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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
THE HONORABLE RALPH K. ANDERSON III, CHIEF ADMINISTRATIVE JUDGE  
DOCKET NUMBER 21-ALJ-15-0003-AP

APPELLATE CS. No. 2021-000785

LYNN JEFFREY CHRONISTER, #189829

APPELLANT

v.

S.C. DEPT. OF PROBATION, PAROLE,  
AND PARDON SERVICES

RESPONDENT

FINAL BRIEF OF APPELLANT

LYNN JEFFREY CHRONISTER, #189829

KIRKLAND B+E CTR., B-II, #60

4344 BROAD RIVER ROAD

COLUMBIA, S.C., 29210

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## STATEMENT OF THE CASE

APPELLANT WAS CONVICTED ON SEPTEMBER 22, 1992 OF MURDER, POSSESSION OF WEAPON DURING A VIOLENT CRIME, AND SENTENCED TO LIFE, PLUS FIVE YEARS. PROJECTED PAROLE DATE WAS IN FEBRUARY 2012, AND SINCE THEN THERE HAS BEEN FIVE BIANNUAL PAROLE HEARINGS.

THIS MATTER AROSE FROM APPELLANT BEING FOUND "ELIGIBLE" FOR MEDICAL PAROLE, AN HEARING HELD ON JANUARY 13, 2021, AND THE REASONS FOR DENIAL OF THE PAROLE THAT'S CITED IN THE "NOTICE OF REJECTION", DATED JANUARY 14, 2021 (R.p. 1 ) WHICH ARE THE "NATURE AND SERIOUSNESS OF CURRENT OFFENSE" AND "USE OF DEADLY WEAPON IN THIS OR PREVIOUS OFFENSE". AN NOTICE OF APPEAL WAS SERVED TO THE ADMINISTRATIVE LAW COURT, AND THE HONORABLE JUDGE ANDERSON'S ORDER AFFIRMING THE BOARD'S DECISION, DATED JUNE 22, 2021, WAS RECEIVED ON JUNE 25, 2021. APPELLANT SERVING AN "NOTICE OF APPEAL" TO THIS COURT ON JULY 20, 2021, AND THE RECORD ON APPEAL ON SEPTEMBER 17, 2021

## ARGUMENT

(I) GROUND "1": NOTICE OF APPEAL TO ADMINISTRATIVE LAW COURT  
"FAILURE TO RECEIVE DUE NOTICE PRIOR TO JANUARY 13TH HEARING THAT WAS FOUND TO HAVE BEEN ON MEDICAL PAROLE".

IN RESPONSE TO THE JUDGE'S INITIAL CONCLUSION ON PG. 4 OF THE ORDER THAT: "APPELLANT RECEIVED PROPER NOTICE OF THE HEARING THE RECORD SHOWS THE NOTICE OF APPELLANT'S MEDICAL PAROLE HEARING WAS MAILED ON DECEMBER 9, 2020 WHICH WAS MORE

"THAN THIRTY DAYS PRIOR TO THE SCHEDULED HEARING"

PRIOR TO THE JANUARY HEARING THERE WAS TWO HEARINGS TO BE SCHEDULED. BECAUSE OF THE PREVIOUS BIENNIAL HEARING WAS HELD IN JANUARY OF 2019, AND APPELLANT HAD BEEN INFORMED IN OCTOBER OF 2020 THAT PAPERS WERE SUBMITTED TO THE PAROLE BOARD FOR AN HEARING ON MEDICAL PAROLE. WHICH THE JANUARY HEARING WAS FOUND TO HAVE BEEN "CONSIDERED FOR" BY THE REPLY FROM "NETTIE JACOBS TO LORIE EVANS" DATED "JAN 14 at 8:49 A.M" [R.p. 2 ] MS JACOBS IS WITH THE PAROLE BOARD'S "SUPPORT SERVICES" [R.p. 3 ] AND MRS. EVANS IS APPELLANT'S OLDEST DAUGHTER.

