

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
S.C. Department of Probation, Parole and Pardon Services

S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2019-002102
Docket No. 19-ALJ-15-0029-AP

Bernard Bagley, #175851,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

MOTION FOR AN ORDER GRANTING BAIL
PENDING DECISION ON APPEAL AND AN
AMENDED MOTION OF NOTICE, VERIFICATION
FOR WRIT OF HABEAS CORPUS

PLEASE TAKE NOTICE, that the Appellant, Bernard Bagley, hereby come now pray for an order granting bail pending the Court decision on the appeal, and bail under §24-21-645, of S.C. Code of Laws, in the above captioned matter based on extraordinary compelling circumstances of the global pandemic covid-19 virus that affects his duration of confinement.

Appellant's appeal is pending before this Court, but since then circumstances have severely changed with regards of the duration of his confinement. As such, accordance to Rule 65(f), SCRPC, he motion this Court for an order granting bail pending decision on appeal and perhaps during the parole investigation until his next parole hearing to end his duration of confinement in SCDC to alleviate any irreparable harm of pain and suffering of unusual punishment regarding his medical vulnerability medical condition in light of covid-19. Because, there is nothing short of relief now of an order granting bail by the power of the Justices in accordance to Article 5, §20, of S.C. Constitution and §14-8-290, of S.C. Code of Laws. SEE: State v. Whitener, 81 S.E.2d 784 (1954), and Evans v. Manning, 59 S.E.2d 341 (1950), Powers of justices and judges at chambers.

Appellant contends that covid-19 presents such a severe risk of harm that makes it unconstitutional to continue confining him in prison whereby this issue is the core of his motion for habeas corpus for bail pending an order in accordance

RECEIVED
DEC 14 2020
SC Court of Appeals

to §24-21-645, and the conditions set forth by the Court and Respondent,

The Appellant is a vulnerable person and he is 63 years old and more likely to contract covid-19 and suffer irreparable harm within SCDC during his duration of his confinement, It's always in a civil society public interest to prevent violations of unusual punishment rights that affect a person health and life. Appellant medical records, classification record which was not assessed by the Board during his June 2019 parole hearing and parole investigation is a major factor in this matter because there is nothing to protect him or every inmate from covid-19 within SCDC. There is no communal holding SCDC facility where the Appellant could be constitutional continued duration of confinement during this global pandemic covid-19 virus extraordinary compelling circumstances.

Appellant's duration of confinement will be a miscarriage of justice based on the extraordinary circumstances of covid-19 that merits immediate attention, because Appellant's parole date will be over 12 months behind based on his initial parole hearing date September 8, 2010. In addition, the Appellant invokes Title II of the ADA (Americans with Disabilities Act) and the Rehabilitation Act in accordance to Article 5, §20, of S.C. Constitution, and Preiser v. Rodriguez, 411 U.S. 475 (1973).

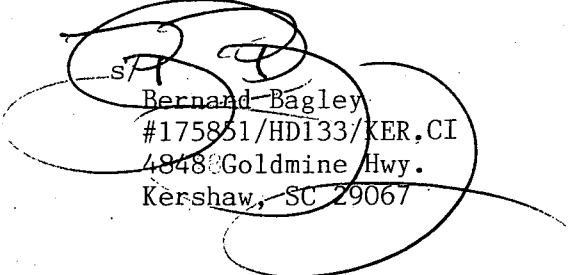
Appellant concur that a clinical evaluation should assist the court with a predictive aid for supervision of SCDPPTS while release on bail. Currently, Appellant suffers severe pain in his spine, and it appears that he is excluded from medical services of surgery intervention for his chronic lumbar and cervical medical conditions, and a pending colonoscopy examination that is in violation of the ADA. He is a military veteran with medical benefits that will assist him with his medical needs and care, in which bail to the Veterans Hospital under §24-21-700, is reasonable based on Appellant's pain and suffering for degenerative disc disease (DDD) has impact his psychological health and changing his personality due to the loss of certain enjoyment of activities. SEE: Mapp v. Reno, 241 F.3d 221 (2d.Cir. 2001).

Public interest may support the release of the Appellant who have served 30 years plus before he contracts covid-19 to preserve critical medical resources and prevent further stress on the States' and SCDC prison system overburdened health care system. SEE: CDC in its Guidance that "Some recent studies have suggested that covid-19 may be spread by people who are not showing symptoms" ctrs for disease control and prevention, how covid-19 spreads, <https://www.cdc.gov/coronavirus/how-covid-spreads.html>. NOTE: Appellant's medical record can be provided if Court require the same.

The Appellant is without words pertaining to the magnitude of covid-19's devastation. However, it is recognized that covid-19 poses a particularly tough challenge for the incarcerated citizens.

WHEREFORE, Appellant prays to be release on bail until covid-19 global pandemic is alleviated completely or entirely throughout SCDC prison system, or until an order under §24-21-645, granting parole. He pray that this Court to exercise its common law judicial power based on Appellant's severe case of DDD and being a medically vulnerable person with a medical condition that can be corrected only by granting bail.

December 8, 2020


Bernard Bagley
#175851/HD133/KER, CI
4848 Goldmine Hwy.
Kershaw, SC 29067

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
S.C. Department of Probation, Parole and Pardon Services

S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2019-002102
Docket No. 19-ALJ-15-0029-AP

RECEIVED
DEC 14 2020
SC Court of Appeals

Bernard Bagley, #175851,

Appellant,

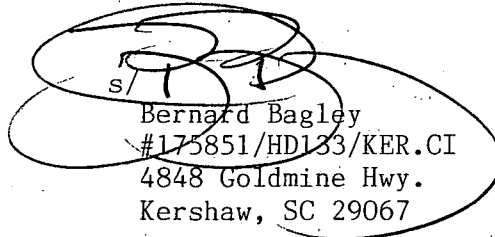
v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

AMENDED VERIFICATION

I, Bernard Bagley, say that I am the Appellant herein, and have read the foregoing Motions and know the contents thereof; that the same is true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters I believe them to be true under penalty of perjury.


s/ Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

December 8, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
DEC 14 2020
SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
S.C. Department of Probation, Parole and Pardon Services

S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2019-002102

Docket No. 19-ALJ-15-0029-AP

Bernard Bagley, #175851,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

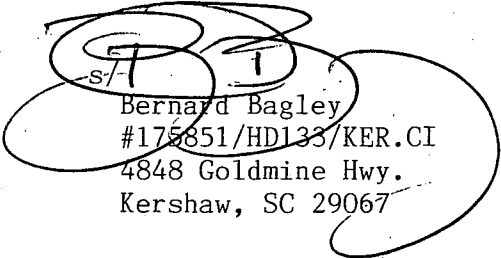
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I, Bernard Bagley, on the 8th of December, 2020, served a copy of his Motions for and Order Granting Bail, and Amended Notice, Verification, and Motion for Habeas Corpus on the Respondent by depositing the same in the U.S. Mail, postage prepaid, addressed as follows:

SCDPPPS Office of General Counsel
Matthew C. Buchanan, Esquire
P.O. Box 207
Columbia, SC 29202

December 8, 2020


Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

Bernard Bagley
#175851-AD133-Kenn
4848 Colburne Hwy.
Kershaw, S.C. 29067



RECEIVED
DEC 14 2020
SC Court of Appeals

S.C. COURT of Appeals
Jenny A. Kitchings, Clerk
P.O. Box 1629
Columbia, S.C. 29211-1629

RECEIVED
DEC 16 2020
DALLAS, TX

LEGAL