

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable H.W. Funderburk, Jr. Administrative Law Judge
Case No.: 16-ALJ-15-00010

Appellant Case No. 2018-000660

Melissa Burris #212040,

Respondent,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Appellant.

RECEIVED
AUG 03 2018
RECORD ON APPEAL SC Court of Appeals

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, S.C. 29063

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Tommy Evans
Assistant General Counsel

S. C. Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

ATTORNEY FOR APPELLANT

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

The Honorable H.W. Funderburk, Jr., Administrative Law Judge
Appellate Case No. 2016-002492

Appellate Case No.: 2017-001759

Melissa Burris, #212040, ... Respondent

v.

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

RECEIVED
AUG 03 2018
SC Court of Appeals
Petitioner

APPENDIX

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ATTORNEY FOR THE PETITIONER

Other Counsel of Record:

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ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

The Honorable H.W. Funderburk, Jr., Administrative Law Judge
Appellate Case No. 2016-002492

Appellate Case No.: 2017-001759

Melissa Burris, #212040,.....Respondent ,

v.

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

APPENDIX

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ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Melissa Burris #212040,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services.

NOTICE OF APPEAL

DOCKET NO. -ALJ-15- -

Notice is hereby given that Melissa Burris #212040 does hereby
appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services
dated February 19, 2016 and received on February 24, 2016, a copy of which is attached. A
general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

See Attached

Melissa Burris 212040

Appellant's Name Leath Correctional Ins.

2804 Airport Rd

Mailing Address

Greenwood, SC 29649

City, State, Zip Code

Signed

Tommy A. Thomas, Esq.
Attorney for Appellant

3/21/16

Dated

P.O. Box 58
Irmo, SC 29063

CERTIFICATE OF SERVICE

I hereby certify that I, Jacquelyn E. Miller (your name), on the 21st day of March, 2016 in Irmo (city), South
Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States
Mail, postage paid, and addressed as follows:

Name of person/Agency served: Division of Legal Services SC Dept. Probation, Parole
+ Pardon Services

Address: 2221 Devine St., Suite 600 P.O. Box 50666

City, State, Zip Code: Columbia, SC 29250

Jacquelyn E. Miller

Print your name

(See reverse side for instructions)

Sign your name

Jacquelyn E. Miller

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Melissa Burris #212040,

Appellant

v.

South Carolina Department of
Probation, Parole and Pardon
Services,

Respondent

ATTACHMENT TO
NOTICE OF APPEAL

Notice is hereby given that Melissa Burris #212040 does hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated February 19, 2016 and received on February 24, 2016, a copy of which is attached. A general statement of the grounds for appeal is as follows:

1. Ms. Burris appeared before this Board and was granted conditional parole.
2. Ms. Burris received a letter from the Board dated February 19, 2016 indicating that her parole had been rescinded. Reason for rescission being Nature and Seriousness of the Current Offense, Indication of Violence in this or Previous Offense, Use of Deadly Weapon in this or Previous Offense.
3. Appellant would argue that the reasons stated in their letter of rescission did not change from the date she was granted parole to the time she was rescinded. She received no disciplinaries. Therefore there is no basis to rescind the Appellant's parole.
4. It can only be surmised that the Appellant received an unfavorable psychological. However, her letter or rejection does not state this.

5. Pursuant to the most current South Carolina Parole Board Operating Manual, as well as the South Carolina code of Laws §24-21-610, there are two classes of offenders that are eligible for parole that must undergo a psychological examination. This examination must be conducted by a duly qualified licensed psychologist or psychiatrist before the Board may consider them for parole.
6. It is my understating that Robin Lyn Moody was the person who evaluated Ms. Burris. According to the South Carolina Labor Licensing and Regulation Robin Lyn Moody is a licensed professional counselor and not a psychologist nor a psychiatrist.
7. That Appellant is informed and believes that this evaluation is contrary to statute and procedure and must be performed by a qualified psychologist or psychiatrist.
8. Therefore the Board failed to properly proceed with or comply with its procedural policy. There is no evidence to support the Board's decision and clearly their decision as stated in its letter of rejection dated February 19, 2016 is purely arbitrary and capricious.
9. That this matter should be remanded back to the Department of Probation, Parole and Pardon Services for reexamination and rehearing.

Other Counsel of Record:
Matthew Buchanan, Esq.
Office of General Counsel
P.O. Box 50666
Columbia, SC 29250
Attorney for Respondent

Irmo, South Carolina
March 21, 2016

TOMMY A. THOMAS
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

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

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440

February 19, 2016

Ms. Melissa F. Burris, #212040
Leath Correctional Institution
2804 Airport Road
Greenwood, SC 29649

Dear Ms. Burris:

The South Carolina Parole Board reconsidered your case on January 13, 2016, and rescinded your parole.

The reasons for rescission are:

- Nature and Seriousness of the Current Offense
- Indication of Violence in this or Previous Offense
- Use of Deadly Weapon in this or Previous Offense

There is no appeal process for rescission of parole, and the Board's decision to rescind your parole is final. You will be notified thirty days prior to your next scheduled parole consideration date.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Ray Patton, Jr.", written in dark ink.

Larry Ray Patton, Jr.
Director of Parole Board Support Services

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

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

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www.state.sc.us/ppp

June 1, 2016

The Honorable H. W. Funderburk, Jr.
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

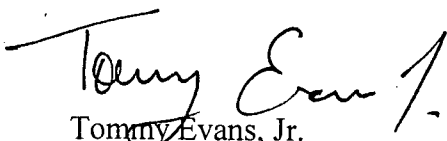
RE: *Melissa Burris, #212040 v. S.C. Department of Probation, Parole and Pardon Services*

Dear Judge Funderburk:

Please find enclosed for filing the *Record on Appeal* dated June 1, 2016, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures

cc: ~~Melissa Burris~~ Tommy Thomas

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

MELISSA BURRIS, #212040 APPELLANT

v.

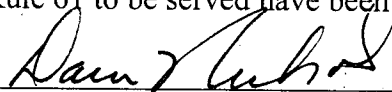
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, ...RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Record on Appeal*, dated June 1, 2016, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 1st day of June, 2016, addressed to:

Melissa Burris, #212040
Leath Correctional Institution
2804 Airport Road
Greenwood, S.C. 29649

I further certify that all parties required by Rule 61 to be served have been served.



Dawn Nichols
Executive Administrative Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

MELISSA BURRIS, #212040 APPELLANT

v.

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

RECORD ON APPEAL

Tommy Evans, Jr.
Assistant General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220**

ATTORNEY FOR RESPONDENT

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

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

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(CORRECTION)

March 10, 2016

Ms. Melissa F. Burris, #212040
Leath Correctional Institution
2804 Airport Road
Greenwood, SC 29649

Dear Ms. Burris:

The South Carolina Parole Board reconsidered your case on **February 17, 2016, (not January 13, 2016)**, and rescinded your parole.

The reasons for rescission are:

- Nature and Seriousness of the Current Offense
- Indication of Violence in this or Previous Offense
- Use of Deadly Weapon in this or Previous Offense

There is no appeal process for rescission of parole, and the Board's decision to rescind your parole is final. You will be notified thirty days prior to your next scheduled parole consideration date

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.", written over a horizontal line.

Larry Ray Patton, Jr.
Director of Parole Board Support Services

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

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

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February 19, 2016

Ms. Melissa F. Burris, #212040
Leath Correctional Institution
2804 Airport Road
Greenwood, SC 29649

Dear Ms. Burris:

The South Carolina Parole Board reconsidered your case on January 13, 2016, and rescinded your parole.

The reasons for rescission are:

Nature and Seriousness of the Current Offense
Indication of Violence in this or Previous Offense
Use of Deadly Weapon in this or Previous Offense

There is no appeal process for rescission of parole, and the Board's decision to rescind your parole is final. You will be notified thirty days prior to your next scheduled parole consideration date.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support Services

South Carolina Department of Probation, Parole and Pardon Services

Columbia, South Carolina

ORDER OF PAROLE

It having to be made appear to the satisfaction of the Board that is Melissa Faye Burniss eligible for parole and has shown a disposition to reform; that there is a reasonable probability that said prisoner will remain at liberty without violating the law; that release is not incompatible with the welfare of society; and that the prisoner will not become a public charge upon release; and that the prisoner will keep and/or successfully satisfy the conditions of this order inviolate, and understands that the violation or unsuccessful completion of any of the conditions pre- or post-release will constitute a breach of faith and be sufficient grounds for the revocation or rescission of the parole issued, and the execution of the original sentence imposed.

It is therefore ordered that Melissa Faye Burniss be released on Parole the _____ day of _____, _____ subject to said prisoner's agreement to abide by the conditions listed on the reverse side of this order, which parole is to expire [Parole Expiration date]. This parole is granted by [the full board or a panel of the full board].

Ordered this _____ day of _____

David B. Burt

Chairman

Henry S. Eldridge

Thauman

Karen A. Waldo

Vice Chairman

Dan L. Burton

Marian Stuenkel

ORDER OF PAROLE RESCISSION:

Ordered this 17th day of Feb., 2016

Samuel B. B.

Chairman

Henry S. Edridge

Thallam

Karen A. Walz

Vice Chairman

Louis R. B.
Dan L. B.

Marian D.

REASONS FOR RESCISSION: Negative Psychological Evaluation.

8

WITNESSES
BURDETTE, APD

DOCKET NO. 93-MS-04-23820

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS
OCT 26 1993 TERM

DDW

THE STATE

vs.

MELISSA FAYE BURRISS

Handwritten signature

ARREST WARRANT NO. D693298

ACTION OF GRAND JURY

TRUE BILL

DATE 10-26-93

Handwritten signature
Foreman of Grand Jury

VERDICT

Indictment for Murder

16-3-20

*comm.
1-6-94*

Foreman of Petit Jury

Date:

GEORGE M. DUCWORTH, SOL.

13

FORM 5 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR MURDER
16-3-20

At a Court of General Sessions, convened on OCT 26 1993,
the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE — MURDER

That MELISSA FAYE BURRISS
did in ANDERSON County on or about SEPTEMBER 11, 1993,
feloniously, wilfully and with malice aforethought, kill one BETTY ELIZABETH BURRISS
by means of SHOOTING
and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

George M. Duworth
TENTH CIRCUIT

SOLICITOR

COUNTY OF ANDERSON

93 - GS- 04 - 23821

NOW COMES THE DEFENDANT

Melissa Daye Burris

Who in open Court ~~and~~ pleads guilty to the charge in the
warrant or in the within indictment and consents to sentence,

this ____ day of _____ 19 ____

Defendant

SENTENCE

The defendant Melissa Daye Burris is
committed to the State Dept. of Corrections/County for a term of LIFE.
~~months/years~~ and/or to pay a fine \$ _____; provided upon the service of
_____ months/years and/or payment of \$ _____, plus pay/waive
costs and assessments as applicable*, the balance suspended with probation for
_____ months/years.

Restitution

Yes/No

to be paid

For physical injury

\$

Property damage

\$

to clerk for

Other conditions

Date

January 5, 1994H. P. Hall

Presiding Judge

*Costs and Assessments

Non-Waivable

\$

Not waived

\$

Total

\$

WITNESSES

BURDETTE, APD

ARREST WARRANT NO. DIR. REF. D693298

ACTION OF GRAND JURY

TRUE BILL

DATE 10-26-93

David E. Hoelzer
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 93-GS-04-2383

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

OCT 26 1993

TERM

DDW

THE STATE

vs.

MELISSA FAYE BURRISS

Indictment for Assault and
Battery With Intent To Kill
and Possession of Firearm
or Knife During
Commission of or Attempt
to Commit Violent Crime

GEORGE M. DUCWORTH, SOL.

comm
1-6-94

16

FORM 8 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR ASSAULT AND
BATTERY WITH INTENT TO KILL
AND POSSESSION OF FIREARM OR
KNIFE DURING COMMISSION OF OR
ATTEMPT TO COMMIT A
VIOLENT CRIME

OCT 26 1993

At a Court of General Sessions, convened on _____,
the Grand Jurors of ANDERSON County present upon their oath:

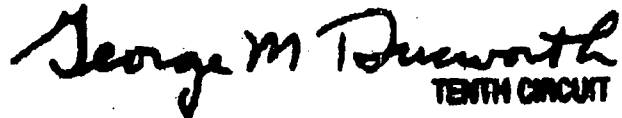
COUNT ONE — ASSAULT AND BATTERY WITH INTENT TO KILL

That _____
did in _____ County on or about _____, with
malice aforethought commit an assault and battery upon one _____
_____ with intent to kill the said victim.

**COUNT TWO — POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That MELISSA FAYE BURRISS
did in ANDERSON County on or about SEPTEMBER 11, 1993, possess or
visibly display a firearm or visibly display a knife during the commission or attempted commission
of a violent crime, to wit: MURDER,
in violation of Code Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


TENTH CIRCUIT

SOLICITOR

COUNTY OF ANDERSON

93 - GS- 04 - 2883**NOW COMES THE DEFENDANT**Melissa Joyce Burris

Who in open Court ~~was present~~ pleads guilty to the charge in the
warrant or in the within indictment and consents to sentence,

this ____ day of _____ 19 ____

Defendant

SENTENCE

The defendant Melissa Joyce Burris is
committed to the State Dept. of Corrections/County for a term of 5
months/years and/or to pay a fine \$ _____; provided upon the service of
_____ months/years and/or payment of \$ _____, plus pay/waive
costs and assessments as applicable*, the balance suspended with probation for
_____ months/years.

Restitution

For physical injury

\$ _____

Yes/No

Property damage

\$ _____

to be paid _____

to clerk for _____

Other conditions _____

Date

January 5, 1994H. D. Hall

Presiding Judge

***Costs and Assessments**

Non-Waivable

\$ _____

Not waived

\$ _____

Total

\$ _____

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

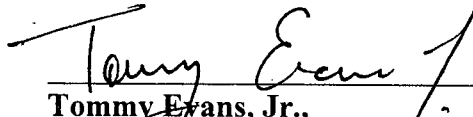
MELISSA BURRIS, #212040 APPELLANT

v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.



Tommy Evans, Jr.,
Assistant General Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

June 1, 2016

THE STATE OF SOUTH CAROLINA
Administrative Law Court
16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Melissa Burris #212040,

Appellant,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

TOMMY EVANS, JR.
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ATTORNEY FOR RESPONDENT

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TABLE OF AUTHORITIES

Barton v. South Carolina Department of Probation, Parole and Pardon Services, 404 SC 395, 745 S.E. 2d 110 (2013)

Cooper v. S.C. Department of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E. 2d 106 (2008)

Furtick v. S.C. Department of Probation, Parole and Pardon Services, 352 S.C. 594, 598-99, 576 S.E.2d 146, 149-50 (2003)

Sullivan v. S.C. Department of Corrections, 355 S.C. 437, 443, 586 S.E. 2d 124, 127 (2003)

South Carolina Board of Paroles and Pardon, Operations Manual, January, 2014.

Statute:

S.C. Code of Laws Ann. §1-23-350

S.C. Code of Laws Ann. §1-23-380 (5) (Supp. 2015)

S.C. Code of Laws Ann. §24-21-610

S.C. Code of Laws Ann. §24-21-620 (2007)

STATEMENT OF THE ISSUES ON APPEAL

1. Did the Department of Probation, Parole and Pardon services err in the rescission of Appellant's parole?

STATEMENT OF THE CASE

On January 13, 2016 the Appellant appeared before the South Carolina Department of Probation, Parole and Pardon Services, hereinafter referred to as the Parole Board, and was granted parole. The Appellant had been convicted in Anderson County on January 5, 1994 for the crime of Murder and Possession of a Firearm during the commission of a violent crime. The Appellant was sentence to life and five years respectively. The Appellant has served the requisite amount of time to be considered for Parole. On January 13, 2016, the Appellant was granted parole.

On March 10, 2016, Appellant received a letter from Probation and Parole indicating that her case was reconsidered on February 17, 2016 and the Board rescinded her parole for the following three reasons:

1. The Nature and Seriousness of the Current Offense,
2. Indication of Violence in this or Previous Offense; and
3. Use of Deadly Weapon in this or Previous Offense.

A Notice of Appeal was timely filed on March 25, 2016 and this matter is now present before the Court.

STATEMENT OF THE FACTS

The Appellant has served a period of incarceration that exceeds ten (10) years, therefore she would be required to have a psychological examination by a duly qualified psychologist or psychiatrist pursuant to South Carolina Code of Law §24-21-610.

It was only discovered after the filing of this appeal and the receipt of the Record on Appeal that the Appellant received a negative psychological. This document and/or information has never been given to the Appellant.

Between the time of being granted conditional Parole, and her notice of rejection, the Appellant received no disciplinaries from the South Carolina Department of Corrections, nor was she charged with any additional crimes and the factual nature of her crime and the circumstance revolving around her crime did not change.

Therefore the Parole Board had no basis for or evidence to support their decision for rescinding the Appellant's parole as stated in their letter dated March 10, 2016. Nor is the Order of Rescission supported by sufficient findings of fact to support the Appellant's rescission of parole.

ARGUMENT #1

Did the Department of Probation, Parole and Pardon services err in the rescission of Appellant's parole?

An individual has a right to ALC review of a final decision of the Board only when that decision affects a liberty interest for which due process is required. Furtick v. S.C. Department of Probation, Parole and Pardon Services, 352 S.C. 594, 598-99, 576 S.E.2d 146, 149-50 (2003); see also Sullivan v. S.C. Department of Corrections, 355 S.C. 437, 443, 586 S.E. 2d 124, 127 (2003) (explaining the nature of the right to ALC review). In Furtick, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole eligibility pursuant to S.C. Code of Laws Ann. §24-21-620 (2007), the statute does not create a liberty interest in the granting of parole itself.

Therefore, claims arising from the Board's decision denying parole are not appealable to the ALC, only claims that the Board failed to consider the appropriate criteria so as to be tantamount to an abrogation of parole eligibility. Cooper v. S.C. Department of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E. 2d 106 (2008). Here, Appellant "is not appealing the denial of parole, but rather, is challenging the method and procedure employed by the Parole Board in reaching its decision." A sufficient liberty interest is involved to warrant due process review by this Court.

When acting in an appellate capacity, the ALC must apply the criteria of S.C. Code of Laws, Ann. §1-23-380 (5) (Supp. 2015) which reads:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The Court may affirm the decision of the agency or remand the case for further proceedings. 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) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion of clearly unwarranted exercise of discretion.

The Board granted Appellant conditional parole, with the condition that Appellant be given a psychological evaluation. Pursuant to §24-21-610 South Carolina Code of Laws that a psychological examination by a duly qualified psychologist or psychiatrist before the Board can consider an individual for parole. This is also set forth in the Parole Board's Operational Manual, page 31, paragraph 4.

A psychological was performed and submitted to the Parole Board. According to the Record on Appeal, The Department of Probation, Parole and Pardon Services issued an Order rescinding Parole on February 17, 2016, stating that Appellant parole had been rescinded due to a Negative Psychological Evaluation. However, the letter received by the Appellant did not indicate this reason. Nor was this information ever provided to the Appellant prior to filing this appeal.

The Appellant has not received a copy of the actual evaluation nor was it included in the Record on Appeal.

The limited appeal of a Parole decision is governed by the Administrative Procedures Act. The Parole Board must comply with its provisions. Pursuant to the terms of the APA, a final decision of an agency adjudication of a contested case shall include finding of fact and conclusions of law. (Cooper) Finding of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings S.C. Code of Laws §1-23-350.

In this case, the decision of the Parole Board is:

- (a) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (b) Arbitrary or capricious or characterized by abuse of discretion of clearly unwarranted exercise of discretion.

In this case, the Appellant would assert that:

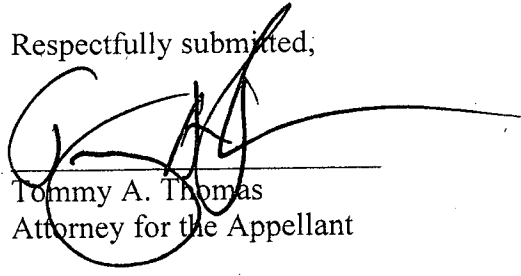
- (1) That there is no evidence in the Record to support the Board's decision to rescind the Appellant's parole and as such the Court should Order that the Appellant be released on parole.
- (2) That even in consideration of the Order of Rescission that was received after the filing of the Appeal, that there is still no sufficient evidence to support the Parole Board's decision. In this document, there is only a notation of negative psychological evaluation. Clearly, the Board's decision, even in taking into consideration the Order of Rescission, is arbitrary or capricious or characterized by abuse of discretion of clearly unwarranted exercise of discretion by the Parole Board.

