 090424

**RECEIVED**  
APR 08 2020  
SC Court of Appeals  
Appellate

v.

South Carolina Department  
of Probation, Parole and  
Pardon Services,

Respondent.

FINAL REPLY BRIEF OF APPELLANT

Calvin Smith, 090424  
KER.CI/HD229  
4848 Goldmine Hwy.  
Kershaw, SC 29067

pro se

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## Statement of Issues on Appeals

The Appellant submit that he incorporate verbatim each and every statement of issues on appeal herein as stated in his Initial Brief of Appellant.

## Statement of the Case

The Appellant submit that he incorporate verbatim the statement of the case herein as stated in his Initial Brief of Appellant.

## Facts

The Appellant submit that he incorporate verbatim the Facts herein as stated in his Initial Brief of Appellant.

## Arguments

The Appellant submit that he incorporate verbatim the Arguments herein as stated in his Initial Brief of Appellant.

## REPLY

Appellant comes now and make his Reply to the Respondent's Initial Brief dated February 28, 2020, in which he received on March 6, 2020. Respondent's Brief is completely out of order because Matthew C. Buchanan, General Counsel is not the attorney on record. In addition, Respondent's Statement of Issues on Appeal does not relate to Appellant's case. The Respondent has included someone else's Statement of Issues on Appeal in the brief. Furthermore, the Respondent is in violation of constitutional or statutory provisions under the 14th Amendment of the constitution and §24-21-645 of S.C. Code Ann., because the Appellant is only being allowed to appear before the Board every two years in violation of the Ex Post Facto Clause that says "No State shall...pass any...ex post facto law...." U.S. Constitution Art. 1, §10, cl. 1. SEE: Jernigan v. State, 531 S.E.2d 507 (1999). The policy the Respondent asserts is arbitrary or capricious whereby Appellant had been appearing before the Board annually, and allowed to reappear before the Board until it created a policy unconstitutionally that was not issued to the Appellant. Section 24-21-645 was the existing law at the time, in which the Appellant came under the umbrella of §24-21-645 at the time of his offense and conviction. Appellant offense(s) occurred prior to June 15, 1981, in which he contends entitled him to annually parole consideration hearings under the statutes in effect at that time. In 1981, the South Carolina legislature created a law that allowed "all inmates" to have the ability to appear before the Board on a yearly basis, prospectively and retroactive to "all inmates." Appellant asserts that the bi-annual hearings create a quantum of a risk to violence that would impede the conditions for the Board to grant parole.

Appellant contends that the Board did not apply the objective criteria under §24-21-10(f)(1), of SC Code Ann., because that law requires parole decisions to be based on forward-looking risk factors rather than the unchangeable fixed factors in its own rules, which the Board uses for parole denials. Also, the Board has not issued those objective criteria or the forward-looking risk factors required, and not doing so, the Respondent has employed unlawful procedure to deny him a fair parole proceeding. The Board has not established the additional written, objective criteria in accordance to §24-21-10(f)(1). Appellant's record as currently this date indicates that the Appellant has been non-violent since his conviction, and that he has not failed during his imprisonment, in which his overall record today and behavior requires parole decision to be based on forward-looking risk factors, and to rule otherwise, and for the Board not to rely upon his current record based on forward-looking risk factors surely impose an impossible mental exercise upon the members of the Board to release qualified inmates who are eligible and good candidates for parole. Appellant contends that the members of the Board does not consider redemption or atonement in its decision-making process, thus, making its decision arbitrary or capricious whereby his current record is evidence that he poses no high risk to public safety, and shows that he is accountable to move on with his life outside of prison.

Rose v. SCDPPPS, 2020 WL465696 was recently ruled on during the pending and process of this appeal. The Appellant submits that he incorporate verbatim the fact that he is an inmate that was improperly denied parole between 1993 to 2013, and based on the Respondent's own admission it destroyed records that prove he was denied fair parole hearings in 1993 through 2013, under unlawful procedures. Appellant request that this Court consider this issue and apply Rose retroactive in his case.

#### Conclusion

Based on the foregoing reasons, the ALC was incorrect to conclude that the Board followed procedures under §24-21-10(f)(1), SC Code Ann., Objective Parole Law that requires parole decisions to be based on forward-looking risk factors. The Appellant request this Court to reverse the decision of the ALC.

Respectfully submitted,

s/ *Calvin Smith*

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March 31, 2020