APPELLANT RESPECTFULLY CONTENTS THAT THE HEARINGS NOTICE, DATED "DECEMBER 9, 2020" [R.p. 3 ] AND WHICH IS SHOWN BY THE SCDC'S RECEIPT OF LEGAL CORRESPONDENCE VERIFICATION [R.p. 4 ] FAILURE TO RECEIVE TIMELY DUE NOTICE DEPRIVED PROCEDURAL DUE PROCESS OPPORTUNITIES OF PREPARATION THAT INCLUDED WITNESS EVIDENCE RELEVANT TO APPROVAL OF APPELLANT'S "LIVING RESIDENCE" (OLDEST DAUGHTER AND HER HUSBAND) S.C. CODE 24-21-715 (D); USCA CONST AMEND. 14 AND OR FACTOR 10 OF THE BOARD'S "CRITERIA FOR PAROLE CONSIDERATION" [R.p. 5 ] THE "ADEQUACY" OF "OVERALL PAROLE PLAN'S" "LIVING ARRANGEMENTS", AND THE "CHARACTER" OF THOSE TO ASSOCIATE WITH, ALSO FACTOR 4 "ATTITUDE" TOWARDS FAMILY, AND FACTOR 12 SHOWING "WILLINGNESS" OF FAMILY TO ALLOW RETURN TO FAMILY CIRCLE.

(11) GROUND <sup>(2)</sup> THE PAROLE BOARD'S JANUARY 14TH 2021 "NOTICE

OF REJECTION" FAILS TO SHOW CONSIDERATION OF MEDICAL PAROLE AND REJECTING BY USE OF SAME REASONS AS IN THE PRIOR REGULAR PAROLE REJECTIONS"

STATEMENT: APPELLANT'S ELIGIBILITY FOR THE PAROLE AROSE FROM DIAGNOSIS OF HEART DAMAGE BY A PREVIOUS HEART ATTACK, AND THE EXTENT OF DISCOVERED BLOCKAGE THAT THE DOCTOR MENTIONED WAS "BEYOND STENTS," AND "OPEN HEART SURGERY." THE DIAGNOSIS WAS MADE BY DR. ROBERT SCHULZE, CARDIOLOGIST WITH COLUMBIA HEART HOSPITAL (SEE MESSAGE, Rp 6 FROM JULIA HESS RN/MANAGER WITH SCDC COA GERIATRICS). MS. HESS INFORMING OF THE ELIGIBILITY, AND THAT APPELLANT BEING OVER THE AGE OF 70 YEARS OLD AT TIME OF PAPERS BEING SUBMITTED WAS ALSO A "CRITERIA" FOR ELIGIBILITY. UNDER 24-21-715(A), (2):

"GERIATRIC MEANS AN INMATE WHO IS SEVENTY YEARS OF AGE OR OLDER AND SUFFERS FROM CHRONIC INFIRMITY, ILLNESS, OR DISEASE RELATED TO AGING WHICH HAS PROGRESSED SO THE INMATE IS INCAPACITATED AS DETERMINED BY A LICENSED PHYSICIAN TO THE EXTENT THAT THE INMATE DOES NOT POSE A PUBLIC SAFETY RISK."

APPELLANT SIGNED A FORM ON "OCTOBER 15, 2020" (Rp. 7 ) TO CONSENT RELEASE OF MEDICAL INFORMATION, AND ON "OCTOBER 26, 2020" AN "PETITION FOR MEDICAL PAROLE, PURSUANT TO S.C. CODE 24-21-715(B)" SIGNED BY SCDC DIRECTOR BRYAN P. STIRLING WAS SERVED TO THE PAROLE BOARD. (Rp. SUBMITTED BY RESPONDENT)

THE JUDGE'S FINDINGS Pg. 7 OF ORDER:

"THEREFORE, ALTHOUGH APPELLANT IS CORRECT THAT THE BOARD DENIED HIS MEDICAL PAROLE FOR THE SAME REASONS IT DENIED HIS BIENNIAL PAROLE AND DID NOT MAKE ANY FINDINGS AS TO APPELLANT'S MEDICAL CONDITIONS, SECTION 24-21-715 DOES NOT REQUIRE THE BOARD TO MAKE ANY SPECIFIC FINDINGS OF FACT FOR A DENIAL. BASED ON THE BOARD'S CITED GROUNDS FOR DENIAL IT IS REASONABLE TO ASSUME THE BOARD FOUND APPELLANT STILL POSES A THREAT TO SOCIETY DESPITE HIS MEDICAL CONDITIONS, AND APPELLANT WAS DENIED MEDICAL PAROLE FOR THIS REASON. ACCORDINGLY, BECAUSE THE BOARD'S DECISION COMPLIES WITH SECTION 24-21-715 I FIND THE DEPARTMENT'S DECISION MUST BE AFFIRMED"