(3) In the alternative, the application of the minimal amount of due process would require that the Parole Board provide a copy of the psychological to the Appellant and that a full finding of facts and conclusions of law be provided in their Order of Rescission. This Order of Rescission must be served upon the Appellant rather than the letter that she received. That without this information, the Appellant is at a loss as to why her parole was truly rescinded and she has no ability to know why her psychological was negative and has no means to seek treatment in preparation of upcoming parole hearings.

CONCLUSION

For the foregoing reasons, Appellant respectfully submits that the Court should reverse the final decision of the South Carolina Department of Probation, Parole and Pardon Services.

Respectfully submitted;



Tommy A. Thomas
Attorney for the Appellant

July 5, 2016

THE STATE OF SOUTH CAROLINA
Administrative Law Court
16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Melissa Burris #212040,

Appellant,

vs.

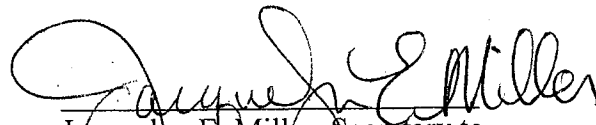
South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Attorney for Appellant certify that I have served a Brief of Appellant on Tommy Evans, Legal Counsel for the South Carolina Department of Probation, Parole and Pardon Services, by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

TOMMY EVANS, JR.
Assistant General Counsel
South Carolina Department of Probation,
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ATTORNEY FOR APPELLANT

July 5, 2016

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

MELISSA BURRIS, #212040.....APPELLANT

v.

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

BRIEF OF RESPONDENT

Tommy Evans, Jr.
Assistant General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

- 1. Did the Department of Probation, Parole and Pardon Services err in the rescission of the Appellant's parole?**

STATEMENT OF THE CASE

On September 11, 1993, an officer of the Anderson police department was called to the Appellant's residence. Once he arrived he saw the victim sitting in a chair unresponsive with several gunshot wounds. The officer requested the Appellant to inform him of the weapons location. He recovered, secured the weapon, then contacted Emergency Medical Services who declared the victim dead at the scene. The Appellant was then taken into custody and charged with the offense of murder. The Appellant was later lawfully questioned where she gave a full confession.

On January 5, 1994, the Appellant appeared before the Honorable H. Hall for the offenses of murder and possession of a firearm in the commission of a violent crime. Upon the conclusion of this appearance the Court sentenced the Appellant to a period of incarceration for the remainder of her natural life for the offense of murder; and five years for the firearms violation.¹ At the time the Appellant committed this crime South Carolina law allowed a person serving a life sentence for murder parole eligibility upon the service of twenty years.

On November 6, 2013, the Appellant made her initial appearance before the Parole Board. Upon the conclusion of this hearing the Board decided to deny the Appellant an opportunity to be released on parole. The Appellant re-appeared before the Board on January 13, 2016. At the conclusion of this hearing the Board decided to grant parole conditionally. The Board decided that the Appellant would only be released on parole upon being evaluated by a licensed psychologist. After being evaluated the results were revealed, due to these results to the Board decided to rescind parole and reexamine the Appellant's case. After this reexamination they decided to deny parole

¹ The Appellant completed the sentence for the firearm violation on September 13, 1998.

due to: 1) the nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; and, 3) a use of a deadly weapon in this or a previous offense.

Upon receiving this denial of parole the Appellant decided to file a notice of appeal before the Administrative Law Court. Within their appeal the Appellant alleges that the decision of the Board was arbitrary and capricious; that he was denied due process by not being provided the results of the psychological evaluation; and, the final decision failed to reveal a finding of facts and conclusion of law separately stated. The Respondent argues that the denial of parole was lawful, the statutory and Department criteria was considered, and the Board was well within their ability to rescind parole pursuant to Department policy. The Respondent's brief supporting their defenses follows.

ARGUMENT

1. The Respondent did not err in the recession of her parole.

The Appellant was granted parole upon the condition that she be evaluated by a qualified psychologist pursuant to South Carolina law. Notwithstanding the provisions of this section, or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist. S.C. Code Ann. §24-21-610 (Supp. 1986). The Appellant was evaluated and upon being notified of the results, the Board decided to rescind parole and reconsider their prior decision. This rescission was well within the boundaries proscribed under Board policies. Under the Parole Board policies the Board can rehear a case if the Board or panel may have acquired some new material and information after it has made its final decision. SOUTH CAROLINA BOARD OF PAROLES AND PARDONS OPERATIONS MANUAL p. 46. The Board has not finalize the parole; therefore, they had the

ability to rescind. The order of parole is not final until it is issued by the Director to the Department of Corrections. The director, or one lawfully acting for him, then must issue a parole order which, if accepted by the prisoner, provides for his release from custody. S.C. Code Ann. §24-21-650(Supp. 1993). The director had yet issued a parole order; therefore, his parole was not final. Unless the parole was final the Board could rescind if there are new information that was revealed that effects their previous decision.

The Appellant argues that she was never given a copy of the evaluation, nor received any notice why the Parole was rescinded. She argues that doing this was in violation of due process. The rescission of parole is not a revocation so she is not entitled to a hearing due to not being denied a liberty interest. The case is just sent back to the Board for a further review and then a final decision. There was no additional hearing just a final decision due to the negative psychological evaluation. The Appellant is not entitled a reason due to the Parole not being revoked just rescinded.

The Appellant also argues that the Board's final order failed to reveal a statement of facts and conclusion of law separately stated, thereby, violating South Carolina law. She argues that the order of denial was unlawful due to it not following the standards provided by the South Carolina Supreme Court in *Cooper v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008). In *Cooper*, the Supreme Court determined the Parole Board neither, "offered an explanation nor indicated that it had considered the statutory criteria of section 24-21-640, and the fifteen criteria listed on the parole form." *Id.*, at 500. The Supreme Court ruled in *Cooper* that if the Parole Board fails to consider and apply the statutory-related parole criteria, it

has the effect of rendering an inmate parole ineligible, which under *Furtick* warrants review by the ALC. *Id.*, at 502²

In the present case the Appellant argues that the Board's final order failed to conform to the *Cooper* opinion by failing to reveal a conclusion of law. The only reason for this decision in order to present notice as to what criteria that was considered prior to the decision. In *Cooper*, the Supreme Court determined what Parole Board orders should reveal, and that the criteria that was considered. 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 its 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 followed proper procedure.

Id.

This was decided by the Supreme Court in order for the Board to reveal to the Appellant that the proper criteria was used before the final decision was made. If this is revealed and the Appellant was not given an additional hearing, that should be sufficient regarding any notice of the criteria used in this parole case. The reasons for the recession of parole were displayed on the final order. The order specifically states that the reasons for the recession was due to: 1) nature and serious of the previous offense; 2) an indication of violence in this or a previous offense; and, 3) the use of a deadly weapon in this or a previous offense. These were the only matter's missing from the final decision of the Board. Notice had to be given to the Appellant as to why her parole was rescinded.

² Administrative Law Judge Division (ALJD) had jurisdiction to hear defendant's appeal from the Department of Probation, Parole and Pardon Services (DPPPS) decision that, as violent offender, defendant was not parole eligible; defendant had a liberty interest in gaining access to the parole board. *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003).

In *Cooper*, the court determined that the order denying parole was unlawful due to it not presenting any conclusions of law. It was the opinion of the Supreme Court that in order for the Board to prove that proper procedures were followed, an order must not only state the findings of fact but the statute and policy considered in reaching this conclusion. This order of parole was clear the mandatory policy was considered during the parole hearing. The Board granted parole conditionally but was well within their ability to rescind this decision and deny parole subsequently.

2. The recession of parole was not in violation of due process.

The Appellant argues that receding her parole violates due process. In the denial of parole all that is needed to be applied is the minimal amount of due process. This was given to the Appellant by being allowed to appear and present evidence in mitigation. The Appellant argues that she was not given a copy of the psychological evaluation. There exist no right to discovery in parole hearings. Criminal procedure rule governing disclosure of evidence in criminal cases does not apply to probation-revocation proceedings. *State v. Hill*, 368 S.C. 649, 630 S.E.2d 274 (2006). Probation revocations are allowed more due process rights than in parole proceedings, such like the right to counsel, and the right to confront witnesses. The Appellant has argued that the psychological evaluation was never given, nor placed in the record. Pursuant to the rules of the administrative law court, everything that was required or available was placed in the record. Where applicable, the record of the contested case shall consist of: a) all documents filed; b) all evidence received or considered including copies of all relevant sentencing sheets in sentence calculation matters, and copies or specific policies relied upon by the agency; c) a statement of matters judicially noticed; d) all proffers of proof of excluded evidence; d) the final order or decision which is subject to administrative review; f) any transcript taken of testimony during the proceeding. Rule

58 SCRALC. There are no filed documents in a parole hearing, nor any transcript or testimony taken during these proceedings. All evidence considered in the denial of parole including her prior indictments were included, and the final orders sent to the Appellant was included in the record. The psychological evaluation was not used to determine a final result, it was just used to reconsider a prior decision. No evidence submitted reveals that the evaluation was considered in the denial of parole. Since there exist no proof that the Board used the evaluation in the final decision it is not to be included in the record.

3. The Appellant request remedies that goes beyond the control of the ALC.

As part of her brief the Appellant requests this Court orders she be released on parole. This is not something the General Assembly placed within the Court's jurisdiction. The Courts have only been given the ability to determine if procedures and policies were followed prior to the denial of parole. There exist no method that gives the ALC the ability to grant parole, only the ability to remand the case for a future hearing. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services. S.C. Code Ann. §1-23-600(D)(Supp. 2015).

The Courts have only given the ALC the ability to determine if the procedures and policies were followed prior to denial. According to South Carolina law the only entity that can make a parole determination is the Parole Board, "no such prisoner may be paroled until it appears to the satisfaction of the board." S.C. Code Ann. §24-21-640(Supp. 2015). It is clear that the General Assembly wished for only the Board to make a determination. If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no need to employ a rule of statutory interpretation and the court has no right to look for, or impose another meaning. *Pachel*

v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995). The Courts should consider not merely the language of a particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997). A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly. *Abell v. Bell*, 229 S.C. 1, 91 S.E.2d 548 (1956).

The decision of the parole board is the only decision that is allowed regarding the granting or denial of parole. The Courts have always made it clear that the Parole Board can only grant or deny parole. 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 question of parole eligibility is separate and independent from the court's authority to sentence an offender. *State v. McKay*, 300 S.C. 113, 386 S.E.2d 623 (1989). So the ALC can only remand for further proceedings, this Court was never given the ability to grant parole. However, the Appellant maintains that this denial of parole was lawful and should be upheld by the ALC.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests that the final decision of the South Carolina Department of Probation, Parole and Pardon Services be affirmed.

Respectfully submitted,



Tommy Evans, Jr.
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Columbia, South Carolina
August 22, 2016

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

MELISSA BURRIS, #212040 APPELLANT

v.

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

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Brief*, dated August 22, 2016, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 22nd day of August, 2016, addressed to:

Tommy Thomas, Esquire
PO Box 88
Irmo, S.C. 29063

I further certify that all parties required by Rule 54 to be served have been served.


Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Melissa Burris, #212040,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 16-ALJ-15-0010-AP

ORDER FOR COMPLETE RECORD

FILED

AUG 25 2016

SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the appeal of Melissa Burris ("Appellant"). Appellant is appealing the decision of the South Carolina Department of Probation, Parole and Pardon Services' ("PPPS") Parole Board, dated February 19, 2016, which rescinded Appellant's parole. Appellant filed her appeal on March 25, 2016.¹

SCALC Rule 58 states, in part, "the record of the contested case shall consist of...[a]ll evidence received or considered..." The Parole Board rescinded Appellant's parole because of a "negative psychological evaluation." The psychological evaluation was clearly considered when the Parole Board made the decision that was appealed, the effective denial of parole.² Therefore, PPPS must file a complete record, including the psychological evaluation of Appellant. It is therefore,

ORDERED that Respondent shall have until September 15, 2016, to file and serve a complete record, including the psychological evaluation (and qualifications of the evaluator) considered by the Parole Board in its appealed decision.

AND IT IS FURTHER ORDERED that Appellant shall have twenty (20) days from the date the

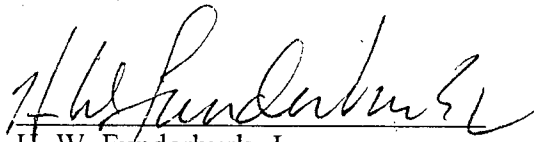
¹ Appellant received the Order of rescission on February 24, 2016. A corrected Order of rescission was sent on March 10, 2016.

² Respondent contends that "[t]he psychological evaluation was not used to determine a final result, it was just used to reconsider a prior decision." However, the stated reason for rescission, in the Order of Parole Rescission is the "negative psychological evaluation." Therefore, the final result, the result Appellant is appealing, is based, at least in part, on the "negative psychological evaluation."

complete record is filed, to file and serve her brief. Respondent shall have twenty (20) days from the date Appellant files her brief, to file and serve its brief. Any reply brief must be filed and served within ten (10) days after Respondent files its brief.

AND IT IS SO ORDERED.

Columbia, South Carolina
August 25, 2016


H. W. Funderburk, Jr.
Administrative Law Judge

FILED

AUG 25 2016

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Melissa Burris, #212040,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 16-ALJ-15-0010-AP

**OBJECTION TO ORDER FOR A
COMPLETE RECORD**

The Respondent the Department of Probation, Parole, and Pardon Services submits this objection to the order for a complete record. The Respondent argues that the contents of the psychological evaluation are irrelevant; therefore, should not be made part of the record. The Respondent further argues that the record already contains all of the relevant information allowed pursuant to the rules.

The Appellant was granted a conditional parole, and afterward was required to participate in a psychological evaluation pursuant to South Carolina law.¹ Upon being given a negative evaluation, the Board decided to rescind the conditional parole. The Appellant has argued that she was denied due process with this rescission, and objected to the results of the evaluation not being made part of the record. This Court ordered that the record is not complete, and that the results of this evaluation must be made a part of the record. The Respondent now respectfully objects, and requests the Court reverse this decision.

¹ Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist. S.C. Code Ann. §24-21-610 (Supp. 1986).

The Court determined that pursuant to the rules of the Administrative Law Court, "the record shall consist of all evidence received or considered" Rule 58 SCALC. The Respondent argues that the contents of the evaluation is irrelevant due to the fact the Board never considered the psychological evaluation in the denial of parole. The Board listed the criteria it considered within the order of denial. The results of the psychological evaluation was not listed. The Appellant argues that her parole was wrongfully rescinded, and requests this Court reinstate parole. However, the ALC was never given the ability to reverse the rescission of a conditional parole. In *Cooper v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008), the Supreme Court gave the ALC only the ability to determine if the Board followed mandatory procedures regarding the statutory and department criteria in their final decision. The psychological evaluation must be received by the Parole Board. The Board followed its procedures when it reconsidered the conditional parole. There is no evidence that this evaluation was ever considered in the final decision, so the evaluation has no bearing on the final decision and should not be a part of the record.

Within her brief the Appellant argues that the final decision of the Board should have included a finding of fact and conclusion of law. The final decision of the Parole Board was placed in the record and did contain the finding of fact and conclusion of law separately stated; the evaluation was not listed as a ground for rescission, so it was not and should not be made a part of the record. The order of denial was clear of what was considered, and the reasons for denial. In *Cooper*, it was clear that the Supreme Court gave the ALC limited authority to review the final decisions of the Parole Board. This review only includes the final decision, and the criteria

considered in making that decision.² If the orders of denial reveals what was considered, that is the only thing ALC can review. The ALC cannot add to this decision an evaluation not considered by the Board in making the final decision. The contents of the evaluation did not change the final decision, it just allowed the Board an opportunity to re-consider their previous decision. This is a routine process developed and followed by the Board. The Court does not have the authority to reverse the decision of the Board. The ALC only has the authority to decide if the Board followed the criteria in the denial of parole, not any rescission of a conditional parole.

The Appellant request that the ALC should order that the Appellant be released on parole. The ALC does not have the authority to reverse the decision of the Parole Board.³ The granting or denial of parole remains only with the Parole Board. The Courts have no ability to make this decision or reverse the decision of the Board. The Parole Board has the sole authority to determine parole eligibility, separate and apart from the court's authority to sentence a defendant. *Cooper*, at 496. We already know the results of the evaluation, it was negative. The contents of the psychological evaluation did not change the final decision of the Board, and does not give the Court the ability to grant parole; therefore, it is irrelevant.

The sole reason for the Court making the decision to include the psychological evaluation in the record is due to the rescission of the Parole Board. The Respondent argues that the ALC was never allowed the ability to review a rescission of a conditional parole, due to it not being a final decision. The ALC can only determine if the policies and procedures were followed and statutory factors were considered in the final decision. The Respondent maintains that this appeal should be

² We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it clearly states in its order denying parole that it considered the factors outlined in section 24-21-240 and the fifteen factors published in its parole form. *Cooper*, at 500

³ An Administrative Law Judge shall not hear an appeal from an inmate in the custody of the Department of Corrections for an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services. S.C. Code Ann. §1-23-600(Supp. 2015).

dismissed due to it being beyond the jurisdiction of the ALC. The contents of the psychological evaluation are irrelevant to this analysis. No evidence was presented by either party revealing that the evaluation was used in the final determination. It is clear that the final decision was rescinded due to: 1) nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; and, 3) use of a deadly weapon in this or a previous offense. This is the only matter the ALC is allowed to review, no other matter relating to this case is subject to review. The ALC has limited authority to review the decision to determine whether the Board followed proper procedure. *Cooper*, at 500. Only relevant material should be part of the record, so the psychological evaluation should be excluded from the record.

Another reason the Court states the psychological evaluation should be made a part of the record is the fact that the reasons for the rescission is due to the negative psychological evaluation. The final result the Appellant is appealing in part is the negative psychological evaluation. To appeal this evaluation is unlawful. The Court does not have jurisdiction over the contents of the psychological evaluation. Even if this Court disagreed with the results of the evaluation, this Court has no authority to order parole and would overstep its bounds in doing so. It is clear in the *Cooper* decision, the ALC only has the ability to review the procedure used in the denial of parole. The evaluation was not considered in the denial of the Appellant's parole, so this evaluation is not relevant and should not become a part of the record.

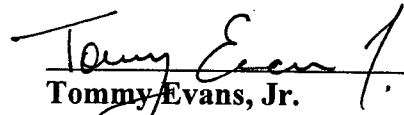
If the evaluation is made a part of the record it will not reveal if the Board failed to follow the criteria in the denial of parole. The inclusion will only allow future irrelevant information to be made a part of the record, and allow future fishing expeditions by inmates of otherwise privileged information. Since the ALC only has the ability to remand a decision by the Parole

Board and not reverse, the evaluation is not relevant and is not under the jurisdiction of the ALC. This makes the contents of the evaluation irrelevant, and not subject to inclusion in the record.

CONCLUSION

For the above stated reasons the Respondent will object to the psychological evaluation being made a part of the record. The Respondent believes that the record is sufficient for the ALC to make an informed decision regarding the procedures followed in the denial of parole. The psychological evaluation is not relevant nor necessary for the Court to make an informed decision. So we respectfully request the Court reverse its previous order to include the psychological evaluation as part of the record.

Respectfully submitted,



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Columbia, South Carolina
August 31, 2016

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Melissa Burris, #212040,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 16-ALJ-15-0010-AP

**ORDER DENYING RESPONDENT'S
OBJECTION TO ORDER FOR**

COMPLETE RECORD

FILED

SEP 06 2016

SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Melissa Burris ("Appellant"). Appellant is appealing the decision of the South Carolina Department of Probation, Parole and Pardon Services' ("PPPS" or "Respondent") Parole Board, dated February 19, 2016, which rescinded Appellant's conditional parole. Appellant filed her appeal on March 25, 2016.¹

On August 25, 2016, the Court issued the Order for Complete Record, requiring PPPS to file and serve a complete record, including the psychological evaluation of Appellant and qualifications of the evaluator. PPPS filed its Objection to Order for Complete Record on August 31, 2016, arguing that the psychological evaluation should not be made part of the record. SCALC Rule 58 states, in part, "the record of the contested case shall consist of...[a]ll evidence *received* or *considered*..." (emphasis added). S.C. Code Ann. § 24-21-610 (2007) reads, in part:

Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first *received* a report as to his mental condition and his ability to adjust to life outside the prison *from a duly qualified psychiatrist or psychologist*. (emphasis added).

