

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
Docket No. 19-ALJ-15-0039

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SC Court of Appeals

APPEAL OF THE FINAL DECISION
OF THE ADMINISTRATIVE LAW COURT

Honorable Deborah Brooks Durden, Administrative Law Judge

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

v.

MICHAEL J. PETTINATO, #218405,.....APPELLANT

NOTICE OF APPEAL

I, Michael J. Pettinato, the above Appellant, herein APPEAL the Final Decision (Order) of the Honorable Deborah Brooks Durden, dated March 12, 2020 a true copy of which is attached hereto. Appellant received the Final Decision (Order) on March 18, 2020.

April 13, 2020
Turbeville, South Carolina

Michael J. Pettinato, #218405
Turbeville C.I., SNB-150
1578 Clarence Coker Highway
Turbeville, SC 29162
(NO TELEPHONE)

Appellant, Pro Se

OTHER COUNSEL OF RECORD:

Octavia Wright, Esquire
Legal Counsel
South Carolina Department of
Probation, Parole and Pardon Services
P.O. Box 207
Columbia, SC 29202
(803)734-9220

Counsel for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. DID THE ALC ERR IN HOLDING THAT PETTINATO RECEIVED SUFFICIENT NOTICE OF THE ISSUES TO BE ADDRESSED AT HIS PAROLE HEARING AND A MEANINGFUL OPPORTUNITY TO PRESENT EVIDENCE AND ARGUE HIS CASE ON ALL ISSUES INVOLVED WHERE SOME OF THOSE ISSUES DID NOT COME TO LIGHT UNTIL AFTER THE BOARD DISMISSED PETTINATO FROM THE ROOM AND SPOKE WITH ONE OF PETTINATO'S DAUGHTERS AND WHERE PETTINATO WAS PREJUDICED IN THAT HAD HE BEEN PROVIDED NOTICE PRIOR TO BEING DISMISSED FROM THE ROOM, TWO OF HIS DAUGHTERS WERE PRESENT AND WOULD HAVE TESTIFIED AS TO THE FALSE INFORMATION PROVIDED TO THE BOARD AS WOULD AVAILABLE COURT RECORDS?
2. DID THE ALC ERR IN IMPLICITLY HOLDING THAT THE BOARD HAD NOT DECLARED THAT PETTINATO IS PERMANENTLY INELIGIBLE AND UNSUITABLE FOR PAROLE BASED ON THE BOARD'S USE OF PERMANENT FACTORS THAT ARE PERMANENTLY INSEPARABLE FROM THE CRIME AND DOES THE USE BY THE BOARD, OF FACTORS THAT ARE PERMANENTLY INSEPARABLE FROM THE CRIME FOR WHICH A PRISONER IS CURRENTLY COMMITTED, VIOLATE DUE PROCESS AND RENDER THE PAROLE HEARING FUNDAMENTALLY UNFAIR?
3. DID THE ALC ERR IN HOLDING THAT THERE IS NO INDICATION THAT THE LEGISLATURE INTENDED TO CREATE A PRESUMPTION THAT PAROLE BE GRANTED AFTER A PRISONER SERVES THE MANDATORY MINIMUM SENTENCE AND MEETS THE STATUTORY CRITERIA DESPITE THE PLAIN LANGUAGE OF S.C. CODE ANN. § 24-21-640 AND OTHER RELEVANT FACTORS ASSOCIATED WITH THE DOCTRINE OF LEGISLATIVE INTENT AND DOES THE TERM "MAY BE PAROLED" AS USED IN THIS STATUTE, VEST THE BOARD WITH BROAD OR ABSOLUTE DISCRETION TO DENY PAROLE FOR ANY REASON OR NO REASON AT ALL?
4. DID THE ALC ERR IN HOLDING THAT PETTINATO'S CONTENTION THAT THE ORDER DENYING PAROLE (REJECTION LETTER) IS UNLAWFUL AND INVALID WHERE IT APPEARS TO BE A COMPUTER GENERATED COPY, IS NOT FILED OR STAMPED IN ANY WAY TO SHOW THAT IT IS OFFICIAL AND/OR AUTHENTIC AND IS NOT SIGNED BY THE CHAIRMAN OR ANY OTHER PAROLE BOARD MEMBER, WHO ARE THE ONLY PERSONS AUTHORIZED BY LAW TO GRANT OR DENY PAROLE, IS WITHOUT MERIT?
5. DID THE ALC ERR IN HOLDING THAT PETTINATO RECEIVED AN ADEQUATE AND SUFFICIENT STATEMENT OF REASONS DENYING HIM PAROLE IN WHICH TO PROVIDE HIM WITH "NOTICE" [OF THE TRUE REASONS FOR DENYING PAROLE] AND A REASONABLE OPPORTUNITY TO OBTAIN ADEQUATE AND MEANINGFUL JUDICIAL REVIEW WHERE THE BOARD FAILED TO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW WHICH ARE REQUIRED AS A MATTER OF DUE PROCESS AND PURSUANT TO SOUTH CAROLINA STATUTORY AND SUPREME COURT CASE LAW?