ARGUMENT: APPELLANT RESPECTFULLY CONTENDS THAT:

(1) DEPRIVATION OF RIGHT TO MEDICAL PAROLE ELIGIBILITY WAS BY THE BOARD'S PROCEDURE TO USE OF THE REASONS / "NOTICE OF REJECTION" TO DENY: (2) THE JUDGE ERRED IN THE FINDINGS: AND (3) ASSUMPTION INSUFFICIENT AS AN REASON.

(1) THE NOTICE FAILING TO SHOW CONSIDERATION OF THE CRITERIA OF APPELLANT'S RIGHT TO THE PAROLE ELIGIBILITY / DID NOT MAKE ANY FINDINGS AS TO THE MEDICAL CONDITION(S) WAS CONTRARY TO THE ADMINISTRATIVE PROCEDURE ACT (APA) AND S.C. CODE ANN 1-23-350 (2005)

1-23-350 (2) NECESSITY OF FINDING OF FACT: BECAUSE OF THE LIMITED APPEAL OF PAROLE DECISIONS IS GOVERNED BY THE

ADMINISTRATIVE PROCEDURE ACT (APA) THE PAROLE BOARD AND THE ADMINISTRATIVE LAW COURT (ALC) MUST COMPLY WITH THE PROVISIONS TO WHICH A FINAL DECISION IN AN AGENCY ADJUDICATION OF A CONTESTED CASE SHALL INCLUDE FINDING OF FACT AND CONCLUSION OF LAW"; COOPER v. S.C. DEPT. OF PROBATION, PAROLE, AND PARDON SERVICES (S.C. 2008) 377 S.C. 489 661 SE2d 869; S.C. CODE ANN. 1-23-350 (2005) PROVIDES THAT UNDER THE APA A FINAL DECISION OR ORDER ADVERSE TO A PARTY IN A CONTESTED CASE SHALL BE IN WRITING OR STATED IN THE RECORD. A FINAL DECISION SHALL INCLUDE FINDING OF FACT AND CONCLUSION OF LAW SEPARATELY STATED.: UNDER 1-23-310(3) A CONTESTED CASE IS ANY PROCEEDING IN WHICH THE LEGAL RIGHTS, DUTIES, OR PRIVILEGES OF A PARTY ARE REQUIRED BY LAW TO BE DETERMINED BY AN AGENCY AFTER AN OPPORTUNITY FOR HEARING: COOPER 661 SE2d 107 HOLDS "IF A PAROLE BOARD DEVIATES FROM OR REWINDS ITS DECISION WITHOUT CONSIDERATION OF THE APPROPRIATE CRITERIA, IT ESSENTIALLY ABROGATES AN INMATE'S RIGHT TO PAROLE ELIGIBILITY, AND THUS INFRINGES ON A STATE CREATED LIBERTY INTEREST" USCA CONST AMEND 14 FRANKLIN v. SHIELDS 569 F2d 784 (4TH CIR. 1979) "AS A GENERAL MATTER PAROLE PROCEEDINGS ARE SUBJECT TO THE DUE PROCESS CLAUSE. BECAUSE FAIR PAROLE CONSIDERATION INVOLVES A PRISONER'S LIBERTY."

(3) THE ASSUMPTION INSUFFICIENT: BECAUSE OF BEING "BASED ON THE BOARD'S CITED GROUNDS FOR DENIAL" WITH NO FINDINGS

AS TO THE MEDICAL CONDITION(S) MADE. WHEREAS IN THE CASE OF COOPER THE ARGUMENT WAS DENIAL OF BIENNIAL PAROLE THE CITED GROUNDS / REASONS IN COOPER 661 SE2d AT 108 ARE THE SAME AS IN APPELLANT'S CASE, AND THE COURT STATED IN COOPER AT 111 (5) THAT: "THESE REASONS WOULD BE SUFFICIENT TO DENY PAROLE IN THE BOARD'S DISCRETION IF THE BOARD'S DECISION EVINCED CONSIDERATION OF SECTION 24-21-640 AND ITS OWN CRITERIA". WHICH AS IN APPELLANT'S CASE THE BOARD NOT MAKING ANY FINDINGS AS TO THE MEDICAL CONDITION(S), AND THE JUDGE BASING ASSUMPTION ON THE CITED GROUNDS WOULD RENDER IT INSUFFICIENT.