The Parole Board not only received the psychological evaluation, as required by S.C. Code Ann. § 24-21-610, but also considered it, as Appellant's parole was rescinded because of a "negative

¹ Appellant received the Order of Rescission on February 24, 2016. A corrected Order of Rescission was sent on March 10, 2016.

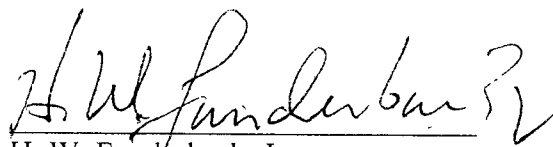
psychological evaluation.” This Court requires the psychological evaluation, along with the qualifications of the evaluator, be made part of the record because that evidence was received and considered by the Parole Board, and for the Court to determine whether policies and procedures were properly followed. It is therefore,

ORDERED that Respondent’s Objection to Order for Complete Record is **DENIED**.

AND IT IS FURTHER ORDERED that Respondent shall have until September 15, 2016, to file and serve a complete record, including the psychological evaluation and qualifications of the evaluator considered by the Parole Board in its appealed decision. Appellant shall have twenty (20) days from the date the complete record is filed, to file and serve her brief. Respondent shall have twenty (20) days from the date Appellant files her brief, to file and serve its brief. Any reply brief must be filed and served within ten (10) days after Respondent files its brief.

AND IT IS SO ORDERED.

Columbia, South Carolina
September 6, 2016



H. W. Funderburk, Jr.
Administrative Law Judge

FILED

SEP 06 2016

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Melissa Burris, #212040,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No.: 16-ALJ-15-0010-AP

MOTION FOR IN CAMERA REVIEW

The Respondent, the Department of Probation, Parole and Pardon Services files this motion for an in camera review of the extra material ordered by this Court to be included in the record. The Respondent makes this motion due to the professional opinion of the evaluator that the contents of the evaluation would be distressing to the Appellant or family. Furthermore, this information should remain privileged for the protection of evaluator, and the scientific methodology of the psychological evaluation. The Respondent requests this information only be in the control and viewed by the Court.

This Court issued an order for a completed record on August 25, 2016. Within this order this Court ordered that the Respondent include in the record a copy of the psychological evaluation and a copy of the evaluator's qualifications. The Respondent later issued an objection for the inclusion of this material which was later denied by this Court.

The Respondent reiterates that the contents of the evaluation are not relevant to this Court's review of the final decision of the Parole Board. This Court can only determine whether policies and procedures were properly followed. The Appellant argues that the Board's decision to rescind conditional parole was arbitrary and capricious and requests this Court to release the Appellant on

parole. Pursuant to South Carolina law only the Board has that ability. The result of the evaluation was already given in the order of rescission. The Appellant was already aware that the evaluation was negative; to release this report can cause undue harm to the evaluator due to the contents within this evaluation.

Within the order denying the objection, this Court stated that, "the psychological evaluation, along with the qualifications of the evaluator, be made part of the record because that evidence was received and considered by the Parole Board, and for the Court to determine whether policies and procedures were properly followed." The Respondent argues that the contents of the evaluation would not reveal if policies or procedures were followed, since they were not considered in the denial of parole. The Respondent will further argue that since the results of the evaluation is already known, the full evaluation should not be revealed to the Appellant. The evaluator states in the report that the information is confidential, and that the report "is not to be released to outside agencies without prior authorization from the report author. Furthermore, information contained in this report may be distressing to clients, parents, or family members and should not be released in an unedited fashion." The evaluator makes a point to address the confidential nature of this report because it contains her opinion and other confidential information obtained during the interview and psychological testing of the Appellant. These results are very personal and could be distressing to the Appellant or her family if released to the Appellant. The release of this information could result in some harm to the evaluator. This is due to the fact these doctors who have agreed to conduct these psychological evaluations are constantly required to enter the prisons alone in order to interview inmates. It would be dangerous for these individuals to enter these prisons when inmates are aware of what is being reported about them within these evaluations. If the Court makes it a practice of releasing these evaluations to inmates, it is possible

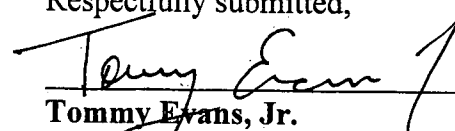
that some doctors will refuse to conduct these evaluations. This would make an already low amount of qualified individuals who conduct these evaluations even lower. This will cause inmates weeks if not months of extra detention before these evaluations are conducted and the results released to the Parole Board.

Though individuals who have had negative evaluations have been granted parole, some do not, and are possibly subject to another evaluation one or two years later. If inmates are provided copies of previous evaluations the earlier opinion of the evaluator will be questioned by the inmate. It will be the only thing the inmate will want to discuss at any subsequent evaluation. If that occurs it will taint or seriously harm the ability of the evaluator to determine if the inmate will be able to adjust to society, the only purpose of these evaluations. To accomplish a successful evaluation the evaluator must be able to access current information, not face a regurgitation of past evaluations.

Since there exists no discovery in Administrative Law Court proceedings, the Appellant does not have a right to review these materials. If the Court feels she has a right the Respondent asks this information be reviewed first by the Court in camera in order to make that determination.

This report reveals that this evaluation had nothing to do with the final decision of the Parole Board. No information contained within the psychological evaluation was stated in the Board's final order of denial, nor was the evaluation ever stated as a reason for denial. The Respondent argues that this evaluation is not relevant in the final decision, and the results are already known by the Appellant. The results should not be revealed to the Appellant, only an in camera review by the Court is needed to determine its relevance, or if the Board failed to follow the policies and procedures in making their final decision. So at this time the Respondent respectfully requests that the Court only review this evaluation in camera without it being revealed to the Appellant.

Respectfully submitted,



Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

Columbia, South Carolina
September 13, 2016

THE STATE OF SOUTH CAROLINA
Administrative Law Court
16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Melissa Burris #212040,

Appellant,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

REPLY TO RESPONDENT'S MOTION FOR
IN CAMERA REVIEW

The Appellant, in response to the Respondent's Motion for in Camera Review, would state as follows:

The Respondent argues in its Motion "this report reveals that the evaluation had nothing to do with the final decision of the Parole Board. No information contained within the psychological evaluation was stated in the Board's final Order of Denial, nor was the evaluation ever stated as a reason of denial." The Appellant would assert that if this is the position of the Respondent, then the Appellant is entitled to Summary Judgement in her favor. There has been no changes whatsoever from the time in which the Parole Board heard and granted the Appellant's parole and the time in which parole was rescinded. The Parole Board is not entitled to have a rehearing that is based on no additional evidence at all and determine that the Appellant's Conditional Parole should be rescinded. The Appellant received no disciplinary

convictions, or additional charges. Nothing changed in between the time from being granted parole and the date of rescission, except for the psychological evaluation.

The Respondent in its Motion argues that this information should only be viewable by the Court. The Respondent makes this motion due to the professional opinion of the evaluator that the contents of the evaluation would be distressful to the Appellant or the family of the Appellant and that this information should remain privileged for the protection of the evaluator. The Appellant would reply that there is not a valid reason for an in camera review or that this information be confined only to the use of the Court. Psychological evaluations are performed on a daily basis in all different aspects of our society. The Department of Probation, Parole and Pardon Services has shown no evidence that the release of this psychological evaluation to the Appellant can be harmful or dangerous. The Appellant would argue that in fact the opposite is true. If the Appellant received a negative psychological that it would be important for the Appellant to have this information. She would then be able to address these issues of concern and prepare herself for the next parole hearing.

In addition, there is no evidence that there would be a danger to the evaluator. Psychiatrist and Psychologist testify in our Court system on a daily basis and there is no evidence presented by the Respondent that these expert witnesses are threatened or have been harmed as a result of their testimony.

The Respondent also argues that the results of the evaluation are already known. This assertion can only be based upon the fact that the Appellant knows that there was a negative psychological. The contents of this evaluation are not known and the lack of this information prevents the Appellant from seeking counselling either through the South Carolina Department

of Corrections and/or by the retaining of a private counsellor or psychologist to address the issues as detailed in the psychological report.

In conclusion, the Respondent either didn't use the psychological report and thus there is no evidentiary basis to support a rescission of parole or they must produce this report to both the Court and the Appellant.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', written over a horizontal line.

Tommy A. Thomas
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

September 26, 2016

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Melissa Burris, #212040,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 16-ALJ-15-0010-AP

**ORDER DENYING RESPONDENT'S
MOTION FOR IN CAMERA**

REVIEW

FILED

SEP 30 2016

SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Melissa Burris ("Appellant"). Appellant is appealing the decision of the South Carolina Department of Probation, Parole and Pardon Services' ("PPPS" or "Respondent") Parole Board, dated February 19, 2016, which rescinded Appellant's conditional parole and denied parole. Appellant filed her appeal on March 25, 2016.¹

On August 25, 2016, the Court issued the Order for Complete Record, requiring PPPS to file and serve a complete record, including the psychological evaluation of Appellant and qualifications of the evaluator. PPPS filed its Objection to Order for Complete Record on August 31, 2016, arguing that the psychological evaluation should not be made part of the record. The Court denied Respondent's Objection to Order for Complete Record on September 6, 2016. Respondent filed its Motion for in Camera Review on September 14, 2016, which requested the Court review the psychological evaluation and qualifications of the evaluator in camera.

This Court denies Respondent's Motion for in Camera Review. However, the Court orders that the psychological evaluation and qualifications of the evaluator be disclosed to Appellant's attorney only, and not Appellant. *See generally South Carolina Board of Pardons and Paroles Policy and Procedure Manual*. Counsel for Appellant shall not disclose any information from the

¹ Appellant received the Order of Rescission on February 24, 2016. A corrected Order of Rescission was sent on March 10, 2016.

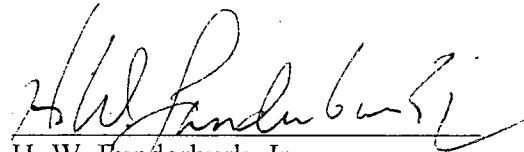
psychological evaluation or from the qualifications of the evaluator to Appellant. In addition, Respondent shall redact, in compliance with SCALC Rule 6(B), the psychological evaluation and qualifications of the evaluator. It is therefore,

ORDERED that Respondent's Motion for in Camera Review is **DENIED**.

AND IT IS FURTHER ORDERED that Respondent shall have until October 17, 2016, to file and serve a redacted psychological evaluation and qualifications of the evaluator considered by the Parole Board in its appealed decision to the Court and counsel for Appellant. Appellant shall have twenty (20) days from the date the complete record is filed, to file and serve her brief. Respondent shall have twenty (20) days from the date Appellant files her brief, to file and serve its brief. Any reply brief must be filed and served within ten (10) days after Respondent files its brief.

AND IT IS SO ORDERED.

Columbia, South Carolina
September 30, 2016


H. W. Funderburk, Jr.
Administrative Law Judge

FILED

SEP 30 2016

SC ADMIN. LAW COURT

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

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

October 4, 2016

The Honorable H. W. Funderburk, Jr.
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

RE: Melissa Burris, #212040 v. S.C. Department of Probation, Parole and Pardon Services

Dear Judge Funderburk:

Pursuant to your order dated September 30, 2016, please find enclosed redacted copies of the psychological evaluation on Ms. Burris along with the redacted copy of Dr. Moody's qualifications. As ordered, copies are also being served on Ms. Burris' attorney which shall not be disclosed to the Appellant.

Sincerely,

Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures

cc: Tommy Thomas

CONFIDENTIAL**Clinical Evaluation Report**

This report is not to be released to outside agencies without prior authorization from the author. Furthermore, information contained in this report may be distressing to clients, family members and should not be released in an undiluted fashion. A summary of this report can be prepared for outside agency or family use.

Inmate Clinical Exam**CONFIDENTIAL**

UpstateTesting@aol.com

(864) 934-2837

www.UpstateTesting.net

Claimant: [REDACTED]

Examiner: [REDACTED]

SCDC: [REDACTED]

Date of Birth: [REDACTED]

CA: 42

Date of Evaluation: 1/27/16

Procedures Administered: [REDACTED] was referred by the South Carolina Department of Probation, Parole and Pardon Services, for a comprehensive clinical evaluation. Instruments administered included the Mini-Mental State Examination, 2nd Edition (MMSE-2); Minnesota Multiphasic Personality Inventory, 2nd Edition (MMPI-2) and a clinical interview.

Identifying Information: [REDACTED] is a 42 year old African American female who was seen at Leath Correctional Institution. She was the sole provider of information for the evaluation and provided a copy of her SCDC ID as identification verification.

Review of Records

Warden's Jacket

Chief Complaint/Presenting Problem: [REDACTED] is being evaluated for parole. She was arrested and charged with murder 22 years ago after shooting and killing her mother.

[REDACTED] indicated that 4 days after her 20th birthday an altercation occurred between her and her mother. Her mother had been abusive toward [REDACTED] from the ages of 6-20 years old. [REDACTED] was frequently hit in the head with a skillet, baking sheet, spatula and her mother's fists. On this particular day her mother had returned home with a boyfriend and that [REDACTED] was having an affair with her boyfriend. Her mother began to hit [REDACTED] and eventually stabbed her multiple times in her back. In retaliation [REDACTED] "checked out" and shot her mother three times. Her mother died on the scene. After the shooting

██████ called the police and reported that she had shot her mother. She was transported to the city police station and later tried for murder and possession of a fire arm. She was sentenced to life in prison. She has served more than 22 years of her sentence. She hopes to be paroled soon and return to her home city in ██████ where she can begin a new life.

██████ acknowledged that she committed the crime and believes she should have been punished for taking a life. However, she also seemed to indicate that she felt mistreated by the justice system by not receiving a psychological evaluation and being forced to make a statement directly after the shooting. When asked if the situation were to occur again how would she respond she stated, "I would grab a phone and run away."

While incarcerated ██████ has received extensive education in the areas of mental health disorders, Braille reading and sewing. She has been working as a Braille translator for the school for deaf and blind. She hopes to continue her work if released as a part time transcriber. She has one grown son and 7 grandchildren which she hopes to spend time with. She looks to her faith in God as a source of her success.

If ██████ is paroled she will return to ██████ or possibly live in ██████ with her son. She hopes to return to ██████ where she has several close friends. She plans to work with PRIDE ministries as a research assistant part time and she plans to continue her counseling services through Sister Care.

When questioned about her mood ██████ she explained that she dealt with depression in the past by "going to God." She receives about 4 hours of sleep each night. But reported that she feels energetic and not fatigued. She has an adequate appetite. ██████ denied any suicidal/homicidal ideations. She denied any delusions/hallucinations.

Other History

██████ denied any past psychiatric hospitalizations. She has never taken medication for mental illness. She received counseling at Behavioral Health for a period of time however prior to being incarcerated. She found the counseling helpful. She received counseling while incarcerated for about 6-7 years. She had a suicide attempt at 16 years old by overdose on over the counter drugs. She did not receive any treatment.

Relevant Medical History

██████ was hospitalized for childbirth at 14 years old.

██████ is diabetic and has reoccurring migraines. She is prescribed medication for treatment.

██████ was beaten as a child and often hit in the head. The abuse began at 3 years old and escalated at 6 years old. She was hit with a cast iron skillet, baking sheet and spatula. The abuse went on for approximately 14 years. However, she did not have any

treatment for any of her head injuries. She was also in a car accident at 4 years old and hit her left ear and head against the side of the car during the impact. Again she did not receive treatment for the injuries. She has no history of seizures.

Substance Abuse History

[REDACTED] drank alcohol prior to being incarcerated. She would drink on the weekends prior to her arrest but claims she did not drink heavily. She smoked marijuana 4 times before she was arrested. She has not used any cannabis in over 22 years, so she claims. However, she apparently went to Behavioral Health in Anderson at some point for substance abuse so she may have under reported her past or present usage.

Legal History

[REDACTED] was arrested and charged with murder and possession of a fire arm. She was sentenced to life in prison.

While incarcerated she has received a few disciplinary actions. When asked about her disciplinary file she reported that she lost her job with the Chaplain for a misunderstanding. However, records indicated she was hiding tee shirts in the office. The full scope of this event is not clear. However, she failed to mention two other significant disciplinary actions within the past 10 years. In 2010 she made sexual gestures and harassed two of her roommates sexually. The records indicate that she walked around naked and asked to see them naked. She also said she was horny and then simulated sex with the roommate. The roommates made several complaints about her and eventually she was punished for her behavior. In 2014 she had an altercation with her roommate over the smell of eggs which she did not like as it "affected her CPAP machine." In retaliation, [REDACTED] threw some type of powder on the roommate.

[REDACTED] reported that in 2012 she was charged with a threat to harm her roommate. She explained that the roommate kept blocking the door while she was in the process of going out. [REDACTED] indicated that she went to the warden for help but was eventually charged with the crime anyway. She plead guilty and took her punishment although she claims she never made such a threat.

Military History

[REDACTED] has no past military service history.

Education History

[REDACTED] graduated from high school with a diploma. She attended Tri County Tech and studied computer technology for about a year. She was a good student and made B's and C's. She did not repeat any grades in school and did not receive any special therapies. She was suspended several times for her "bad attitude." Later she indicated that her behavioral issues were listed on a "long sheet of paper."

[REDACTED] is trained and certified in Braille transcription. She also has a literary textbook formatting certification. She also has training in marketing, sales, industrial sewing,

parenting skills, depression, awareness and substance abuse. She recently completed a domestic violence prevention program.

Work History

██████ has been working with the outreach program for the School for Deaf and blind as a Braille translator since 2007. She worked for the Chaplain for nearly 4 years. She has also held jobs in the following areas: power plant, housekeeping, canteen operator, in the office and as a reservationist for flights and cruises for a period of two years.

While working for the Chaplain she was charged with solicitation and lost the job.

Family History:

██████ is single but she has a 28 year old son and 7 grandchildren. She was raised by her mother. She had contact with her father. She has 6 half siblings with whom she shares a father. She does not have regular contact with them. Her father was a drug addict. Her mother had a history of seizures and would abuse alcohol. Her mother has been in the psychiatric hospital. She has an uncle who is blind.

Abuse and Trauma

██████ was very physically abused by her mother from the ages of 6-20 years old. She would hit ██████ in her head multiple times with a skillet, baking sheet, etc. Her mother would threaten to kill her and cut her neck in effort to murder her. ██████ has a scar on her neck from the incident. She would use pliers to remove skin from her breasts. She was also sexually abused as a child while in kindergarten primarily by her mother who was obsessed with "checking her" private parts regularly and pulling skin off her body. At 8 years old she would let men touch her in order to get money for her friend. She was raped at 12 years old. Afterwards she became more promiscuous and became pregnant at 13 years old. A man attempted to rape her at 13 years old but she fought him off and escaped. She claims that she startles easily especially when someone raises their hands to her head. She denied any nightmares/dreams. She denied any other symptoms of Posttraumatic Stress Disorder.

Extracurricular Activities

██████ attends a Bible Study weekly. She attends church occasionally. She is a member of the hobby craft program.

Activities of Daily Living:

██████ gets up at 3:45am, takes a shower, and has prayer time and devotions. She goes to work from 6:30-4pm. She has a snack and spends time crocheting in the evening. She goes to bed around 10am-11pm. She had a driver's license prior to being incarcerated. She can complete chores and prepare meals. She can shop alone and manage her own funds. She had a bank account in the past. She can bathe and dress herself without assistance. She enjoys crocheting and other crafts.

Mental Status:

██████████ was casually dressed in prison uniform attire with a jacket. Her hair was neatly arranged in a pony tail. She stood approximately 5'5ft tall and weighed approximately 225 lbs. Her hygiene was adequate. She had a noticeable scar on the left side of her neck where her mother attempted to kill her. She denied any significant vision problems but said she occasionally has ringing in her ears. She is right handed. She articulated unassisted. She was rather fidgety and her speech was in a rapid and in a happy tone and she giggled often. She appeared hyperactive and hyper verbal. She often spoke excessively and had to be interrupted in order to be redirected. Her affect was wide and she appeared nervous and somewhat anxious. Her thought processes were logical. She denied any hallucinations or delusions. Her attitude was cooperative. Her memory and concentration were adequate. Her judgment and insight were fair as she seemed to play the victim. ██████████ was administered the MMSE-2 exam and produced a score of 30/30. ██████████ could identify three out of three items for immediate recall and delayed recall. She could identify the year, season, month, day of the week, date, state, country, city, building and floor. She correctly responded to all serial 7 items. She could identify two objects, repeat a phrase, identify three geometric shapes, read and follow a command, write a sentence and copy conjoining pentagons. Results of this assessment appear valid. It was noteworthy that she erased the drawing and began again to make her drawing more clear. This indicates some anxiety.