6. DID THE ALC ERR IN DENYING PETTINATO'S MOTION TO PROCEED IN FORMA PAUPERIS WHERE PETTINATO OTHERWISE QUALIFIES TO PROCEED IN THE ADMINISTRATIVE LAW COURT AS A POOR PERSON AND WHERE PETTINATO WAS PREJUDICED IN THAT HE WAS, BECAUSE OF HIS STATUS OF BEING POOR, UNABLE TO OBTAIN THE TRANSCRIPTS AND/OR DVD OF ANY OF HIS THREE PAROLE HEARINGS TO INCLUDE IN THE RECORD ON APPEAL, WHICH IS THE ONLY METHOD FOR HIM TO ESTABLISH THAT FALSE INFORMATION WAS PRESENTED TO THE BOARD AND THE BOARD RELIES ON THAT INFORMATION EACH TIME PETTINATO APPEARS BEFORE THE BOARD, TO HIS DETRIMENT?

7. DID THE ALC ARBITRARILY DENY PETTINATO'S MOTION TO ENLARGE HIS BRIEF AND WAS PETTINATO PREJUDICED AS A RESULT WHERE LIMITING HIS INITIAL BRIEF TO 10 PAGES PREVENTED HIM FROM FULLY AND ADEQUATELY BRIEFING THE FIVE ISSUES HE WAS ABLE TO BRIEF, COMPELLED HIM TO DELETE OTHER ISSUES THAT HE INTENDED TO APPEAL, AND WHERE THE RESPONDENT DID NOT OBJECT AND NEITHER THE RESPONDENT NOR THE COURT WOULD HAVE BEEN PREJUDICED HAS PETTINATO'S MOTION BEEN GRANTED?

8. DID THE ALC ARBITRARILY DISMISS PETTINATO'S APPEAL WHERE THE ALC FAILED TO CONSIDER PORTIONS OF ARGUMENTS PRESENTED BY PETTINATO IN HIS INITIAL AND REPLY BRIEFS WHERE PETTINATO WAS PREJUDICED AS A RESULT?

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**APPEAL OF THE FINAL DECISION
OF THE ADMINISTRATIVE LAW COURT**

Honorable Deborah Brooks Durden, Administrative Law Judge

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

v.

MICHAEL J. PETTINATO, #218405,.....APPELLANT

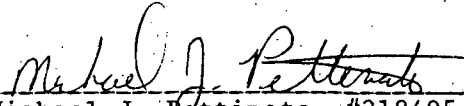
CERTIFICATE OF SERVICE

I, Michael J. Pettinato, **CERTIFY** under penalty of perjury that I have on this date, served a Notice of Appeal; a Request To Proceed In Forma Pauperis; an Affidavit In Support Of Request To Proceed In Forma Pauperis; and a True Copy of the Order being Appealed, upon the Administrative Law Court and the above Respondent, by hand delivering same to a Mail Room Clerk at the Turbeville C.I., for deposit into the U.S. Mail, First Class Postage prepaid and addressed as follows:

Honorable Deborah Brooks Durden
Administrative Law Judge
Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, SC 29201

Octavia Wright, Esq.
S.C Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, SC 29202

April 13, 2020
Turbeville, South Carolina


Michael J. Pettinato, #218405
Turbeville C.I., SNB-150B
1578 Clarence Coker Highway
Turbeville, SC 29162
(NO TELEPHONE)

Appellant, Pro Se

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael J. Pettinato, #218405,

Docket No. 19-ALJ-15-0039-AP

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

ORDER

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SC Court of Appeals

This case is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Anthony Enriquez (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On February 27, 2019, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant of its determination that he was denied parole. On March 30, 2019, Appellant submitted a request a rehearing. On July 22, 2019, the Department responded to Appellant advising that there is no rehearing/appeal process for the routine denial of parole. Appellant filed an appeal with the ALC on August 9, 2019. A Notice of Motion and Motion to Proceed in Forma Pauperis and Affidavit in support of that motion accompanied his appeal. In this motion, Appellant stated that he is unable to pay for expenses related to obtaining the transcripts and/or DVDs of his parole hearings of June 11, 2014, October 11, 2016, and February 27, 2019 (collectively, Parole Hearings), the final decision being appealed, and to prosecute this appeal. Appellant asks this Court to order the Department to provide a copy of the transcripts and/or DVDs of his Parole Hearings. Appellant has made no showing that the 2014 and 2016 transcripts he seeks are relevant to his appeal of his February 27, 2019 department determination. It is the responsibility of Respondent to provide the record on appeal related to its February 2019 decision. Therefore, the Motion to Proceed in Forma Pauperis is denied.