WITH ALL DUE RESPECT TO THE BOARD AND JUDGE APPELLANT CONTENDS THAT STILL BEING A THREAT TO SOCIETY IS WITHOUT REASON. BECAUSE ALCOHOL ABUSE, AND SEVER EMOTIONAL DISORDERS WERE INVOLVED IN TRAGEDY OCCURRING, AND APPELLANT'S WARDEN'S JACKET SHOWS PROGRAMS, COUNSELING, AND THERAPY TAKEN. BUT MAINLY IT'S APPELLANT'S WILL, FAMILY, AND A SECOND CHANCE.

THE EVIDENCE OF THE ABUSE, AND THE DISORDERS WOULD REDUCE NATURE AND SERIOUSNESS OF OFFENSE/MURDER WHERE THE RESPONDENT'S ATTORNEY STATED IN HIS BRIEF THAT:

"TO COMPLY WITH SOUTH CAROLINA LAW, THE BOARD MUST EVALUATE THE CIRCUMSTANCES OF APPELLANT'S OFFENSE IN LIGHT OF HIS MEDICAL CONDITION WHEN EVALUATING APPELLANT'S REQUEST FOR MEDICAL PAROLE (Rp 8-9 ALSO CITING SAME

REASON AS IN "NOTICE OF REJECTION"

THE EVIDENCE WAS PRESENTED IN-CAMERA AT THE TRIAL'S BLAIR HEARING BY PSYCHIATRIST/DOCTOR THOMAS BEHRMAN WITH WILLIAM S. HALL INSTITUTE (Rp. 10, LINE 10; p. 11, LINES 4-9; p. 12 LINE 1). HE DIAGNOSED "AN ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES"; AND THAT THE ADJUSTMENT DISORDER WAS CONNECTED WITH ALCOHOL ABUSE (Rp. 13 LINE 24, p. 14 LINE 23 - TO p. 15) ALSO THAT "THE ESSENCE OF THE DISORDER WAS "A DOMESTIC ARGUMENT OR AN ONGOING STRIFE IN THE MARRIAGE", AND NOTABLY, (DIRECT)

(A) "WELL OUR OPINION OF HIM WAS HE WAS NOT REACTING IN A WAY THAT WOULD ORDINARILY BE EXPECTED FROM AN AVERAGE PERSON IN HIS SITUATION. IT WAS ABOVE AND BEYOND WHAT WE WOULD NORMALLY EXPECT."; (Q) "IT WOULD HAVE BEEN AN ABNORMAL EMOTIONAL REACTION?"; (A) "YES, SIR" (Rp. 16 LINES 5-20) ALSO (A) "ITS NOT ONLY THAT, BUT HIS RESPONSE TO THE SITUATION WAS MAL-ADAPTIVE IN THAT IT WAS MORE SEVERE AND MORE DYSFUNCTIONAL THAN WHAT WE WOULD NORMALLY EXPECT FOR THE AVERAGE PERSON"; (Q) "HIS EMOTIONAL RESPONSE TO THE STRESS OF THE DIVORSE SITUATION?"; (A) "WELL, YES" (Rp. 17, LINE 23 - p. 18 LINE 4)

(Q) "DOCTOR, WHAT YOU HAVE JUST TOLD THE SOLICITOR IN TERMS OF HIS REACTION, HIS CONDITION, THAT WOULD HAVE BEEN THE CONDITION ON THE 14TH OF FEBRUARY, THE ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES?"; (A) "TO THE BEST OF MY KNOWLEDGE AND GIVEN THE INFORMATION THAT WE HAVE AVAILABLE THAT WOULD HAVE BEEN MY DIAGNOSIS OF HIM ON THAT DATE" (Rp. 19, LINES 16-22)