Testing Behavior

██████████ appeared to try her best on all test items. She was occasionally distracted and would giggle or want to comment on each item asked.

Minnesota Multiphasic Personality Inventory, 2nd Edition (MMPI-2)

██████████ was administered the Minnesota Multiphasic Personality Inventory, 2nd Edition (MMPI-2). This inventory was designed to assess an individual's personality based on how she views herself. It is appropriate for use on individuals 18 years of age or older, but can be used with caution on adolescents as young as 16, depending on their perceived level of functioning and maturity.

This MMPI-2 validity profile suggests an attempt to present herself in a very positive manner. The client may have attempted to present an unrealistically favorable picture of her virtue and moral values. She appears to feel the need to present an image of strong moral character or to deny human frailties. Her approach to the MMPI-2 items suggests a rather naive or unsophisticated self-appraisal.

Her profile reflects an intense and somewhat mixed pattern of symptoms. This MMPI-2 pattern is unusual in mental health assessment settings, presenting a somewhat mixed diagnostic picture. Individuals with this profile may be quite unpredictable and hyperactive, with periods of somatic distress and physiological slowdown. The client is a rather hyperactive individual whose normally active life and fast personal tempo have been slowed by her concern about her physical well-being. She seems to be experiencing a great deal of somatic distress and is quite tense. She exhibits symptoms of elevated mood along with somatic distress. Some individuals with this profile have

symptoms of toxic disturbance or neurological problems. This seems reasonable considering her physical abuse to the head she experienced at her mother's hand.

██████ seems to be highly manipulative and self-indulgent. She seems to have had much past conflict with authority and is quite resentful of societal standards of conduct.

Her personal relationships are likely to be somewhat strained right now. Her behavior has probably been erratic recently and may have caused some concern for people close to her.

Several possible diagnoses should be considered. Some individuals with this profile pattern are clearly experiencing emotional problems and have intense somatic distress. Others are personality-disordered individuals who feel significant somatic distress owing to an intemperate and excessive lifestyle. A third possibility is a major affective disorder or a cyclothymic disorder with excessive somatic concern. She appears to have a number of personality characteristics that have been associated with substance abuse or substance use problems. Her scores on the addiction proneness indicators suggest the possibility of an addictive disorder. Further evaluation for the likelihood of a substance use or abuse disorder is indicated. In her responses to the MMPI-2 she acknowledged some problems with excessive use or abuse of addictive substances. An actual organic basis to her problems should be ruled out as she claims multiple head injuries. If psychological treatment methods are considered appropriate in her case, it is important to verify her motivation for treatment and her openness to psychological interpretations of her problems. Because she views her problems as having a physical basis, she may not be willing to discuss possible psychological factors in her clinical picture. Insight-oriented psychotherapy may not be very productive because many individuals with this clinical profile tend to use denial to a great extent and are not very introspective. Some individuals with this MMPI-2 pattern have a driven quality to their behavior. This individual may be unwilling or "too busy" to engage in psychological treatment.

Commonly seen in convicted felons, this MMPI-2 performance is found in individuals who appear to feel the need to deny any psychological adjustment problems and to assert that they are responsible and very well adjusted. The symptoms or problems she reported in this valid MMPI-2 profile should be carefully evaluated and may have an important bearing on her prison adjustment. Her personality problems should be taken into consideration when making forensic recommendations. She appears to be an energetic if somewhat impulsive person who may be experiencing symptoms of unrealistic elation at this time. Some individuals who score in this range have a pattern of grandiose aspiration and an exaggerated sense of self-worth and self-importance. They tend to be somewhat hedonistic in the way they approach life. They may have periods of irritability or aggressive behavior that adversely affect those around them. When making forensic recommendations in this individual's case, it is important to keep in mind that she may not be able to keep the promises she makes. Another important limiting consideration with respect to developing workable plans with this inmate is that she shows little interest or ability in dealing with routine or detailed tasks.

Therefore, she may become bored and restless very easily. These individuals tend to have low frustration tolerance and may have trouble inhibiting expression of their impulses.

Conclusion

██████ was a fair historian. However, she seemed to over-represent herself as a moral individual. Some of her claims are contrary to disciplinary reports and therefore should be considered in review of this report. ██████ was charged with the murder of her mother at 20 years old. She had lived in a very abusive home with her mother for nearly 14 years. Her mother would frequently hit her in the head with her fist and hard metal objects. Her mother was also sexually abusive toward her. Additionally, she suffered a rape and another attempted rape and gave birth to a son at 14 years old. Although she acknowledged wrong doing by taking a life she also seemed to indicate she was rather victimized by the judicial system and was unjustly treated. She has a plan to return to live in ██████ if released and keep her position as a Braille transcriptionist to the school for deaf and blind and as a researcher for PRIDE ministries.

██████ performance on the MMPI-2 highlighted several areas of concern if paroled. She is a very impulsive and manipulative individual. She seemed to present herself in a false light during the interview and even failed to report several disciplinary issues found in the Warden's Jacket. She seems rather unpredictable and feels somewhat victimized by the judicial system. She does not have a strong social support for when she leaves prison other than old friends whom she knew prior to her incarceration who may not be a good influence on her.

██████ presented as almost hypomanic. Her speech was rapid and she was hyper verbal. She appeared hyperactive and euphoric. She does not receive very much sleep; only 4 hours. She seems to have a rather impulsive personality. She also reported a history of depression but did not identify any specific symptoms. Regardless a diagnosis of bipolar disorder should be ruled out.

If released ██████ will need supportive services including counseling to manage her aggressive and impulsive behavior along with her manic presentation and possible depression. She needs a supportive home environment with accountability and perhaps an evaluation to rule out any neurological or cognitive issues given her history of head injuries and frequent migraine headaches. There is also concern as she has a rather addictive personality and that she may turn to substance abuse so perhaps a prevention program might be an option for her.

Diagnostic Impression:

Data from this evaluation suggest ██████ primary DSM-5 diagnoses are as follows:
R/O Bipolar Disorder

--- -- (0) 0 + ++ +++

Professional Vita

Robin Lyn Moody, Ph.D.

EXPERIENCE SUMMARY

- * Group Counseling
- * Teen Pregnancy
- * Alcohol/Drug Abuse
- * Diagnostics
- * Anxiety Disorders
- * Domestic Violence
- * Individual Counseling
- * Crisis Intervention
- * Research
- * Child Abuse
- * AIDS Issues
- * Administration
- * Suicide/homicide Intervention
- * Mental Health
- * Trauma
- * Testing & Evaluation

CERTIFICATIONS and LICENSURES

NCC - National Certified Counselor (National Board of Certified Counselors, Inc.) #344142
LPCS - Licensed Professional Counselor Supervisor (S.C. Board of Licensed Professional Counselors) #5399
CIS - Certified Irlen Screener (Irlen Institute International Headquarters)
CCBT - Certified Cognitive Behavioral Therapist (National Association of Cognitive Behavioral Therapists) #11415
LPC - SC - Licensed Professional Counselor (S.C. Board of Licensed Professional Counselors) #4781
NGCH - Certified Hypnotherapist (National Guild of Certified Hypnotherapists) Issued 10/94
NCAE - Nationally Certified Addictions/Aids Educator (Human Resource Providers) #251393403
CRLT - Certified Rational Living Therapist (National Association of Cognitive Behavioral Therapists) Issued 12/96
CRMFT - Certified Rational Marriage and Family Therapist (National Association of Cognitive Behavioral Therapists) #12016
CGS - Certified Grants Specialist (Research Associates) Issued 10/00
LPC - GA - Licensed Professional Counselor (Georgia Composite Board of Professional Counselors) #007806
LPC - NC - Licensed Professional Counselor (N.C. Board of Licensed Professional Counselors) #10780
SC Notary - Notary Public (State of South Carolina) exp. 7/15/24)

PROFESSIONAL EDUCATION

Harvard University - Cambridge, MA (8/28/14-present)
Neuroscience GPA 4.0

Walden University - Minneapolis, MN (3/2001-2/2010)
Doctor of Philosophy - Clinical Psychology & Industrial/Organizational Psychology
Psychology GPA 4.0

Christian Bible College - Rocky Mount, NC (8/1996-8/1997)
Doctor of Philosophy - Christian Psychology/Counseling GPA 4.0

Clemson University - Clemson, SC (1/1993-12/1994)
Master of Education - Community Agency-Counseling and Guidance GPA 4.0

Toccoa Falls College - Toccoa, GA (8/1988-12/1992)
Bachelor of Science in Christian Counseling
Concentration in Counseling Skills

OTHER EDUCATION

Westgate Training and Consultation Network (45 hrs) - Inman, SC (8/2009)
Clinical Supervision course as part of the requirements for a Licensed Professional Counselor Supervisor in S.C.

NewMind BCIA Certified Neurofeedback Training (40 hrs) - Atlanta, GA (2009)
Neurofeedback training course focused on the fundamentals of neuroanatomy, neurophysiological sources of EEG, psychopharmacology, brain maps, treatment planning and professional ethics.

Irlen Screener Training (2 hrs) - Winston Salem, NC (2009)
Certified Irlen Screener
Irlen screener training focusing on the fundamentals of administration, scoring, interpretation and filter determination for scotopic sensitivity syndrome.

The Brain and Behavior (25 hrs) - Anderson, SC (2008)
Dr. Daniel Amen, famous for his use of SPECT scans to understand psychiatric disorders geared this course toward not only reading SPECT scans but also understanding the brain as it relates to cognition, emotions and behavior. He also taught how to use a brain system history in clinical practice and describe psychiatric illnesses from a brain dysfunction perspective.

Rorschach Training Programs, Inc. (35 hrs) - Indianapolis, IN (2007)
Rorschach training program focusing on the fundamentals of administration, scoring and interpretation of the Rorschach test.

Universal Class - Universalclass.com (2006).
Physlognomy

Walden University Psychological Testing (15 Qt. Hrs) - Bloomington, IN (2001/2002)
Trained in administration and interpretation of personality, intelligence, neuro-cognitive and Projective measures. (WRAT, WAIS-III, WISC, MMPI-2, Meyers-Briggs, HTP, TAT, CAT, 16-PF, NEO-4, etc.)

Research Associates - Hilton Head, SC (2000)
Certified Grants Specialist

National Association of Cognitive Behavioral Therapy - Weirton, WV (1995)
Certified Rational Living Therapist I

American Institute for Human Development - Atlanta, GA (1994)
Certified Hypnotherapist

RELATED EXPERIENCE

Grand Canyon University – Phoenix, AZ

(4/15 – present)

Faculty

- * Teaching undergraduate and graduate courses in counseling and psychology

University of Phoenix – Phoenix, AZ

(4/15 – present)

Certified Faculty

- * Teaching a neuroscience graduate course in sensory and perception

Upstate Testing & Evaluation Center, LLC – Anderson, Oconee, Greenville & Easley, SC

(3/10-present)

Consultative Examiner/Owner, Therapist & Amen Method Professional

- * Conducts Mental Status Exams for Attorneys, Neurologists, Government Agencies and Physicians
- * Conducts full Clinical Evaluations including testing for Attorneys, Government Agencies (Vocational Rehabilitation, Department of Disability Services, Department of Social Services) and Physicians
- * Conducts IQ testing for mental retardation, learning disabilities, ADHD, stroke victims, traumatic head injury, dementia patients, PTSD, autism, PDD, etc.
- * Conducts Achievement Testing for individuals with learning disabilities
- * Conducts full Neuro-cognitive Evaluations
- * Evaluates for Malingering
- * Evaluates for Mental Competency
- * Provides Individual Faith Based Counseling
- * Educates and makes referrals to the Amen Clinic for brain imaging
- * Works with referrals from the Amen Clinic to optimize brain potential
- * Amen Method Professional who educates clients about the brain and behavior using the Amen Method
- * Contracts with SC Department of Probation, Pardon and Parole to conduct evaluations on inmates who are being considered for parole.
- * EAP provider for Magellan and Network Advantage
- * Provides individual counseling for trauma, domestic violence, family issues, anxiety, depression, grief, change of life and women's issues
- * Member of the following insurance panels: Blue Cross/Blue Shield; Blue Choice; Cenpatco; Molina; Tricare; Behavioral Health Systems; Value Options; Blue Choice Medicaid; Magellan and APS Network Advantage

LPC Supervisor – Anderson, SC (09-present)

- * Providing LPC supervision to LPC interns for the state of South Carolina

Greenville Mental Health Center – Greenville, SC (8/08-9/09)

Ph.D. Pre-doctoral Intern

- * Conducted psychological testing for child and adolescent unit and adult acute care
- * Attended treatment teams regularly
- * Staffed cases with psychologist and psychiatrists
- * Formulated diagnostic impressions and treatment recommendations
- * Wrote psychological reports for all psychologically tested clients
- * Attended monthly training sessions
- * Attended general staffings
- * Attended weekly supervision with a licensed psychologist

- * Conducted intake assessments
- * Wrote clinical notes and regular updates on clients
- * Cataloged, organized and maintained testing materials for GMHC
- * Consulted regularly with staff psychologists and psychiatrists
- * Attended specialized training for administration of psychological tests
- * Conducted mini audits for chart review
- * Performed case management for over 200 clients
- * Conducted LPC supervision for Licensed Professional Counselor Interns

Carolina Center for Behavioral Health - Greer, SC (12/05-8/06)

Ph.D. Pre-doctoral Intern

- * Therapist for a five unit 86 bed psychiatric hospital
- * Facilitated psychosocial groups for the adult psychiatric unit
- * Co-facilitator of psychosocial and process groups for adult psychiatric, adult crisis, substance abuse, child and adolescent and geriatric units.
- * Conducted psychosocial assessments on every ward
- * Conducted testing for all levels of care and both adults, adolescents (Intellectual, personality and projective measures)
- * Reviewed patient cases and participated in treatment teams
- * Participated in case management, and staff meetings
- * Conducted research for the hospital by gathering data and analyzing patient satisfaction
- * Conducted assessments for incoming patients
- * Conducted hand-writing analysis for psychiatrists

Anderson Alliance for the Prevention of Child Abuse - Anderson, SC (4/97-6/2000)

Facilitator/Coordinator/Consultant

- * Conducted Pregnancy and Parenting support groups with school districts within Anderson County
- * Incorporated the "Baby Think it Over" program into the pregnant teen model
- * Interview and assessments of group participants
- * Facilitate two hour group sessions weekly
- * Report regularly to the Alliance and grant sources
- * Promote HEALTHY PARENTING-ANDERSON in the community
- * Develop curriculum and incentives for HP-A
- * Design and distribute brochures for HP-A
- * Contract with local United Way agencies for funding
- * Contract with the Council on Teen Pregnancy for grant funding
- * Design and facilitate group for parenting teens as a corresponding model to HP-A
- * Design and administer tests and other forms of measurable outcomes
- * Developed a logic model and gathered measurable outcomes for United Way

Crisis Ministries - Anderson, SC (2/95-9/99)

Assistant Director/Therapist/Consultant

- * Crisis intervention and stabilization counselor
- * Mental Health Crisis after-hours counselor (serving three counties)
- * United Way information and referral counselor
- * Trauma reduction therapist
- * Suicidal and homicidal intervention specialist
- * Volunteer coordinator (recruiting and managing 20-40 volunteers)
- * Mobile crisis unit counselor
- * Individual counselor for adult short-term therapy
- * Youth crisis and family therapy counselor
- * Alcohol and Drug Abuse Commission Crisis after-hours counselor
- * Fund raising and public relations duties

- * Liaison for Healthy People 2000 coalitions and task forces.
- * Design test and measurements for progress evaluation
- * Participated in the designing and publishing of a newsletter called TRENCHES
- * Conduct and score personality tests and other psychometric tools
- * Administrative/personnel duties
- * Counseled clients with issues relating to: depression, anxiety, family problems, youth crisis, pregnancy, domestic violence, relationships problems, suicide, homelessness, truancy, substance abuse, parenting, and grief
- * Regularly assisted the chronically mentally ill through crisis intervention and stabilization

Anderson Rational Therapy Center - Anderson, SC (9/88-9/99)

Owner/Psychotherapist

- * Individual psychotherapy
- * Areas of focus: trauma, anxiety, AIDS, depression and domestic violence
- * Assessments

Greenville Mental Health - Greenville, SC (7/94-1/95)

Intern

- * Individual and group counseling
- * Design and publish newsletter for RILS and RPT programs
- * Group facilitator for Restorative Independent Living Skills
- * Group co-facilitator for Rehabilitative Psychosocial Therapy
- * Counseling and relaxation therapy for April Valley (geriatrics residential facility)

Haven of Rest Battered Women's Shelter - Anderson, SC (5/91-8/91)

Intern

- * Individual and group counseling
- * Assisted lawyers by serving subpoenas

PROFESSIONAL ORGANIZATIONS (past & present)

- * American Psychological Association
- * American Counseling Association
- * Association for Assessment in Counseling, Membership Committee
- * Association for Adult Development and Aging
- * American College Counseling Association
- * American Mental Health Counseling Association
- * S.C. Alliance for the Mentally Ill
- * Association for Multicultural Counseling and Development
- * Association for Spiritual, Ethical and Religious Values in Counseling
- * Association for Specialist in Group Work
- * International Association of Addictions and Offender Counselors
- * National Employment Counseling Association
- * National Guild of Hypnotists
- * Chi Sigma Iota: National Honors Society
- * American Association of Christian Counselors
- * American College of Counselors
- * National Association of Cognitive Behavioral Therapist
- * Christian Association of Psychological Studies
- * American Association of Suicidology
- * Obsessive-Compulsive Foundation
- * The American Academy of Experts in Traumatic Stress
- * Anxiety Disorders Association of America
- * S.C. Victims Assistance Network

- * Association of Traumatic Stress Specialists
- * Psi Chi – National Post-Graduate Honor Society

ACTIVITIES (past & present)

- + President for Psi Chi (Post-Graduate Honor Society) (2004)
- + Vice President for Psi Chi (Post-Graduate Honor Society) (2003)
- + Secretary for Psi Chi (Post-Graduate Honor Society) (2002)
- + Board of Directors for Anderson Alliance for the Prevention of Child Abuse
- + Board of Directors for CURRV (Coalition for the Understanding and Reduction of Relationship Violence)
- + Member of Primary Prevention Task Force Initiative for SC
- + Served as volunteer for Haiti Christian Missions by collecting medications and medical supplies for various clinics and orphanages in Haiti
- + Consultant for HP-A group therapists
- + Volunteer speaker for Foothills United Way representing various non-profit agencies within local plants and businesses
- + Member of Domestic Violence Task Force for SC
- + Serve on the Media Committee for CURRV
- + Member of Family Values Task Force for SC Governors Initiative
- + Volunteer Domestic Violence Victims Advocate
- + Volunteer Counselor at Haven of Rest Women's Shelter
- + Serve as Committee Chairwoman representing CURRV on the Steering Committee of Healthy People 2000
- + Member of Anderson Services Association
- + Board member for Blue Ribbon Campaign Committee for the Alliance for the Prevention of Child Abuse
- + Member of School District One Case Management Team

SPEAKING ENGAGEMENTS

- + Guest speaker for Girl Scouts/Boy Scouts groups
- + Speaker representing HP-A in all school districts 1-5
- + Guest speaker for "Breaking the Tie that Binds" seminar
- + TV interview as Volunteer Coordinator at Crisis Ministries
- + Guest speaker for United Way campaigns at local businesses
- + Guest speaker for local day camps (Camp Providence)

OTHER TEACHING EXPERIENCE

- + "The Brain, Development & Disorders" Lecturer for SWK 670 Psychopathology class, MSW program USC
- + Guest teacher for Daniel High School Psychology classes
- + "WAIS-IV Administration and Interpretation" Lecturer for Psychological Testing at Clemson University
- + "The Brain and its Functions as Related to Mental Diagnoses" Lecturer for SWK 760 Psychopathology class, MSW

NON-PUBLISHED MATERIAL & PROFESSIONAL RESEARCH PAPERS

- Moody, R. (2006). *Dissociative Identity Disorder*. Research conducted for the graduate course "Abnormal Psychopathology" at Walden University. August 2006.
- Moody, R. (2003). *Leadership Ethics and the Personal and Professional Effects*. "Foundations of Industrial/organizational psychology" research paper at Walden University. November 2003.
- Moody, R. (2003). *Ethics of Effective Leadership*. A paper formulated for the course "Leadership and the process of change" at Walden University. April 2003.
- Moody, R. (2003). *Cerebral Asymmetry Dominance and its Effects on Individual Processing and Emotive Personality*. Research for the graduate course "Theories of personality" at Walden University. February 2003.
- Moody, R. (2003). *Psychotherapy's Role in the Obesity Epidemic: Exploration of Differential Diagnoses and Treatment*. Research conducted for "Advanced psychopathology" at Walden University. February 2003.
- Moody, R. (2003). *Organizational Leadership: Fundamental Aspects of Effectiveness*. "Organizational Psychology" research conducted at Walden University. May 2003.
- Moody, R. (2002). *The Development and Effects of Hand Orientation*. "Developmental psychology" research paper at Walden University. August 2002.
- Moody, R. (2002). *Ethics and Standards of Professional Practice Case Studies*. Case studies conducted while attending a course in Ethics at Walden University. November 2002.
- Moody, R. (2002). *Cybertherapy: Technological Saturation Creates a New Model of Psychotherapy*. Research conducted during the graduate course "Therapeutic psychology" at Walden University. November 2002.
- Moody, R. (2002). *Quantitative Analysis Portfolio*. A portfolio created from the knowledge learned in the graduate course "Quantitative Analysis" at Walden University. February 2002.
- Moody, R. (2002). *Cerebral Hemisphere Asymmetry and its Affects on Learning*. "Psychology of learning" research conducted at Walden University. May 2002.
- Moody, R. (2002). *Biological Genesis of Homosexuality*. Research gathered for the graduate course "Biological Psychology" at Walden University. January 2002.
- Moody, R. (2002). *The Examination in Function and Validity of Two Projective Tests: The Rorschach and the TAT*. A paper formulated for a graduate course at Walden University "Tests and measurements." May 2002.
- Moody, R. (2001). *Cybertherapy: A Virtual Psychological Evolution in a Post-Modernistic Age*. A research paper for the graduate course "Psychology and social change" at Walden University. April 2001.
- Moody, R. (2001). *The Defining Evolution of the Cyber-Self*. Research for the "History and systems of psychology" at Walden University. October 2001.