On September 27, 2019, Respondent filed its Record on Appeal with this Court. On October 21, 2019, Appellant filed a Motion to Enlarge Brief and a Motion for Extension of Time in which to File Initial Brief, with an Affidavit, in the above-referenced matter. In his Motion to Enlarge Brief, Appellant requests an additional eighteen (18) pages beyond the ten-page limit per ALC Rule 60(A), stating that the issues are numerous and complex. In his Motion for Extension of Time in which to

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SC ADMIN. LAW COURT


File his Initial Brief, Appellant requests an additional thirty to ninety days from the date his initial brief is due to file his Initial Brief. This Court did not receive any opposition to the motions. This Court will grant Appellant an **additional thirty (30) days** from the date his initial brief is due to file his Initial Brief. However, a review of the issues on appeal does not reflect that the issues presented are complex or novel. Moreover, the statement of issues is repetitive. Therefore, the Motion to Enlarge Brief is denied.

IT IS THEREFORE ORDERED that the Appellant's Motion to Proceed in Forma Pauperis is **DENIED**.

IT IS ALSO ORDERED that the Appellant's Motion to Enlarge Brief is **DENIED**.

IT IS FURTHER ORDERED that the Appellant's Motion for Extension of Time in which to File Initial Brief is **GRANTED**, and Appellant's Brief shall be due by Friday, December 13, 2019. Respondent shall have twenty days from the date Appellant's brief is filed to submit a brief. Any reply brief must be filed within ten days from the date Respondent's brief is filed.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

November 5, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy herewith in the United States mail, postage paid, or in the Intergovernmental Mail Service addressed to the party(ies) or their attorney(s).
This 5th day of November 2019.
By: R. E. Cer
Judicial Law Clerk

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

March 12, 2020
Columbia, South Carolina

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SC Court of Appeals

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March 12, 2020

SC ADMIN. LAW COURT

Michael J. Pettinato, #218405
Turbeville Corr., Inst., SNB-150
1578 Clarence Coker Highway
Turbeville, SC 29162

April 13, 2020

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

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SC Court of Appeals

RE: S.C. Department of Probation, Parole and Pardon Services,
Respondent vs. Michael J. Pettinato, Appellant
NOTICE OF APPEAL, Docket No. 19-ALJ-15-0039

Dear Ms. Kitchings:

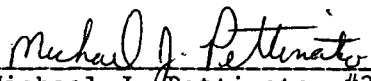
Enclosed for filing in the above referenced case, please find a Notice Of Appeal, a True Copy of the Final Decision (Order) being appealed; a Request To Proceed In Forma Pauperis; An Affidavit In Support Of Request To Proceed In Forma Pauperis; and a CERTIFICATE OF SERVICE of same upon the Honorable Deborah Brooks Durden, Administrative Law Judge, and upon the above Respondent's last known counsel of record.

Also enclosed please find an additional copy of each document that I wish to have clock-stamped and returned to me for my records and a self addressed postage prepaid envelope as is customary.

In addition, if it is decided that I may need a "Request For Waiver Form" or similar Form in order to proceed In Forma Pauperis, please send me such a form so I may complete and return it to your Office.

Thank You in advance for your assistance in this matter.

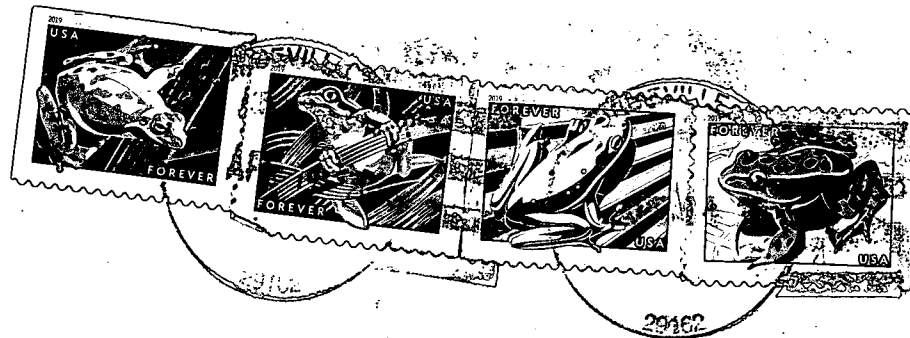
Respectfully,


Michael J. Pettinato, #218405
Turbeville C.I., SNB-150B
1578 Clarence Coker Highway
Turbeville, SC 29162

cc: Honorable Deborah Brooks Durden, ALJ
Octavia Wright, Esquire, Respondent's Counsel of Record
File

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Honorable Jenny Kitchings
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