COUNSEL STATED TO THE JUDGE THAT HE HAD "THE DOCTOR UNDER SUBPOENA", AND WOULD "NOTIFY HIM" IF HE "NEEDED HIM BACK", THE DOCTOR SHOWING WILLING AND ABLE TO RETURN BY HIS ANSWER OF "WE'LL WORK IT OUT" (Rp. 20, LINES 12-17). APPELLANT RESPECTFULLY CONTENTS THE EVIDENCE WAS WITHHELD FROM THE JURY BY APPARENTLY THE DOCTOR WAS NOT NOTIFIED TO RETURN. ALSO THE OTHER EVIDENCE NOT GOING TO THE JURY, AND WOULD HAVE SUPPORTED THE SEVERITY OF THE DISORDERS IS THE INSTITUTE'S "PATIENT ADMISSIONS INFORMATION" (Rp. 21) AND THE STATE'S "REQUEST FOR NOTICE OF INSANITY DEFENSE" (Rp. 22). THE INFORMATION SHOWING DIAGNOSIS OF "MAJOR DEPRESSION" UPON ADMITTANCE ON THE FOLLOWING MORNING FEBRUARY 15, 1992, AND APPARENTLY BY THE DEFENSE THE STATE BECAME AWARE OF SEVERITY OF THE DISORDERS, AND CIRCUMSTANCES. THE DEFENCE NOR INFORMATION ENTERED INTO TRANSCRIPT OF RECORD AS EVIDENCE, AND APPELLANT ONLY BECAME AWARE OF THEM IN RECEIVING CASE COPIES FOR PCR ERROR OF LAW WAS BY THE JUDGE INCLUDING IN HIS RULING ON REQUEST FOR CHARGE OF MANSLAUGHTER THAT "THE ONLY TESTIMONY IS THAT HE WAS EMOTIONAL AFTERWARDS" (Rp. 23 LINE 14-15) UNDER S.C. CODE 16-3-50: "TO WARRANT A COURT'S ELIMINATING THE OFFENSE OF MANSLAUGHTER IN A MURDER PROSECUTION IT SHOULD VERY CLEARLY APPEAR THAT THERE IS NO EVIDENCE WHATSOEVER TENDING TO REDUCE THE CRIME FROM MURDER TO MANSLAUGHTER" STATE CASE (SC. 2004) 338 S.C. 90, 525 S.E.2d 515.

ALSO APPELLANT HAD NO PRIOR CRIMINAL RECORD/ARREST AND THE SOLICITOR STATED, "YOUR HONOR, MY UNDERSTANDING, HE HAS

NO RECORD OF CRIME OF MORAL TURPITUDE" [TR. p. 58, LINE 24-25]  
THIS WITH THE PSYCHIATRIST EVIDENCE WOULD SHOW MITIGATING  
CIRCUMSTANCES AS UNDER 16-3-20(b)(1) & (2); BLACKS LAW DICTION-  
ARY - MITIGATION OF PUNISHMENT "A REDUCTION IN PUNISHMENT  
DUE TO MITIGATING CIRCUMSTANCES THAT REDUCE THE CRIMINAL LE-  
VEL OF CULPABILITY SUCH AS EXISTENCE OF NO PRIOR RECORD."

OUTSIDE OF THE TRIAL RECORD'S EVIDENCE APPELLANT IS UNAWARE OF  
THE BOARD'S USE IN CONSIDERATION OF CIRCUMSTANCES OF THE OFFENSE,  
AND RESPECTFULLY CONTENDS THAT CITING THE "NATURE AND SERIOUSNESS OF  
OFFENSE WAS ALSO IMPROPER BECAUSE OF PSYCHIATRIST EVIDENCE."

#### CERTIFICATION

I CERTIFY THAT THE FINAL BRIEF COMPLIES WITH RULE 211(b) SCACR

#### CONCLUSION

APPELLANT RESPECTFULLY REQUESTS FOR THE REASONS STATED THE ALC'S  
RULING SHOULD BE REVERSED, AND THE APPEAL GRANTED.

NOVEMBER 5, 2021

RESPECTFULLY SUBMITTED:

*Lynn Jeffrey Chronister*  
LYNN JEFFREY CHRONISTER, 189829

KIRKLAND BEECTR, B.J.L. '60

4344 BROAD RIVER ROAD

COLUMBIA, S.C., 29210