Moody, R. (2001). *Cyber-Sexuality*. A research paper for the graduate course "Social Psychology" at Walden University. November 2001.

Moody, R. (1997). *The Methodology of Cognitive Behavioral Therapy and Psychoanalytic Therapy as Comparative Models in the Treatment of the Diagnostic Anxiety Disorder: Panic Without Agoraphobia*. Thesis for Ph.D. in Christian Counseling at Christian Bible College.

Moody, R. (1997). *Healthy Parenting-Anderson*. Curriculum model developed and designed particularly for Healthy Parenting-Anderson, a pregnant and parenting support group for teens sponsored by the Anderson Alliance for the Prevention of Child Abuse.

Moody, R. (1997). *A Guide to Understanding Psychiatric Drugs*. A guide researched and created for volunteers at Crisis Ministries.

Moody, R. (1995). *Greenville Mental Health Agency Outline*. An agency outlined developed during a practicum for a graduate degree at Clemson University. The outline examines the different facets of the agency to give other students insight into services offered.

Moody, R. (1994). *The Effective Multicultural Counselor in Training*. A paper researched and presented at a graduate course at Clemson University. October, 1994.

Moody, R. (1993). *Evaluation of Music Therapy as Compared to other Traditional Treatments*. A paper researched and presented in a graduate course at Clemson University. March 1993.

Moody, R. (1993). *Cultural Processes of School Book Reports*. A research presentation for a Master's degree course entitled "School as a cultural process."

Moody, R. (1993). *Empowering Battered Women with Self Esteem*. Research and plan developed to use within the Haven of Rest Women's Shelter, also presented at a graduate course at Clemson University.

PUBLISHED MATERIAL

Moody, R. (2010). *The Impact of Client Suicide on Mental Health Professionals*. Proquest. 2010.
<http://gradworks.umi.com/33/96/3396330.html>

THE STATE OF SOUTH CAROLINA
Administrative Law Court
16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Melissa Burris #212040,

Appellant,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

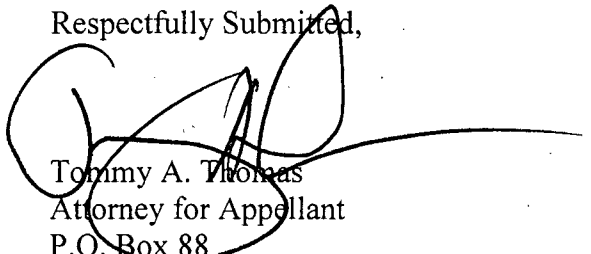
**MOTION FOR CLARIFICATION OF ORDER DENYING
RESPONDENT'S MOTION FOR IN-CAMERA REVIEW**

On September 30, 2016, The Honorable H. W. Funderburk, Jr. issued an Order denying the Respondent's Motion for In-Camera Review of the psychological evaluation of Appellant. The Court Ordered the Respondent to file and serve a redacted psychological evaluation and qualification of the evaluator on or before October 17, 2016.

Pursuant to the Court's Order, a copy of the psychological evaluation and qualifications were received from the Respondent on October 6, 2016. Pursuant to the Court's Order, Counsel for the Appellant was ordered not to disclose any information from the psychological evaluation or the qualification of the evaluator to the Appellant. In addition, the Court established a time line for filing of Briefs and a Reply Brief. This Motion for clarification and guidance is in response to the Court's Order.

The Briefs of both the Appellant and the Respondent were filed with the Court, prior to the disclosure of the psychological evaluation. The Appellant wishes to respond by Reply Brief to the psychological submitted by the Respondent. That Counsel for the Appellant is concerned that in doing so, he may be in violation of the Court's Order in making reference to, and discussing information contained in the psychological evaluation. Counsel respectfully requests the Court to clarify its position in this matter regarding the best method to address the issues raised in the psychological without disseminating any of this information either to the public or to the Appellant.

Respectfully Submitted,



Tommy A. Thomas
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

October 13, 2016

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Melissa Burris, #212040,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 16-ALJ-15-0010-AP

**ORDER CLARIFYING ORDER
DENYING RESPONDENT'S
MOTION FOR IN CAMERA**

REVIEW FILED

OCT 17 2016

SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Melissa Burris ("Appellant"). Appellant is appealing the decision of the South Carolina Department of Probation, Parole and Pardon Services' ("PPPS" or "Respondent") Parole Board, dated February 19, 2016, which rescinded Appellant's conditional parole and denied parole. Appellant filed her appeal on March 25, 2016.¹

On September 30, 2016, this Court denied Respondent's Motion for in Camera Review, but ordered PPPS to file and serve to the Court and counsel for Appellant a redacted psychological evaluation and qualifications of the evaluator considered by the Parole Board in its appealed decision. In addition, the Court ordered that counsel for Appellant shall not disclose any information from the psychological evaluation or from the qualifications of the evaluator to Appellant. PPPS filed redacted copies of the psychological evaluation and qualifications of the evaluator on October 4, 2016.

Counsel for Appellant, on October 14, 2016, filed a Motion for Clarification of Order Denying Respondent's Motion for in Camera Review. In his Motion, counsel "requests the Court to clarify its position in this matter regarding the best method to address the issues raised in the psychological without disseminating any of this information either to the public or to the Appellant."

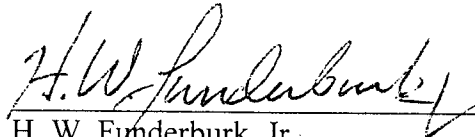
¹ Appellant received the Order of Rescission on February 24, 2016. A corrected Order of Rescission was sent on March 10, 2016.

Counsel for Appellant and PPPS shall file their supplemental briefs pursuant to SCALC Rule 6(B)(2). Specifically, counsel for Appellant shall file an unredacted supplemental brief with the Court, which will be filed under seal, arguing any issue raised by the psychological evaluation and the qualifications of evaluator. However, counsel for Appellant shall only give Appellant a redacted brief that does not contain any information from psychological evaluation nor any personal data identifiers of the evaluator. It is therefore,

ORDERED that Appellant shall have until October 25, 2016, to file and serve her brief.² Respondent shall have twenty (20) days from the date Appellant files her brief, to file and serve its brief. Any reply brief must be filed and served within ten (10) days after Respondent files its brief.

AND IT IS SO ORDERED.

Columbia, South Carolina
October 17, 2016


H. W. Funderburk, Jr.
Administrative Law Judge

FILED

OCT 17 2016

SC ADMIN. LAW COURT

² Respondent filed its redacted copies of the psychological evaluation of Appellant and the qualifications of the evaluator on October 4, 2016.

THE STATE OF SOUTH CAROLINA
Administrative Law Court
16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Melissa Burris #212040,

Appellant,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

SUPPLEMENT TO APPELLANT'S INITIAL BRIEF

Upon receipt and review of the psychological report of the Appellant, as well as the professional Vitae of Robin Lyn Moody, PhD., the Appellant would respectfully supplement her Brief as follows:

The Appellant is diagnosed with a bi-polar disorder, pursuant to the DSM-5 on a scale from -3 - +3. The Report indicates a -1. According to the reviewers conclusion, she finds that the Appellant lived in a very abusive home with her Mother for nearly 14 years, in which her mother would frequently physically and sexually abuse the Appellant.

The Reporter notes her concerns if Appellant is paroled that the Appellant is impulsive and manipulative, that she presents herself in a false light and that she failed to report several disciplinaries that were found in the Warden's Jacket. She also notes that the Appellant seems rather unpredictable and feels somewhat victimized by the Judicial System. That she does not have strong social support upon release, other than old friends who she knew prior to her

incarceration. In conclusion, the reviewer states that she reported a history of depression, but did not identify any specific symptoms and states that the diagnosis of bi-polar disorder should be ruled out. She goes further to say that if Appellant is release, she will need supportive services including counselling, a supportive home environment and evaluation to rule out any neurological or cognitive issues. That she has an addictive personality and that she may turn to substance abuse so that a prevention program might be an option for her.

The Appellant has been incarcerated since 1993. That during that period of time, she has had five disciplinaries, three of which she was convicted of. That one was handled in an Administrative manner and two of them were handled by means other than punishment. She has had a total of 5 disciplinaries in a period of 23 years of incarceration.

The Appellant does not have any disciplinary history for the use of drugs or alcohol. There are no Assaultive disciplinary convictions on Appellant's record. The three convictions that she does have were all for non-assaultive disciplinaries.

The Appellant has been working for the outreach program for the School of the Deaf and Blind since 2007. She had been working for the Chaplin for 4 years and has held a number of jobs within the Department of Corrections.

In looking at the psychological report as a whole, it does not appear that there is any evidence to support the fact that the Appellant presents any type of significant risk to the community. The Appellant has been incarcerated for 23 years of her life. She has a minor disciplinary history and appears to have been working regularly and also to have been engaged in programs with the Department of Corrections. Therefore, there does not appear to be any facts that would support the Board's decision to rescind her parole for a negative psychological.

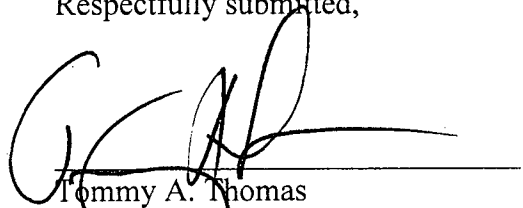
Regarding the Professional Vitae of Robin Lyn Moody, PhD., it appears that she does not meet the requirements of South Carolina Code Section 24-21-610. She is not a psychologist and is unable to render a psychological report. Her most recent degree is from Waldon University in Minnesota as a Doctor of Philosophy. It does not appear from her Vitae that she has a PhD in Psychology. The State of South Carolina requires such to practice as a Psychologist. In addition, she is not licensed as a Psychologist in the State of South Carolina, which is also a requirement to practice in this State. She is a licensed Professional Counsellor by the South Carolina Board of Licensed Professional Counsellors, License No. 4781. Based upon the criteria of South Carolina Code Sections 40-55-55 and 40-55-80, she does not meet the criteria to provide a psychological evaluation of the Appellant.

The Respondent has argued "this report reveals that the evaluation had nothing to do with the final decision of the Parole Board. No information contained within the psychological evaluation was stated in the Board's final Order of Denial, nor was the evaluation ever stated as a reason of denial." The Appellant would assert that if this is the position of the Respondent, then the Appellant is entitled to Summary Judgement in her favor. There has been no changes whatsoever from the time in which the Parole Board heard and granted the Appellant's parole and the time in which parole was rescinded. The Parole Board is not entitled to have a rehearing that is based on no additional evidence and determine that the Appellant's Conditional Parole

should be rescinded. The Appellant received no disciplinary convictions, or additional charges.

Nothing changed in between the time from being granted parole and the date of rescission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', is written over a horizontal line.

Tommy A. Thomas
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Irmo, SC 29063
(803) 732-5507

October 24, 2016

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

MELISSA BURRIS, #212040.....APPELLANT

v.

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

SUPPLEMENTAL BRIEF OF RESPONDENT

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

- 1. Did the Department of Probation, Parole, and Pardon Services err in the rescission of Appellant's parole?**

STATEMENT OF THE CASE

On September 11, 1993, an officer of the Anderson police department was called to the Appellant's residence. Once he arrived he saw the victim sitting in a chair unresponsive with several gunshot wounds. The officer requested the Appellant to inform him of the weapons location. He then recovered, secured the weapon, and contacted Emergency Medical Services who declared the victim dead at the scene. The Appellant was then taken into custody and charged with the offense of murder. The Appellant was later lawfully questioned where she gave a full confession.

On January 5, 1994, the Appellant appeared before the Honorable H. Hall for the offenses of murder and possession of a firearm in the commission of a violent crime. Upon the conclusion of this appearance the Court sentenced the Appellant to a period of incarceration for the remainder of her natural life for the offense of murder; and five years for the firearms violation.¹ At the time the Appellant committed this crime South Carolina law allowed a person serving a life sentence for murder parole eligibility upon the service of twenty years.

On November 6, 2013, the Appellant made her initial appearance before the Parole Board. Upon the conclusion of this hearing the Board decided to deny the Appellant an opportunity to be released on parole. The Appellant re-appeared before the Board on January 13, 2016. At the conclusion of this hearing the Board decided to grant parole conditionally. The Board decided that the Appellant would only be released on parole after being evaluated as to her ability to conduct herself in society, pursuant to South Carolina law. Upon being evaluated the results were revealed, due to these results to the Board decided to rescind parole and reexamine the Appellant's case. After this reexamination they decided to deny parole due to: 1) the nature and seriousness of the

¹ The Appellant completed the sentence for the firearm violation on September 13, 1998.

current offense; 2) an indication of violence in this or a previous offense; and, 3) a use of a deadly weapon in this or a previous offense.

Upon receiving this denial of parole the Appellant decided to file a notice of appeal before the Administrative Law Court. Within her appeal the Appellant alleges that the decision of the Board was arbitrary and capricious; that he was denied due process by not being provided the results of the psychological evaluation; and, the final decision failed to reveal a finding of facts and conclusion of law separately stated. The Respondent argues that the denial of parole was lawful, the statutory and Department criteria was considered, and the Board was well within their ability to rescind parole pursuant to Department policy. This brief replaces any previous briefs filed by the Respondent in the present case.

ARGUMENT

1. The Respondent did not err in the recession of the Appellant's parole.

Within the Appellant's supplemental brief he mentions facts that was placed in the psychological evaluation that was never considered by the Board, and are not a determinate of the ALC.

The Appellant was granted parole upon the condition that she receive a psychological evaluation pursuant to South Carolina law. The Appellant was evaluated and upon being notified of the results the Board decided to rescind and reconsider their prior decision. This rescission was well within South Carolina law and the boundaries proscribed under Board policies. A provisional parole order shall include the terms and conditions to be met by the prisoner during the provisional period and terms and conditions if any to be met upon parole. S.C. Code Ann. §24-21-645(Supp. 2015) Under the Parole Board policies the Board can rehear a case if the Board or panel have acquired some new material and information after it has made its final decision. SOUTH

CAROLINA BOARD OF PAROLES AND PARDONS OPERATIONS MANUAL p. 46. The Board did not finalize parole; therefore, they had the ability to rescind. An order of parole is not final until it is issued by the Director to the Department of Probation, Parole and Pardons, for his release from incarceration. The director, or one lawfully acting for him, must issue a parole order which, if accepted by the prisoner, provides for his release from custody. S.C. Code Ann. §24-21-650(Supp. 1993) The director had yet issued a parole order; therefore, the Appellant's parole was not final. Unless parole is final the Board could rescind if there is new information that could allow a reconsideration of their previous decision.

The Appellant argues that she was never given a copy of the evaluation, nor received any notice as to why parole was rescinded other than a statement stating that parole was rescinded due to "a negative psychological evaluation" R. p. 4 She argues that in doing this violates due process. The rescission of parole is not a revocation she is not being denied a liberty interest so she is not entitled to a hearing. The Board wished to have a further review and then issue a final decision. The Appellant had previously appeared before the Board and allowed her to present any mitigating evidence. She nor the victims had a right to a second opportunity to appear before the Board. The recession without hearing of a prisoner's parole by a state parole authority does not violate the prisoner's right to due process of law under the Fourteenth Amendment, neither state law relating to parole nor the expectation resulting from the notification given to the prisoner that a parole release had been ordered in his case being sufficient to create a liberty interest within the meaning of the Amendment. *Jago v. Van Curen*, 454 U.S. 14, 102 S.Ct. 31, 70 L.Ed. 13 (1981). There was no additional hearing just a final decision due to the negative evaluation. The Appellant is not entitled a reason due to Parole not being revoked just rescinded. She is entitled a reason as to why this parole was denied which was given.

The Appellant also argues that the Board's final order failed to reveal a statement of facts and conclusion of law separately stated, thereby, violating South Carolina law. He argues that the final order failed to follow the standards provided by the South Carolina Supreme Court in the case 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 Supreme Court determined the Parole Board neither, "offered an explanation nor indicated that it had considered the statutory criteria of section 24-21-640, and the fifteen criteria listed on the parole form." *Id.*, at 500. The Supreme Court ruled in *Cooper* that if the Parole Board fails to consider and apply the statutory-related parole criteria, it has effect of rendering an inmate parole ineligible, which under *Furtick* warrants review by the ALC. *Id.*, at 502.²

In the present case the Appellant argues that the Board's final order failed to conform to the *Cooper* opinion by failing to reveal a conclusion of law. A conclusion of law is only necessary to present notice as to what criteria was considered prior to the final decision.

Within her brief the Appellant is requesting the Court to grant parole, there were no objections regarding the actual hearing, and whether the Board considered the proper criteria. She has never questioned whether or not the proper criteria was considered during the hearing. The order revealing why parole was rescinded is sufficient, if the Board failed to follow the criteria it would have been raised by the Appellant. It was never raised, so the order rescinding parole is sufficient, as it states the reason why the Board decided to rescind their previous decision. No issue has been raised concerning the conclusion of law because it was never questioned. Within her brief the Appellant raised many factual issues relating to mitigation, but never raised a question as to if

² Administrative Law Judge Division (ALJD) had jurisdiction to hear defendant's appeal from the Department of Probation, Parole and Pardon Services (SCDPPPS) decision that, as violent offender, defendant was not parole eligible; defendant had a liberty interest in gaining access to the parole board. *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003).

the criteria found in statutory law, department policy, or the risk assessment was considered prior to the final decision.

The Appellant argues that the reasons for denial was arbitrary and capricious and no evidence was presented to support the Board's decision to rescind parole. The ALC are only obligated to review the final decision of the Board and if the findings of fact gave a concise and explicit statement of the underlying fact supporting the findings. S.C. Code Ann. §1-23-350 (Supp. 2015). It is clear why the Board decided to rescind parole, after reconsideration the Board decided to rescind parole due to: the nature and seriousness of the offense of murder; the indication of violence in committing this offense; and, the use of a gun in committing that offense. Each of these are very valid reasons for the recession of parole, and falls within the mandatory criteria found in South Carolina law. The South Carolina Code of Laws specifically state:

The board must carefully consider the record of the prisoner before, during and after imprisonment, and no such prisoner maybe 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 his imprisonment; that the interest of society will not be impaired thereby; and, that suitable employment has been secured for him.

S.C. Code Ann. §24-21-640 (Supp. 1986)

Each of these reasons for denial fall within the above referenced criteria. Within the order it was obvious that the findings of fact were sufficient enough to determine whether the Board followed the criteria prior to making its final decision.³ There is no particular format that the order must be made, as long as the reasons for recession can be found. Under section 1-23-350, findings of fact

³ As with all agency orders, when the Public Service Commission issues its determination about the reasonableness of intercompany dealings its findings of fact must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence in the record and whether the law has been properly applied. *Kiawah Property Owners Group v. Public Service Com'n of South Carolina*, 338 S.C. 92, 525 S.E.2d 863 (1999).

and conclusions of law need not be presented in any particular format but need only be sufficiently detailed to enable to reviewing court to determine whether fact 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 (S.C. App. 1988).

