

STATE OF SOUTH CAROLINA  
In The Administrative Law Court  
Docket Number 21-ALJ-15-0007

**RECEIVED**

OCT 07 2021

**SC Court of Appeals**

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

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CHARLES WILLIAMS, #086721.....APPELLANT

v.

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

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**BRIEF OF RESPONDENT**

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**ATTORNEY FOR RESPONDENT**

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**STATEMENT OF THE ISSUES ON APPEAL**

1. Does the Parole Board's use of its stated parole consideration criteria, which was not in existence at the time Appellant committed his crime, constitute an ex post facto violation?
2. Whether the Board followed lawful procedures?

## STATEMENT OF THE CASE

On September 26, 1975, Appellant left a night spot with three females ranging in age from 15-17 years old. About a month later, on October 26, 1975, the bodies of all three females were found floating in the Reedy River about fourteen miles outside of Greenville County. The investigation revealed Appellant took all three victims and gave them some pills, which they consumed leading to their death a short time later. Appellant then drove to a wooded area by the Reedy River and rolled each body into the water. Due to the age of the case, information regarding his indictment and conviction are limited. On April 16, 1976, Appellant was sentenced to death by electrocution, however, on April 14, 1977, the South Carolina Supreme Court vacated Appellant's death sentence and remanded his case to the lower court for resentencing. On April 20, 1977, Appellant was sentenced to three life sentences which were set by the court to run consecutive to each other.

Appellant became parole eligible in August 1984. Since that time, Appellant has had twenty parole hearings with the most recent review taking place on March 24, 2021. Following Appellant's appearance, the Board unanimously rejected his request for parole citing the nature and seriousness of Appellant's offense as the reasons for their rejection.

Upon being informed of his denial of parole, Appellant filed a notice of appeal before the Administrative Law Court (ALC). In his appeal, Appellant alleges the application of Form 1212 to Appellant's parole hearing violates the ex post facto clause of the U.S. Constitution, and the Board determined their findings of fact upon unlawful procedure because of the change of a single word in the relevant parole statute outlining the Board's consideration of parole.

The Respondent argues that the changes in the criteria is minimal and not penal in nature so there exists no violation of ex post facto. The Respondent will further argue that the change to

the statute did not appreciably change the Board's required procedure and was therefore not unlawful.

The Respondent's brief follows.

### ARGUMENT

**1. The Board's use of its current parole consideration criteria does not result in an ex post facto violation.**

Appellant argues that the use of the parole consideration criteria found in S.C. Code §24-21-640 and the criteria listed in the Board's current Form 1212 constitutes an ex post facto violation. Because he committed his crime in 1975, he argues that the criteria the Board uses should solely be that which was used at the time of his offense.<sup>1</sup>

The Respondent submits that the changes to the parole criteria do not retroactively alter the definition of the crime or increase the punishment for a crime. As discussed in Jernigan v. State, 340 S.C. 256, 261, 531 S.E.2d 507, 509 (2000), ex post facto violations occur when "the legislative amendment 'produces a sufficient risk of increasing the measure of punishment attached to the covered crimes.'" Id., quoting California Dep't of Corrections v. Morales, 514 U.S. 499 (1995).

In Jernigan, the legislative change at issue was a change from yearly parole hearings to biannual hearings for violent offenders. The Supreme Court determined that the change violated ex post facto because increasing the time between parole hearings "effectively increases the 'quantum of punishment.'" Jernigan at 265, 340 S.E.2d at 512, quoting Lynce v. Mathis, 519 U.S. 433, 444-45 (1997).

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<sup>1</sup> Appellant has unsuccessfully submitted this identical argument to this Court and the Honorable Deborah Brooks Durden under Docket No. 19-ALJ-15-0002 (Order filed July 22, 2019).

At the time the Appellant committed the offense, S.C. Code Ann. § 55-612 (Supp. 1962) defined the mandatory criteria the Parole Board was obligated to apply to an inmate seeking parole.

Section 55-612 of the South Carolina Code of Laws specifically stated:

The Probation, Parole and Pardon Board shall carefully consider the record of the prisoner, before during and after imprisonment, and no such prisoner shall be paroled until it appear 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 interests of society will not be impaired thereby; and that suitable employment has been secured for him.

S.C. Code Ann. §55-612 (Supp. 1962)

In comparing this to the current statute, the only difference is the word “shall” is replaced by the word “may.” This change does not affect the Board members nor the criteria used in the determination of parole. This minor difference must be considered procedural, and not a violation of ex post facto. A procedural change is not ex post facto even though it may work to an inmate’s disadvantage. State v. Bryant, 382 S.C. 505, 675 S.E.2d 816 (Ct. App. 2009).

The Appellant alleges that the consideration of the Department’s fifteen criteria found in Form 1212 violates ex post facto.<sup>2</sup> He argues that since this criteria did not exist, and that he has not received parole since he started receiving hearings in 1984, then it must be to his detriment. This argument is flawed, as correlation does not necessarily imply causation.

Furthermore, neither the statutory nor Department criteria is penal in nature so it does not violate ex post facto. In order for ex post facto clause to be applicable, the statute or the provision in question must be criminal or penal in purpose and nature. State v. Huiett, 302 S.C. 169, 394 S.E.2d 486 (1990). The Department criteria does not increase punishment; nor does it change the

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<sup>2</sup> The Board must establish written, specific criteria for the granting of parole and provisional parole. S.C. Code Ann. §24-21-640 (1990).

parole board or add to the amount of votes necessary to be awarded parole. The use of the current criteria is merely a procedural change; therefore, it does not violate ex post facto. Therefore, the decision of the Parole Board should be upheld.

**2. The Parole Board's procedure was not unlawful.**

Appellant argues the Board did not utilize the procedure outlined by the South Carolina Code as it existed at the time of the commission of his offense.

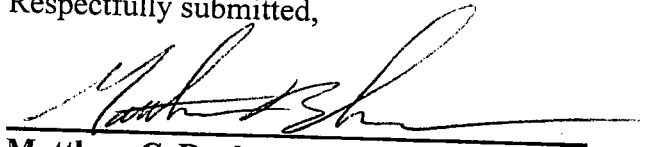
This argument, the Respondent submits, is a re-worded ex post facto argument that Appellant already stated above. Despite his assertions that the changes to the law since the commission of his offense are penal in nature, the differences in the law are procedural and do not increase the punishment.

The sole change of the §55-162 to §24-21-640 changes the word "shall" to "may." As discussed above, this is a procedural change that does not constitute a change that would be an ex post facto violation. In no way, based on the plain language of the statute, does the earlier inclusion of the word "shall" imply that the Board must parole Appellant. The statute still confers absolute discretion to the Board over the matter of granting or denying parole. The only time an inmate *shall* be paroled (or *may* be paroled) is upon the satisfaction of the Board.

**CONCLUSION**

Based on the foregoing arguments, the Department respectfully requests the Appellant's arguments be dismissed and the final decision of the Board be affirmed.

Respectfully submitted,



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