It is clear that the General Assembly wished for only the Board to make a determination regarding the release of an inmate on parole. "No such prisoner may be paroled until it appears to the satisfaction of the board." S.C. Code Ann. §24-21-650 (Supp. 2015). If the statute language is plain and unambiguous and conveys a clear and definite meaning, there is no need to employ the rule of statutory interpretation and the court has no right to look for, or impose another meaning. *Pachel v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995). The Courts should consider not merely the language of a particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997). A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly. *Abell v. Bell*, 229 S.C. 1, 91 S.E.2d 548 (1956). So the ALC cannot award the Appellant parole as she requests.

Within her brief the Appellant has stated many facts that is beyond the consideration of the ALC. The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann. §1-23-380(Supp. 2015). The Appellant included within his brief many facts that was placed in the evaluation, as to argue that the Court should grant her parole. However, that ability was never given to the ALC, also there exist no evidence revealing that any fact placed in the evaluation was considered in the denial of parole. It is clear by the order as to why parole was rescinded and a negative evaluation was not mentioned.

Therefore, this evaluation is not relevant due to the fact the ALC only has the ability to determine if the Parole Board followed policy and criteria prior to denial.

The decision of the parole board is the only decision allowed regarding the granting or denial of parole. The Courts have always made it clear that the Parole Board is the only state governmental entity that can grant or deny parole. 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). So the ALC only has the authority to remand the case for further proceedings, this Court was never given the ability to grant parole. The Respondent still maintains that this denial of parole was lawful and should be upheld by the ALC.

The Appellant request for ALC award summary judgement in favor of her and grant her parole. The Courts have only given the ALC the ability to determine if the procedures and policies were followed prior to denial. According to South Carolina law the only entity that can make a parole determination is the Parole Board, The Parole Board has the sole authority to determine parole eligibility, separate and apart from the court's authority to sentence a defendant. *Cooper*, S.C. at 496, S.E.2d at 110. So the Appellant is not entitled to summary judgment. The party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the pleadings, dispositions, answers to interrogatories, and admissions to file, together with affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Cleotex Corporation v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548 (1986).

2. The Respondent did not err in allowing Dr. Robin Lyn Moody to conduct an evaluation regarding the Appellant's ability to function outside of prison.

The Appellant was conditionally granted parole upon the evaluation done to assess her ability to function outside of prison. Due to her having served ten continuous years, pursuant to South Carolina law this evaluation must be completed before parole is finally granted. Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may not be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside of prison from a duly qualified psychiatrist or psychologist. S.C. Code Ann. §24-21-610 (Supp. 1986). The Appellant argues that the evaluation was not completed by a licensed psychologist so it is invalid. The Appellant was evaluated by Dr. Robin Lyn Moody, Ph.D, who though not a licensed psychologist does possess a doctorate in psychology, clinical psychology, and industrial organized psychology. The Appellant argues that the denial of parole was invalid due to this evaluation. The statute does not require a license as a qualification, the individual who conducts the evaluation just must be duly qualified. Dr. Moody has a doctorate in psychology, she is a national certified counselor, licensed professional counselor, among other numerous certifications that she has attained. According to the rules this makes Dr. Moody duly qualified to make this evaluation. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience training or education may testify thereto in the form of an opinion or otherwise. Rule 702 SCRE. This determination to accept the evaluation by Dr. Moody should be made by the Board not the ALC. All expert testimony must satisfy criteria of rule of evidence governing testimony of experts, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meet a reliability threshold for the jury's ultimate consideration. *State v. White*, 382 S.C. 265, 676 S.E.2d

684 (2009). Dr. Moody does have a doctorate degree in Clinical Psychology which make her more qualified than an average person to make an opinion regarding the Appellant's ability to function outside of prison. An expert witness is a witness with knowledge most generally be such as is not normally possessed by the average person. *Potter v. Glosser Bros. Department Store, Inc.*, 146 Pa. Super 129, 22 A.2d 28 (1941). Since Dr. Moody has more training and knowledge than the average person she is qualified to give her opinion regarding the Appellant's ability to function outside of prison. The Board was well within their ability to take this opinion under consideration.

Dr. Moody is only giving an opinion as to whether or not the Appellant will be able to conduct herself outside of prison. She uses medical and criminal records, as well as an interview of the Appellant to make this determination. She never made a medical diagnoses, nor placed the Appellant in any type of treatment programs. She is just gave an opinion on the ability of the Appellant to function outside of prison. This evaluation still did not cause the denial of the Appellant's parole it was just used in order for the Board to reevaluate their previous decision, and make a determination if the Appellant should not be released on parole. So the fact she is not a licensed psychologist is not relevant as to the denial of parole.

3. The recession of parole was not in violation of due process

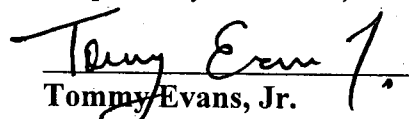
The Appellant argues that receding her parole violates due process. In the denial of parole all that is needed to be applied is the minimal amount of due process. This was given to the Appellant by being allowed to appear and present evidence in mitigation. The Appellant argues that she was not given a copy of the psychological evaluation. There exist no right to discovery in parole hearings. Criminal procedure rule governing disclosure of evidence in criminal cases does not apply to probation-revocations proceedings. *State v. Hill*, 368 S.C. 649, 630 S.E.2d 274 (2006). Probation revocations are allowed a greater amount of rights than a parole proceeding, such as a

right to counsel, and a right to confront witnesses, neither of which is required in a parole proceeding.⁴ In parole proceedings wide latitude must be given to the parole as it pertains to due process. In the United States Supreme Court case of *Meachum v. Fano*, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976) the court ruled that administrators of penal systems need considerable latitude in operating those systems, and that the protected interest of prisoners are necessarily limited. *Jago*, at 18.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests that the final decision of the South Carolina Department of Probation, Parole and Pardon Services be affirmed.

Respectfully submitted,


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Columbia, South Carolina
November 14, 2016

⁴ The board shall grant hearings and permit arguments and appearances by counsel or any individual before it at any such hearing while considering a case for parole, pardon or any other form of clemency provided for under law. No inmate has a right of confrontation at the hearing. S.C. Code Ann. §24-21-50(Supp. 1995).

THE STATE OF SOUTH CAROLINA
Administrative Law Court
16-ALJ-15-00010

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Melissa Burris #212040,

Appellant,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

REPLY TO SUPPLEMENTAL BRIEF
OF RESPONDENT

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South Carolina Code of Laws (1976 Annotated), Section 44-55-80

South Carolina Department of Probation, Parole and Pardon Services,
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Rule 702 of the South Carolina Rules of Evidence

The Appellant, in response to the Respondent's Supplemental Brief, would state as follows:

That the South Carolina Code of Laws (1976 Annotated), Section 24-21-610 states that "no prisoner who has served a total of ten (10) consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside of the prison from a duly qualified psychiatrist or psychologist.

The Respondent's Supplemental Brief argues.

1. The Respondent did not err in the rescission of the Appellant's parole.
2. The Respondent did not err in allowing Dr. Robin Lyn Moody to conduct an evaluation regarding the Appellant's ability to function outside of prison.
3. The recession of parole was not in violation of due process.

In argument one, the Respondent argues that the Appellant was granted parole on the condition that she receive a psychological evaluation. That this was pursuant to South Carolina Law. The Appellant was evaluated and upon being notified of the results, the Board decided to rescind and reconsidered their prior decision. The Respondent further argues that under the Parole Board policy, the Board can rehear a case, if the Board or Panel has acquired new material or information after it has made its final decision.

It is unclear what the Respondent's position is. The Respondent also states that the Board decided to rescind parole after reconsideration of the 1) Nature and seriousness of offense, 2) The indication of violence in committing this offense, and 3) The use of a gun in committing the offense. The Respondent goes further to argue that each of these reasons for denial fall within their referenced criteria and seems to carry forth their argument made in their initial brief that the psychological evaluation had no impact, nor was considered in deciding to rescind the

Appellant's parole. If that is in fact correct, then there was no additional evidence that was received by the Board, therefore, the Board would not have followed proper procedure in rescinding the Appellant's parole and their decision is arbitrary and capricious.

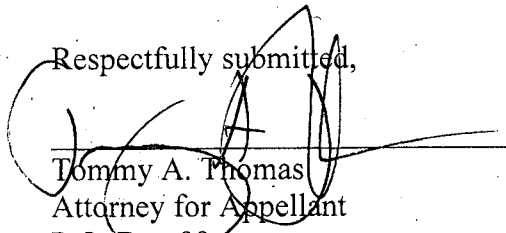
In the Respondent's second argument regarding Dr. Robin Lyn Moody, the Respondent argues that the Statute does not require a license as a qualification, that the individual who conducts the evaluation must just be duly qualified. While the Statute regarding parole does not state that the qualified psychiatrist or psychologist be licensed pursuant to Section 44-55-55, a license is required for a person to engage in the practice of psychology in the State of South Carolina. They must obtain this license from the State Board of Examiners in Psychology. In addition, Section 40-55-80 indicates that the application for licensing, a person must make application to the Board of Examiners in Psychology, they must furnish the Board with references and satisfactory evidence that the candidate has obtained a Doctorate Degree in Psychology. While Dr. Moody may have a Doctorate Degree in Psychology, she is a Licensed Professional Counselor in the State of South Carolina, she has not been licensed in the State of South Carolina to practice psychology.

In addition, the Respondent attempts to argue that the requirements of duly qualified is more akin to Rule 702 of the South Carolina Rules of Evidence, than the Statute in question. Their argument is that an expert witness can be qualified by the Court and under those circumstances require a lower burden than what appears to be required by the Statute. The Appellant would argue that the legislative intent was not to allow a lower standard, such as an expert witness. The Appellant would assert that Rule 702 does not apply to this situation.

In the Respondent's third argument they argue that they applied the minimal amount of due process. The Appellant was allowed to appear and present evidence at her initial parole

hearing and that there exists no right of discovery in parole hearings. The question presented by this argument is if in fact the decision to rescind the Appellant's parole was based upon a negative psychological, then the Appellant is given no ability to address these issues prior to her next scheduled parole hearing. If this information is kept in secret, then the Appellant is further detained and not given any ability to properly prepare for her next parole hearing. Surely the Appellant has the right to know why her parole was rescinded.

Respectfully submitted,


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November 28, 2016

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Melissa Burris, #212040,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 16-ALJ-15-0010-AP

ORDER OF REMAND

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Melissa Burris ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. Appellant is appealing the decision of the South Carolina Department of Probation, Parole and Pardon Services' ("PPPS" or "Respondent") Parole Board ("Board"), dated February 19, 2016, which rescinded Appellant's conditional parole and denied parole. Appellant filed her appeal on March 25, 2016.¹

BACKGROUND

Appellant was convicted of the crimes of murder and possession of a firearm in the commission of a violent crime. Appellant was sentenced to a period of incarceration for the remainder of her natural life for the crime of murder and five (5) years for possession of a firearm in the commission of a violent crime. On January 13, 2016, Appellant appeared before the Board and was granted parole conditionally. Because Appellant served more than ten (10) consecutive years in prison, the Board had to obtain "a report as to [her] mental condition and [her] ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist." S.C. Code Ann. § 24-21-610 (2007).

As a result of the report by Robin Lyn Moody ("Counselor"), the Board rescinded Appellant's parole because of a "negative psychological evaluation." Counselor is a Licensed Professional

¹ Appellant received the Order of Rescission on February 24, 2016. A corrected Order of Rescission was sent on March 10, 2016.

FILED

DEC 06 2016

SC ADMIN. LAW COURT

Counselor. Although Counselor has a Doctorate of Philosophy in Clinical Psychology & Industrial/Organizational Psychology, she is not a practicing psychiatrist or psychologist and is not licensed by the state of South Carolina as a psychiatrist or psychologist. Nothing in the Record substantiates that Counselor "has completed two years of supervised experience as approved by the [State Board of Examiners in Psychology] and specified in the [Association of State and Provincial Psychology Boards] Agreement and Reciprocity." S.C. Code Ann. § 44-55-80(4) (2011). In addition, there is nothing in the Record to support a conclusion that Counselor has presented "satisfactory evidence that [Counselor] is competent in psychology as shown by passing written and oral examinations as required by the [State Board of Examiners in Psychology]." *Id.*

Appellant appealed the decision of the Board rescinding Appellant's appeal on the bases that there was no reason to rescind Appellant's parole and that the psychological evaluation was not conducted by someone who was a duly qualified psychiatrist or psychologist.

ISSUE

Whether the mental evaluation report, considered by the Board, was proper when it was conducted by a Licensed Professional Counselor instead of a duly qualified psychiatrist or psychologist.

DISCUSSION

An individual has a right to ALC review of a final decision of the Board only when that decision affects a liberty interest for which due process is required. *See Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 598-99, 576 S.E.2d 146, 149-50 (2003); *see also Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review). In *Furtick*, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole eligibility pursuant to S.C. Code Ann. § 24-21-620 (2007), the statute does not create a liberty interest in the granting of parole itself. *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 n. 4.

Therefore, claims arising from the Board's decision denying parole are not appealable to the ALC, only claims that the Board failed to consider the appropriate criteria so as to be tantamount

to an abrogation of parole eligibility. *Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008). Here, Appellant "is not appealing the denial of parole, but rather, is challenging the method and procedure employed by the Parole Board in reaching its decision." *Cooper*, 377 S.C. at 502, 661 S.E.2d at 113. A sufficient liberty interest is involved to warrant due process review by this Court. *Id.*

When acting in an appellate capacity, the ALC must apply the criteria of S.C. Code Ann. § 1-23-380(5) (Supp. 2016), which reads:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. 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) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Appellant argues she is entitled to a reexamination of her mental condition followed by a rehearing on the basis the Department did not comply with the statute because the evaluation was not conducted by an appropriate person. S.C. Code Ann. § 24-21-610 states:

Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a **duly qualified psychiatrist or psychologist**. [Emphasis added].

Counselor evaluated Appellant after the determination that Appellant was granted conditional parole. Counselor is a Licensed Professional Counselor, and holds a Doctorate of Philosophy in Clinical Psychology & Industrial/Organizational Psychology. At issue is whether Counselor, based on her education and credentials, is a duly qualified psychologist for the purposes of S.C.

Code Ann. § 24-21-610. If the Counselor is not a duly qualified psychiatrist or psychologist, then the decision by the Board was affected by an error of law.

In its brief, Respondent notes that Counselor is not a licensed psychologist, but does possess a doctorate in psychology, clinical psychology, and industrial organized psychology. S.C. Code Ann. 40-55-55 (2011) requires a license to engage in the practice of psychology. In order to obtain a license, the applicant must have a doctoral degree in psychology and meet other requirements such as examinations and supervised experience. S.C. Code Ann. § 40-55-80. There is nothing in the Record to support a conclusion that Counselor has met the examination and supervised experience requirements necessary for licensure in South Carolina.

Nothing in Counselor's curriculum vitae indicates that Counselor holds herself out as a psychologist or provides psychological services. If she were, she would be practicing psychology without a license in violation of S.C. Code Ann. § 40-55-55. Counselor cannot, and does not, hold herself out as a qualified psychologist. Likewise, the Board cannot retain Counselor as a duly qualified psychiatrist or psychologist as required by S.C. Code Ann. § 24-21-610.

Respondent states the evaluation did not cause the denial of Appellant's parole, the evaluation was just used to reconsider the Board's previous decision. The Record contradicts this position as the Order of Parole Rescission plainly states the conditional parole was rescinded because Appellant received a "negative psychological evaluation." Further, the issue in the present case is only whether the evaluation meets the statutory requirements.

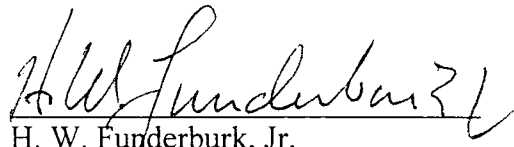
As this evaluation does not conform with the requirements of S.C. Code Ann. § 24-21-610, Appellant is entitled to a new mental health evaluation conducted by a duly qualified psychiatrist or psychologist, as mandated by S.C. Code Ann. § 40-55-10 *et seq* (2011 & Supp. 2016). After receipt of the report from the new evaluation, a rehearing shall be held to consider Appellant's parole.²

² These circumstances require that this case be remanded to the Board for a rehearing. Accordingly, the Court will not address the remaining issues. *See Fuich v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court does not need to rule on remaining issues when the disposition of an issue is dispositive of the appeal).

IT IS THEREFORE ORDERED that this matter is **REVERSED** and **REMANDED** to the Department to conduct a mental evaluation by a psychiatrist or psychologist, and Appellant shall have a rehearing regarding his parole.

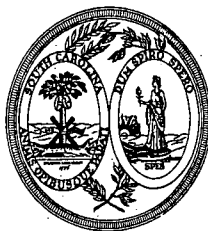
AND IT IS SO ORDERED.

Columbia, South Carolina
December 6, 2016


H. W. Funderburk, Jr.
Administrative Law Judge

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

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

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December 12, 2016

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street- 5th Floor
Columbia, South Carolina 29201

RE: Melissa Burris v. SCDPPPS

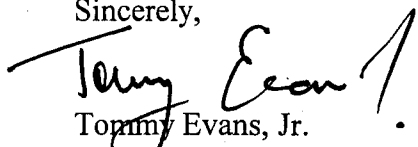
Dear Ms. Kitchings:

Please find enclosed the original Notice of Appeal in the above captioned case wherein the Department is appealing the order of the Honorable H. W. Funderburk, Jr., Administrative Law Judge, dated and filed December 6, 2016. Also enclosed is the proof of service and the order to be challenged on appeal.

Also, please be advised that no transcript exists in this case, therefore, Appellant will file its Initial Brief and Designation of Matter within the allowed timeframe.

Thank you for your assistance in this matter.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn
Enclosures

cc: Tommy Thomas, Esquire
The Honorable H.W. Funderburk, Jr.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable H.W. Funderburk, Jr.
Administrative Law Judge

Case No. 16-ALC-15-0010-AP

MELISSA BURRIS, #212040,

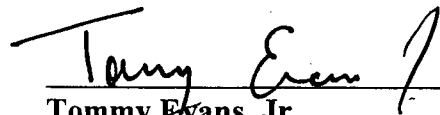
Respondent,

SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES,

Appellant.

NOTICE OF APPEAL

The South Carolina Department of Probation, Parole and Pardon Services, by its attorney, Tommy Evans, Jr., appeals the order of the Honorable H.W. Funderburk, Administrative Law Judge, dated and filed December 6, 2016, and received on December 9, 2016.



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable H.W. Funderburk, Jr. Administrative Law Judge
Case No.: 16-ALJ-15-00010

Appellate Case No.: 2016-002492

MELISSA BURRIS, #212040.....RESPONDENT

v.

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

INITIAL BRIEF OF APPELLANT

Tommy Evans, Jr.
Assistant General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
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ATTORNEY FOR THE APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Did the ALC err in determining that Dr. Robin Lyn Moody was not qualified to conduct a mental examination to determine the fitness of the Respondent to conduct herself in society; thereby, reversing the decision of the Parole Board.

STATEMENT OF THE CASE

On September 11, 1993, an officer with the Anderson police department responded to a call at the Respondent's residence. Upon arriving, he witnessed the victim in a chair unresponsive with several gunshot wounds. The officer requested the Respondent to provide him with the weapon used to commit this crime. She gave him the weapon in which he secured, then contacted Emergency Medical Services. Upon their arrival they determined the victim to be deceased, her cause of death due to the multiple gunshot wounds. The Respondent was then taken into custody and charged with the offense of murder, and possession of a weapon during the commission of a violent offense. The Respondent was later questioned, and after being informed of her *Miranda* rights gave a full confession.

On January 5, 1994, the Respondent appeared before the Honorable H. Hall for the offenses of murder and possession of a weapon in the commission of a violent crime. Upon the conclusion of this appearance, the Court sentenced the Respondent to a period of incarceration for the remainder of her natural life for the offense of murder; and, a five year period of incarceration for the offense of possession of a weapon during the commission of a violent crime.¹ 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.

On November 6, 2013, the Respondent made her initial appearance before the Parole Board. Upon the conclusion of this hearing the Board decided to deny the Respondent an opportunity to be released on parole. The Respondent re-appeared before the Board on January 13, 2016. At the conclusion of this hearing the Board decided to grant parole conditionally. Due to the length of time the Respondent served incarcerated; prior any release from incarceration she was

¹ The Appellant completed the sentence for the weapons offense on September 13, 1998.

required to be evaluated as to her ability to conduct herself in society. She was examined and evaluated by Dr. Robin Lyn Moody, Ph. D. Upon completion of this evaluation, Dr. Moody determined that the Respondent would not be able to conduct herself in society. Upon receiving the results of Dr. Moody's evaluation the Board decided to rescind the Respondent's conditional parole and reexamine their previous decision. After this reexamination the Board decided to deny parole due to: 1) the nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; and, 3) a use of a deadly weapon in this or a previous offense.

Upon receiving this denial of parole the Respondent filed a notice of appeal before the Administrative Law Court (ALC). Within this appeal the Respondent argued that the decision of the Board was arbitrary and capricious; that she was denied due process by not being provided the results of the psychological evaluation; and, the final decision failed to reveal the findings of facts and conclusion of law separately stated. The Appellant argued that the denial of parole was lawful, and that every statutory and Department criteria was considered. The Appellant further argued that the Board was well within their rights to rescind parole pursuant to Department policy.

During litigation the Honorable H.W. Funderburk, Administrative Law Court Judge, ordered that a redacted copy of the evaluation report and Dr. Moody's professional vita be included in the record. After the submission of the final briefs by each party Judge Funderburk issued his decision on December 6, 2016. Within this decision he determined that since Dr. Moody is not a licensed psychologist, per statute she was not qualified to issue a determination as to Respondent's prior mental state and ability to function in society. He ordered that the case be remanded so a licensed psychologist can examine the Respondent to make the determination as to the Respondent's ability to function outside of prison. The lower court also ordered that upon the

completion of this evaluation another hearing will be held to determine if the Respondent is to be granted parole. The Appellant's brief supporting their argument follows.

ARGUMENT

1. **The lower Court erred in determining that Dr. Robin Lyn Moody, Ph. D., was not qualified to conduct an evaluation to determine the Respondent's ability to function outside of prison because she is not a licensed psychologist.**

The Respondent was conditionally granted parole; however, due to the amount of time the Appellant was incarcerated she could not be released from incarceration until a mental evaluation was completed to determine her ability to function outside of prison.² A mental health evaluation was conducted by Dr. Robin Lyn Moody, Ph.D., who determined that the Respondent was not fit mentally handle the rigors of society. Upon being informed of Dr. Moody's findings, the Board reevaluated her case and made a determination to rescind the Respondent's conditional parole.

The ALC determined that due to Dr. Moody not being a licensed psychologist she was not qualified under the statute to conduct an evaluation. The Appellant will argue that the statute does not require the evaluator be a licensed psychologist, but a person **duly qualified** to make this determination. Dr. Robin Lyn Moody possesses a doctorate in psychology, clinical psychology, and industrial organized psychology. She conducts clinical evaluations for attorneys, governmental agencies, and physicians. She also teaches undergraduate and graduate courses in counseling, and psychology. She instructs students who will become licensed psychologist; therefore, she should be capable of making the determination as to a person's ability to conduct themselves in society. Nothing in the statute states that there is a requirement, that the evaluator be

² Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside of prison from a duly qualified psychiatrist or psychologist. S.C. Code Ann. §24-21-610 (Supp. 1986).

licensed. Instead, the individual who conducts this evaluation must be “duly qualified.” The above referenced qualifications should reveal that Dr. Moody is duly qualified to make these evaluations.

The lower Court determined that in order to be able to make these evaluations the person must be a licensed psychologist; however, that is not stated within the statute. This evaluation falls under one of the exceptions which does not require a license. Pursuant to South Carolina law a licensed member of another profession who is regulated by the Department of Labor, Licensing, and Regulation and who is rendering services of a psychological nature and does not represent himself to be a psychologist or his services to be psychological is not required to obtain a license. S.C. Code Ann. §40-55-90(A)(1)(c)(Supp. 2015). The South Carolina Code of Laws also state that a person is exempt from requiring a license if:

A person employed by any entity who professional employment is funded through an agency of the State and who provides services of a psychological nature within the scope of employment if the person does not describe himself or his services by any title or description which states or implies that the person holds a license or otherwise required by this chapter.

S.C. Code Ann. §40-55-90(A)(13)(Supp. 2015).

Dr. Moody has never held herself out to be a psychologist, but is a National Certified Counselor, and a Licensed Professional Counselor, with a doctorate in clinical, industrial, and organizational psychology with also has a doctorate in Christian Psychology Counseling. Black’s Law Dictionary defines “Duly qualified” in a proper manner in accordance to with legal requirements as, possessing the necessary qualifications, a person trained and prepared to perform tasks to fulfil an office. BLACK’S LAW DICTIONARY (2nd Ed.) It should be clear to this Court that Dr. Moody is duly qualified to make a determination as to the ability of the Respondent to be able to conduct herself into society if released from incarceration. This is the only requirement listed within the statute. The lower Court erred in determining that the evaluator must be a licensed psychologist

when it does not state that within the statute. If having a license in the field of psychology or psychiatry was a condition it would have been listed within the statute. The General Assembly's only qualification was that the person be "duly qualified."

Pursuant to *Sims v. Colvin*, 2014 WL 793065, the United States District Court of South Carolina determined that examiners are qualified if they are "currently licensed" in the State and have the training and experience to perform the type of examination or test required. In *Sims*, the U.S. District Court for South Carolina noted that while the consultative examiner used by the ALJ was not a licensed psychologist, he was a licensed professional counselor with an advanced degree. The District Court Judge upheld the ALJ's decision to consider the examiner's assessment because the Plaintiff failed to show that the consultative examiner did not have the training and experience to perform the psychological examination. Ultimately, the Court ruled against the Plaintiff by determining that the ALJ did not err in relying on the licensed professional counselor's exam in lieu of the one performed by a licensed psychologist.

In this cause of action, the Respondent never presented any evidence revealing that Dr. Moody did not have the requisite training and experience to perform a pre-parole mental health assessment. In the present case, the one-time mental health evaluation is not a treatment device that might require the Board to give a licensed psychologist more weight than a duly qualified consultative examiner. "When the nature and length of the treatment relationship by a licensed psychologist indicates that the evaluation at issue was not conducted primarily for medical treatment, the opinion of the licensed psychologist should not be given controlling weight." *Caudill v. Astrue*, 2010 WL 148806 (2010). Thus, the use of a licensed psychologist or psychiatrist for a non-treatment cause such as a need to obtain a report as in the present case is not necessary.

The Board only considered the result of the exam as one factor among several in making the decision to deny parole.

The Appellant also argues that the determination of a person qualifications to make this evaluation is completely in the control of the deciding body, which in this case is the Parole Board. The Board was made aware of the qualifications of Dr. Moody and determined that she is duly qualified to make her opinion regarding the possibility of the Respondent's ability to succeed outside of prison. Dr. Moody has a doctorate in Psychology, is a national certified counselor, a licensed professional counselor, conducts mental exams for attorneys, and governmental agencies, and teaches undergraduate and graduate courses in counseling and psychology. Pursuant to the rules, this makes her duly qualified to make an opinion on this matter. If scientific, technical, or other specialize knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge skill, experience training or education may testify thereto in the form of an opinion or otherwise. Rule 702 SCRE.

The authority to decide if Dr. Moody is qualified belongs with the deciding body, the Parole Board. All expert testimony must satisfy criteria of the rules of evidence governing testimony of experts, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration. *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009). The person who conducted this evaluation has a doctorate in psychology, which makes her more qualified than an average person to make an opinion regarding the Appellant's ability to function outside of prison. An expert witness is a witness with knowledge must generally be such as not normally possessed by the average person. *Potter v. Glosser Bros. Department Store, Inc.*, 146 Pa. Super. 129, 22 A2d 28 (1941).

Dr. Moody not only has more training and knowledge than the average person, she uses psychological testing as part of this evaluation. Within her report Dr. Moody revealed the instruments used in her evaluation which included, the mini-mental state examination 2nd edition, the Minnesota Multiphasic Personality Inventory 2nd edition and a clinical interview. So Dr. Moody, who has a Doctorate in Psychology, has revealed substantial evidence that she is duly qualified to give her opinion regarding the Respondent's ability to function outside of prison. The ALC cannot remand a decision of the Board without being presented any evidence of wrongdoing. The findings of an 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). It should be considered reasonable that the qualifications presented by Dr. Moody reveals that she is more than qualified to give the examination and her opinion as to the ability of the Respondent's ability to function outside of prison.

The lower court ruled that the evaluation completed by Dr. Moody is unlawful due to the fact she is not a licensed psychologist. Nothing in the statute states that the person should be licensed to conduct this evaluation. The statute only said that the person must be "duly qualified." If the General Assembly wished the person who conducted this evaluation be a licensed psychologist or psychiatrist the statute would have specifically stated this, as it exists in other statutes when it requires a licensed psychologist or physician. (Ex. Section 24-21-715, parole for a terminally ill inmate; Section 62-8-109, when a power of attorney is effective.) Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which

limits or expands the statutes operation. *Rowe v. Hyatt*, 321 S.C. 366, 468 S.E.2d 649 (1996). Court should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 16, 492 S.E.2d 777, 779 (1997). A law must be interpreted reasonably and practically consistent with the purpose and policy of the General Assembly. *Abell v. Bell*, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956).

The Board decided to use Dr. Moody due to the fact she is highly qualified to form an opinion on the ability of the Respondent to live a life outside of prison. There are a limited number of licensed psychologists willing to conduct these evaluations. In order to expedite these evaluations the Appellant sought another duly qualified individual. The General Assembly did not intend this to be a medical diagnosis, but a look into an inmate who has spent at least ten years in prison to determine his or her ability to adjust to the changes in society, and his or her ability to handle these changes, so as to not violate parole. This statute does not apply to an individual who has maxed out a sentence, but only to individuals who might be released on parole.

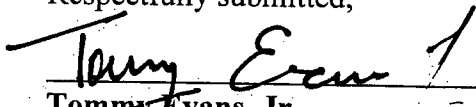
Dr. Moody is a nationally certified and licensed professional counselor who conducted mental evaluations to many inmates, several of which she has determined will be successful once released on parole. Although the Board did not release them solely for this reason, or denied their release on parole due to her determination, they have taken her opinion into consideration. If this Court rules with the ALC, the question must be asked, should the Board rescind all individuals Dr. Moody has determined will successfully handle themselves in society, and who have been released on parole? Since the ALC determined that the Board erred in his case, and if the Court accepts this determination, that decision would apply to each case Dr. Moody considered while under contract with the Department.

It should be clear that Dr. Moody is extremely qualified to make an opinion as to the Respondent's ability to function outside of prison. The statute clearly states "duly qualified," not "licensed." Since Dr. Moody was duly qualified the decision of the Board should be upheld.

CONCLUSION

Based on the foregoing reasons the ALC incorrectly remanded the final decision of the Parole Board; therefore the Appellant respectfully requests the final decision of the Administrative Law Court be reversed.

Respectfully submitted,


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Columbia, South Carolina
February 9, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable H.W. Funderburk, Jr. Administrative Law Judge
Case No.: 16-ALJ-15-00010

Appellate Case No.: 2016-002492

MELISSA BURRIS, #212040.....RESPONDENT

v.

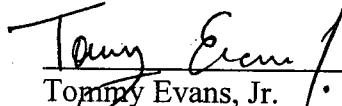
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,..... APPELLANT

DESIGNATION OF MATTER

Appellant proposes the following to be included in the Record on Appeal:

1. Entire Record on Appeal in the Administrative Law Court

The undersigned hereby certifies this Designation contains no matter which is irrelevant to
this appeal.



Tommy Evans, Jr.
Assistant General Counsel

February 9, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable H.W. Funderburk, Jr.
Administrative Law Judge
Case No. 16-ALC-15-0010-AP

Appellate Case No.: 2016-002492

Melissa Burris #212040,

Respondent,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF AUTHORITIES

Sims v. Colvin, 2014 WL 793065

South Carolina Board of Pardons and Paroles, Operations Manual, January, 2014.

Statute:

S.C. Code of Laws Ann. §1-23-380 (5) (Supp. 2015)

S.C. Code of Laws Ann. §24-21-610

S.C. Code of Laws Ann. §24-21-715

S.C. Code of Laws Ann. §40-53-90 (a)

S.C. Code of Laws Ann. §40-55-10 *et seq* (2011 & Supp. 2016)

S.C. Code of Laws Ann. §40-55-55 (2011)

S.C. Code of Laws Ann. §40-55-80

South Carolina Rules of Evidence Rule 702

STATEMENT OF THE ISSUES ON APPEAL

1. Did the Lower Court err in determining that Dr. Robin Lyn Moody was not qualified to conduct a psychological examination pursuant to Section 24-21-610, S.C. Code as amended?

STATEMENT OF THE CASE

On January 13, 2016, the Respondent appeared before the South Carolina Department of Probation, Parole and Pardon Services, hereinafter referred to as the Parole Board, and was granted parole. The Respondent had been convicted in Anderson County on January 5, 1994, for the crime of Murder and Possession of a Firearm during the commission of a violent crime. The Respondent was sentence to life and five years respectively. The Respondent has served the requisite amount of time to be considered for Parole. On January 13, 2016, the Respondent was granted conditional parole.

On March 10, 2016, Respondent received a letter from Probation and Parole indicating that her case was reconsidered on February 17, 2016, and the Board rescinded her parole for the following three reasons:

1. The Nature and Seriousness of the Current Offense,
2. Indication of Violence in this or Previous Offense; and
3. Use of Deadly Weapon in this or Previous Offense.

A Notice of Appeal was timely filed on March 25, 2016, in the South Carolina Administrative Law Court.

The Appeal was decided by the Lower Court and by Order of The Honorable H. W. Funderburk the case was remanded back to the South Carolina Department of Probation, Parole and Pardon Services.

A timely Notice of Appeal was filed by the Appellant. This Appeal follows:

STATEMENT OF THE FACTS

The Respondent has served a period of incarceration that exceeds ten (10) years, therefore she would be required to have a psychological examination by a duly qualified psychologist or psychiatrist pursuant to South Carolina Code of Law §24-21-610.

It was only discovered after the filing of the initial appeal and the receipt of the Record on Appeal from the Administrative Law Court that the Respondent received a negative psychological. This document and/or information was never given to the Respondent.

Between the time of being granted conditional Parole, and her notice of rejection, the Respondent received no disciplinaries from the South Carolina Department of Corrections, nor was she charged with any additional crimes. The factual nature of her crime and the circumstance revolving around her crime did not change.

The psychological was performed by Dr. Robin Lyn Moody a Licensed Clinical Counselor. Dr. Moody is not a Licensed Psychologist. The Lower court determined that pursuant to State Law and §24-21-610, she was not qualified to render a psychological report.

ARGUMENT #1

Did the Lower Court err in determining that Dr. Robin Lyn Moody was not qualified to conduct a psychological examination pursuant to Section 24-21-610, S.C. Code as amended?

ARGUMENT

The Appellant in this case asks the question whether the Administrative Law Court erred in determining that Dr. Robin Lyn Moody was not qualified to conduct a mental evaluation to determine the fitness of the Respondent for parole purposes.

The Respondent is currently serving a life sentence, but is eligible for parole. She appeared before the Parole Board November 6, 2013 and was denied. She appeared a second time before the Board on January 13, 2016 and was granted conditional parole upon receiving a favorable psychological as required by S.C. Code Section 24-21-610. The evaluation in this case was performed by Dr. Robin Lyn Moody, a contract employee of The South Carolina Department of Probation, Parole and Pardon Services. This evaluation was provided to the Parole Board. Upon receipt of Dr. Moody's psychological report, the Respondent's conditional parole was rescinded.

This decision was appealed to the Administrative Law Court in which the Honorable H. W. Funderburk, Administrative Law Court Judge found:

When acting in an appellate capacity, the ALC must apply the criteria of S.C. Code Ann. §1-23-380 (5) (Supp. 2016), which reads:

The Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on question of fact. The court may affirm the decision of the agency or remand the case for further proceedings. 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) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Court also found that the Respondent argues she is entitled to a reexamination of her mental condition followed by a rehearing on the basis the Department did not comply with the statute because the evaluation was not conducted by an appropriate person. S.C. Code Ann. §24-21-610 states:

Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a **duly qualified psychiatrist or psychologist**. [Emphasis added].

The Lower Court determined that this evaluation does not conform with the requirements of S.C. Code Ann. §24-21-610. Respondent is entitled to a new mental health evaluation conducted by a duly qualified psychiatrist or psychologist, as mandated by S.C. Code Ann. §40-55-10 *et seq* (2011 & Supp. 2016). After receipt of the report from the new evaluation, a rehearing shall be held to consider Respondent's parole.

Judge Funderburk also Ordered that a copy of the Respondent's psychological and Curriculum Vitae be provided to the Court, but further stated that the Respondent's counsel was not allowed to provide these documents nor any information contained therein to the Respondent.

The Appellant appears to argue that:

1. The Board is allowed to conduct a rehearing and make a determination if the Respondent should be granted parole as if she was receiving a completely new parole hearing. Their basis for their decision is that after the examination, the Board decided to revoke the original granting of parole and then rescinded her parole on the following basis:

1. Nature and Seriousness of the Current Offense
2. An indication of Violence in this or previous offenses; and
3. Use of a deadly weapon in this or other previous offenses.

The Appellant seems to argue that upon receipt of a psychological, that they have the ability to completely review the case de novo and make a decision that is inconsistent with their previous decision.

The fallacy in this argument and logic is that the Respondent received no further criminal charges, no disciplinaries, or any other substantive reason as to why her condition changed from the original granting of conditional parole and the so called reexamination and revocation of parole. The Respondent would argue that this is outside of proper procedure. Clearly this decision is arbitrary and capricious and there is no basis for a parole revocation.

2. The Appellant then argues that the Robin Lyn Moody was duly qualified by the "agency itself" and therefore is not required to be a licensed psychologist. The Statute states that the person has to be a duly qualified psychologist or psychiatrist. It does not appear that it is the intent of the legislature to say that the psychologist could to meet lower legal requirements to practice as a psychologist. The Lower Court clearly points out that pursuant to the South Carolina Department of Labor and Licensing an individual who is practicing psychology in the State of South Carolina must be licensed.

It notes there are certain criteria that a person must meet in order to obtain a license from the State. S.C. Code Ann. §40-55-55 (2011) requires a license to engage in the practice of psychology. In order to obtain a license, the applicant must have a doctoral degree in psychology and meet other requirements such as examinations and supervised experience. S.C. Code Ann. §40-55-80. There is nothing in the Lower Court Record to support a conclusion that Counselor has met the examination and supervised experience requirements necessary for licensure in South Carolina.

While Dr. Moody does have a PhD in psychology, she has never taken the exam for licensing of psychologist in our State nor has she ever obtained a license to practice psychology.

3. The Appellant argues that Dr. Moody is exempt from the requirement of licensing. Pursuant to §40-55-90 (a) which exempts a person employed by any entity whose professional employment is funded through an Agency of the State or who provides services of a psychological nature within the scope of employment, if the person does not describe himself or his services by any title or description which states or implies that a person holds a license or otherwise required by the chapter.

The fallacy of this argument is that the Doctor in question is not a full time employee of the South Carolina Department of Probation and Parole Services, nor is she involved with any full time research within any agency of South Carolina Government. She holds herself out as a psychologist by performing a psychological examination and rendering a psychological report. She has a contract as an independent contractor to provide services for the South Carolina Department of Probation, Parole and Pardons Services.

The Appellant admits in their Brief, that Dr. Moody is employed and works outside of her contract with the State of South Carolina. Therefore, this exemption does not apply to her. She does not meet this criteria. She rendered a **psychological** [emphasis added] report to the Parole Board. By nature, a psychological report would be performed by a Psychologist and pursuant to Statute, a psychologist must be licensed by the State.

4. The South Carolina Department of Probation, Parole and Pardon Services, cannot on their own, duly qualify a person to provide psychological services. The Laws of the State of South Carolina require that the individual be licensed. The Appellant cannot avoid this licensing requirement by providing their own duly qualification of certification of that individual.

Appellant refers to the case of Sims v. Colvin, 2014 WL 793065 and Rule 702 South Carolina Rules of Evidence. The Respondent would respectfully argue that those situations do not apply to the issue at hand. The Statute regarding evaluations for Probation and Parole, does not mention a Licensed Professional Counsellor, in fact, it specifically requires a duly qualified psychologist. The Statute does not envision an expert witness pursuant to Rule 702. It is not envisioned that Dr. Moody would only be asked to make herself more qualified than an average person as contemplated in Rule 702.

5. The Appellant argues that if the General Assembly wished for the person conducting this evaluation be a licensed psychologist, they would have specifically stated that in the Statute. The Appellant alludes to Section 24-21-715, South Carolina Code as Amended (Parole for terminally ill, geriatric, or permanently disabled inmates) parole for

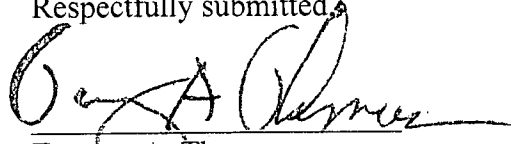
a terminally ill inmate in which a physician's opinion is required. Clearly we would not want unlicensed physicians giving an opinion regarding terminal illness. The General Assembly did specifically state that a "duly qualified psychologist" should be licensed by virtue of the Statutes under Labor and Licensing.

6. The Appellant asked the question, that should the Court determine that Dr. Moody psychologist in this case that would the Board have to go back and rescind the parole of any and all inmates who had been given favorable psychologicals by her. This is an interesting argument but this issue is not currently before the Court.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits that the Court should confirm the decision of the Administrative Law Court.

Respectfully submitted,



Tommy A. Thomas
Attorney for the Respondent

March 10, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable H.W. Funderburk, Jr.

Administrative Law Judge

Case No. 16-ALC-15-0010-AP

Appellate Case No.: 2016-002492

Melissa Burris #212040,

Respondent,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

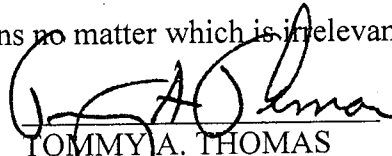
Appellant.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

The Respondent designates that the following matter be included in the Record on Appeal:

1. The entire Lower Court Record.
2. Respondent's Psychological Evaluation performed by Dr. Robin Lyn Moody.
3. The Curriculum Vitae of Dr. Robin Lyn Moody.

I certify that this designation contains no matter which is irrelevant to this appeal.



TOMMY A. THOMAS

P.O. Box 88

Irmo, SC 29063

(803) 732-5507

ATTORNEY FOR RESPONDENT

March 10, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable H.W. Funderburk, Jr. Administrative Law Judge
Case No.: 16-ALJ-15-00010

Appellate Case No.: 2016-002492

MELISSA BURRIS, #212040.....RESPONDENT

v.

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

**MOTION OBJECTING TO RESPONDENT'S
DESIGNATION OF MATTER**

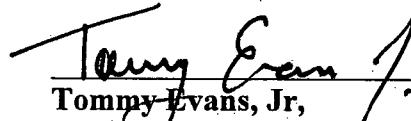
Comes now, Tommy Evans, Jr., Assistant General Counsel for the South Carolina Department of Probation, Parole and Pardon Services (the Department), and respectfully objects to Respondent's request to include a copy of the Respondent's psychological evaluation performed by Dr. Robin Moody.

Appellant objects to this inclusion as all information contained in a parolee or probationer's file is privileged and is exempt from disclosure. See S.C. Code Ann. § 30-4-40(a)(4) (1991) (allowing exemption of matters specifically exempted from disclosure by statute or law). Pursuant to statute, all information and data obtained in the discharge of his official duty by a South Carolina probation agent is privileged information and may not be disclosed directly or indirectly to anyone other than the judge or others entitled to receive reports, unless ordered by the court or the director. S.C. Code Ann. § 24-21-290 (Supp. 2008).

See also State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (2003). Investigating parole cases referred by the director, keeping detailed records of his or her work, making reports in writing, and performing other duties as the director may require are part of the official duties of a probation agent. S.C. Code Ann. § 24-21-280 (Supp. 2007).

Furthermore, this report was not included in the lower court's record on appeal. Appellant filed a motion for an in camera review of this report and by order dated September 30, 2016, by the Honorable H.W. Funderburke, redacted copies of this report were sent to both the Judge and Respondent's attorney; however, it was not to be disclosed to the Respondent. Therefore, Appellate requests that the court deny Respondent's request for the inclusion of this report in the record on appeal.

Respectfully submitted,



Tommy Evans, Jr,
Assistant General Counsel
South Carolina Department of Probation,
Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable H.W. Funderburk, Jr.
Administrative Law Judge
Case No. 16-ALC-15-0010-AP

Appellate Case No.: 2016-002492

Melissa Burris #212040,

Respondent,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Appellant.

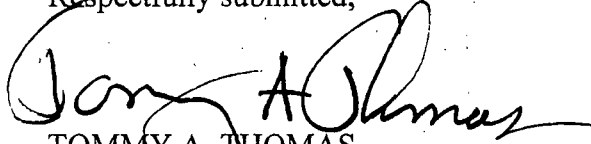
**REPLY TO APPELLANT'S MOTION OBJECTING TO RESPONDENT'S
DESIGNATION OF MATTER**

That the Respondent would respectfully show unto the Court:

1. That by specific Order from the Lower Court, the psychological report prepared in the Respondent's case as well as the Curriculum Vitae of Robin Lyn Moody was made part of the Lower Court's decision process.
2. That clearly this information is part of the Record. Attached to this Reply, is a copy of the Lower Court's Order requiring that the information in question be provided.

3. The Respondent would contend that it is impossible for this Court to make a decision without the entire record of the Lower Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tommy A. Thomas", written over the printed name.

TOMMY A. THOMAS

P.O. Box 88

Irmo, SC 29063

(803) 732-5507

ATTORNEY FOR RESPONDENT

March 27, 2017

The South Carolina Court of Appeals

Melissa Burris #212040, Respondent,

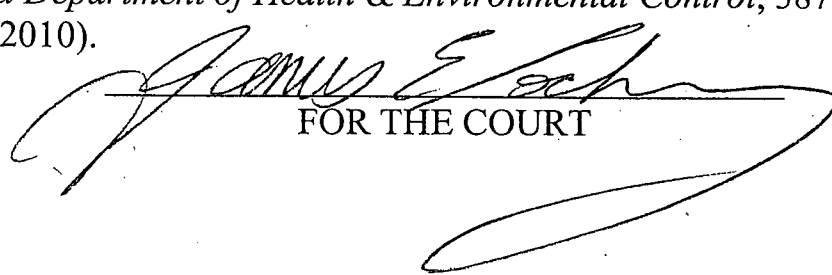
v.

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

Appellate Case No. 2016-002492

ORDER

The South Carolina Department of Probation, Parole and Pardon Services (the Department) has filed an appeal from the Administrative Law Court's order reversing the Department's denial of Melissa Burris's parole and remanding the matter back to the Department for a new mental evaluation and a rehearing regarding Burris's parole. Because the ALC's order is not a final decision that is immediately appealable pursuant to section 1-23-610 of the South Carolina Code (Supp. 2016), this appeal is dismissed. *See Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health & Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010).


FOR THE COURT

Columbia, South Carolina

cc:

Tommy Evans, Jr., Esquire

Tommy Arthur Thomas, Esquire

FILED

May 4, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Administrative Law Court
The Honorable H.W. Funderburk Jr., Administrative Law Judge
Appellant Case No. 2016-002492

Filed May 4, 2017

Melissa Burris, #212040,

RESPONDENT

v.

South Carolina Department of Probation, Parole and
Pardon Services,

APPELLANT

PETITION FOR REHEARING

The Appellant, the South Carolina Department of Probation, Parole and Pardon Services, respectfully petitions this Court for rehearing pursuant to Rule 221(a), SCACR. The Appellant hereby seeks a rehearing on the grounds that the Court may have misapprehended or overlooked several crucial points by concluding that the Administrative Law Court (ALC) had not made its final decision; therefore, this case is not appealable.

Specifically, the Appellant submits this Court may have misapprehended its determination that the ALC had not made a final order regarding these proceedings. The Appellant will argue that the ALC made the determination that the Appellant erred in not allowing a duly qualified psychiatrist or psychologist to make the determination of whether or not the Respondent would be

fully functional outside of prison, and that decision was final. The denial of parole was overturned the case was remanded for another evaluation to be completed by a psychiatrist or psychologist and have a re-hearing regarding his parole. Any appeal after a re-hearing would be considered moot and have no value regarding the matter what that originally brought before this Court.

The Respondent is currently serving a life sentence for murder. At the time she committed this offense, South Carolina law allowed a person serving a life sentence for murder parole eligibility upon the service of twenty years. On November 6, 2013, the Appellant made her initial appearance before the Parole Board. At the conclusion of this hearing the Board decided to deny the Respondent an opportunity to be released on parole. The Respondent re-appeared before the Board on January 13, 2016. At the conclusion of this hearing the Board decided to grant parole conditionally. Due to the length of time the Respondent was incarcerated, she was required to be mentally evaluated as to her ability to conduct herself in society, *see*, S.C. Code Ann. §24-21-610 (2015). She was examined and evaluated by Dr. Robin Lyn Moody, Ph.D. Upon completion of this evaluation, Dr. Moody determined that the Respondent would not be able to adjust to life outside of prison. After receiving those results, the Board decided to rescind the Respondent's conditional parole and reexamine their previous decision. After this reexamination the Board decided to deny parole due to: 1) the nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; and, 3) a use of a deadly weapon in this or a previous offense.

This decision was appealed to the Administrative Law Court who decided that pursuant to South Carolina law this evaluation must be done by a licensed psychiatrist or psychologist. The ALJ determined that the Board's decision to consider this evaluation was reversible error. The lower Court ordered that this case be remanded for a new evaluation and a re-hearing.

After this decision the Appellant immediately filed a notice of appeal before this Court, arguing that the ALC erred in its interpretation of the statute. The Appellant argued that Dr. Moody falls under an accepted person who is exempted from requiring a license to perform psychological evaluations, *see*, S.C. Code Ann. §40-55-90(A)(1)(c)(2015). Thereby making her duly qualified pursuant to statute. This court ruled that this decision is not appealable due to it not being a final decision, and thereby dismissed this appeal.

The Appellant respectfully request this Court to grant this petition for rehearing and withdraw its previous order dismissing this appeal. The Appellant will argue that the decision of the ALC was final, and any appeal stemming from another decision of the Board would be moot regarding the issues originally brought before this Court.

ARGUMENTS

- 1. The decision of the ALC was final; therefore, this Court does have jurisdiction over this cause of action.**

The ALC's jurisdiction to review a final decision of the Department is derived from the decisions of the South Carolina Supreme Court in *Al-Shabbaz v. State*, 338 S.C. 334, 527 S.E.2d 724 (2000); *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2002); and, *Cooper v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 481, 661 S.E.2d 106 (2008). In *Al-Shabbaz*, the South Carolina Supreme Court created a new avenue by which an inmate could seek review of a final decision of a state agency in a "non-collateral" matter related to a conviction and sentence. The Court held that inmates could appeal those final agency decisions to the ALC, and ultimately the Court of Appeals pursuant to the Administrative Procedures Act. *Al-Shabbaz*, at 376. In *Al-Shabbaz*, the Court recognized that "these administrative matters typically arise in two ways: (1) when an inmate is disciplined and

punishment is imposed; and (2) when an inmate believes prison officials have erroneously calculated sentence; sentence-related credits or custody status.” *Id.*, at 369

In *Furtick*, the Court noted that the appealable final decision arises in the latter manner, where the inmate alleges that the Department erroneously determined he was not eligible for parole. The review by the ALC under procedures set forth in *Al-Shabbaz* is necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. *Furtick*, at 149. The Court determined that the permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process. *Id.* The *Furtick* decision gave the ALC jurisdiction over the denial of parole eligibility.

The Supreme Court in *Cooper* decided to give the ALC the authority to review the denial of parole. The ALC was given the very narrow ability to determine if the process was legally followed by the Board prior to the final decision. If it is shown that the Board considered the mandatory criteria and risk assessment, the final decision stands. If it is found that the Board in some way failed to abide by the mandatory criteria or risk assessment the ALC can order the case remanded for a new hearing. Pursuant to these decisions, the ALC only has one action available, to remand the decision for another hearing. This is what was decided, which is a final decision, therefore, this court has jurisdiction.

The Court of Appeals has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree in the circuit court, family court, a final decision of an agency, **a final decision of an administrative law judge**, or the final decision of the Worker’s Compensation Commission. S.C. Code Ann. §14-8-200(2015)(emphasis added). This Court made the decision that the ALC did not make a final decision so this court dismissed this appeal.

Within its decision this Court cited Section 1-23-610 of the South Carolina Code of Laws which state:

(A)(1) For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right. (2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge's decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions from which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine or alcoholic liquor. Upon motion the administrative law judge may grant, or the court of appeals may order, a stay upon appropriate terms.

S.C. Code Ann. §1-23-610(A)(1-2)(2015)

This Court referred to the above referenced statute to dismiss this Appeal. The Court is not allowed to make a decision regarding interlocutory decisions. In the absence of a statute or rule that permits the immediate appeal of an interlocutory order, only final orders are generally appealable. *Culbertson v. Clemens*, 322 S.C. 20, 471 S.E.2d 163 (1996) An order is interlocutory and not final when "there is some further act which must be done by the court prior to a determination of the rights of the parties." *Mid-State Distribs., Inc. v. Century Imps. Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993). The order of the ALC was final. The Judge made the decision for the case to be remanded for another evaluation to be completed and another hearing held by the Board. The initial subject of appeal that was raised by the Appellant was whether or not it was lawful for Dr. Moody to give her opinion regarding the ability of the Respondent to function outside of prison. The decision of the ALC was that Dr. Moody was not qualified to make this determination.

Cited within the order of dismissal is the South Carolina Supreme Court case of *Charlotte-Mecklenburg Hospital Authority v. S.C. Dept. of Health and Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010) which the court decided that the decision was interlocutory and not a final decision so the appeal was subject to dismissal. The Appellant argues that the present case is not identical to that of *Charlotte – Mecklenburg*. In that case the issue before the Court was whether or not the Department of Health of Environmental Control (DHEC) made the proper determination of which party were entitled a certificate of need. The ALC remanded this case for DHEC to make a decision. Once DHEC made the decision as to which party was entitled this certification, that decision was once again appealable. In the present case the issue brought before the lower court was decided, there is no further determination that could be made concerning the qualifications of Dr. Moody. The ALC determined that she was not qualified and ordered a new parole hearing. For this decision to be interlocutory the Department would have to be able to make a decision on the merits of Dr. Moody, which will be re-heard by the ALC. The decision of the ALC was final which gives this Court jurisdiction.

There is no further act can be made regarding this decision. Once the ALC made this decision the Appellant only had two actions, one, to have the Respondent evaluated by another doctor, or, two, appeal this decision to this Court. This issue cannot be brought again before the ALC, the decision made on this issue was final. In *Good v. Hartford Accident & Indemnity Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942), the South Carolina Supreme Court decided what makes a decision final, in *Good* it states:

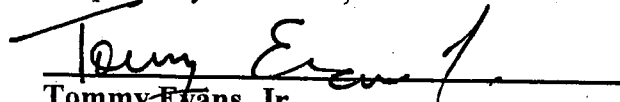
“A judgment order of decree to be final for purposes of an appeal or error, must dispose of the cause, or a distinct branch thereof, as to all parties, reserving no further questions or directions for future determination. It must be finally dispose of the whole subject – matter or be a termination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has

been determined. In other words, a final judgment is one which operates to divest some right in such a manner as to put it beyond the power of the Court making the order to place the parties in their original condition after the expiration of the term; that is, it must put the case out of Court, and must be final in all matters within the pleadings.

Good, at 212, *quoting*, 2 Am.Jur. 860, Section 22.

In South Carolina, an immediate appeal may be taken where the rights of the State would be substantially impaired if the appeal is not heard. When error in the decision or ruling cannot be vindicated on appeal, a substantial right is involved. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000). It is clear by the decision of the ALC that the right of the Appellant would be dramatically impaired due to the fact there are limited number of psychiatrist or psychologist available in this State many of whom are not willing to perform such evaluations within the state's prison system. This decision would cause a substantial delay in the final decisions of many individuals who are awaiting the chance to be released on parole. There is also the question of the individuals who have been given a positive evaluation by Dr. Moody and have already been released on parole. If this evaluation has been done in error, each evaluation done by Dr. Moody, including those who has resulted in positive evaluations, has been done in error and maybe subject to remand. The ALC remanded the case back to the Board for a future evaluation and another parole hearing; however, the decision regarding the qualifications of Dr. Moody was the only issue raised before the ALC. This is a final decision which cannot be brought again before the ALC, so this Court has jurisdiction.

Respectfully submitted,


Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina
May 8, 2017

The South Carolina Court of Appeals

Melissa Burris #212040, Respondent,

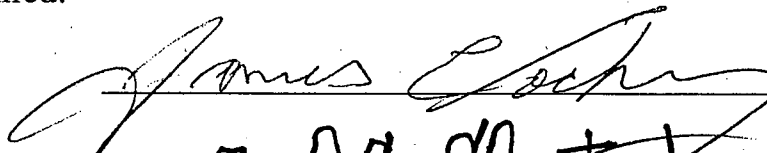
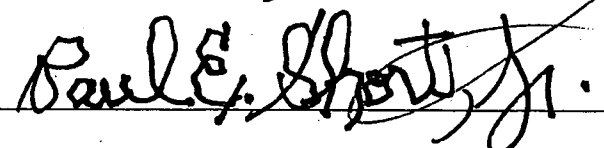
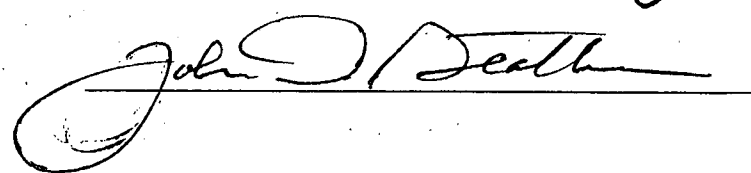
v.

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

Appellate Case No. 2016-002492

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc: Tommy Evans, Jr.
Tommy Arthur Thomas
Jana E. Shealy

FILED

August 9, 2017

The Supreme Court of South Carolina

Melissa Burris #212040, Respondent,

v.

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

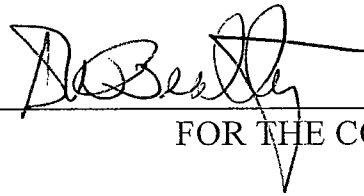
Appellate Case No. 2017-001759

ORDER

By order dated September 15, 2017, this Court dismissed the petition for a writ of certiorari filed by petitioner for failure to file two copies of the Appendix and proof of service as required by Rule 242(e), SCACR. Petitioner now asks the Court to reinstate the matter and accept the filing of the Appendix out of time. The motions are granted, and the Appendix and proof of service thereof filed by petitioner are accepted.


Columbia, South Carolina

October 19, 2017



C.J.

FOR THE COURT

cc:

Tommy Arthur Thomas, Esquire

Tommy Evans, Jr., Esquire

The Honorable Jana E. Shealy

The Honorable Jenny Abbott Kitchings

The Supreme Court of South Carolina

Melissa Burris #212040, Respondent,

v.

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

Appellate Case No. 2017-001759

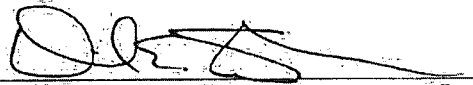
Lower Court Case No. 2016-ALJ-15-0010AP

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

March 28, 2018

cc:

Tommy Arthur Thomas, Esquire

Tommy Evans, Jr., Esquire

The Honorable Jenny Abbott Kitchings

The Honorable Jana E. Shealy



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 05, 2018

The Honorable Jana E. Shealy
1205 Pendleton Street
Columbia SC 29201

REMITTITUR

Re: Melissa Burris #212040 v. SCDPPPS
Lower Court Case No. 2016ALJ150010AP
Appellate Case No. 2016-002492

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Tommy Evans, Jr., Esquire
Tommy Arthur Thomas, Esquire

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable H.W. Funderburk, Jr. Administrative Law Judge
Case No.: 16-ALJ-15-00010

Appellant Case No. 2018-000660

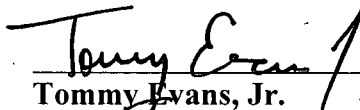
MELISSA BURRIS, #212040.....RESPONDENT

v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 210(c), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007, and contains all material proposed to be included by any of the parties and not any other material.



Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

RECEIVED
AUG 03 2018
SC Court of Appeals

August 2, 2018