

RECEIVED

DEC 16 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W.Funderburk, Jr., Administrative Law Judge
Appellate Case No. 2021-001149

Russell Mawyer, #139176,

Appellant,

v.

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

Respondent.

APPELLANT'S REPLY BRIEF

December 14, 2021

Russell Lee Mawyer
SCDC# 139176
Perry C.I., Q4A 221
430 Oaklawn Road
Pelzer, S.C. 29669

Matthew C. Buchanan,
Esquire
General Counsel, SCDPPPS
P.O. Box 207
Columbia, S.C. 29202

TABLE OF CONTENTS

Table of Authorities.....1

Reply.....2

Conclusion.....5

TABLE OF AUTHORITIES

Cooper v. S.C. Dept. of Probation, Parole and Pardon Services,
377 S.C. 489, 6661 S.E.2d 106 (2008).....**passim**

STATUTE

S.C. Code Ann. §24-21-640.....**passim**

REPLY

In Reply to the Respondent's Initial Brief, received by Appellant on December 7, 2021, Appellant submits that as with the case in Cooper v. S.C. Dept. of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008), when an Appellant is raising the issue that the parole board deviated from the procedures promulgated by the S.C. Legislature in §24-21-640 of the S.C. Penal Code and its intent, the Administrative Law Court (ALC) has jurisdiction to review Appellant's appeal and rule on the merits of the issues raised therein.

Appellant has made a clear showing throughout his appeal, that he is challenging the method and procedure which the parole board employed in reaching its decision to deny him parole, which in fact was arbitrary, capricious, and a gross abuse of its discretion (reason and judgment).

The Respondent asserts that the parole board's discretion is "absolute". The Court in Cooper made it clear that "the Legislature created this Board to operate within certain parameters", and that they "do not believe the Legislature established the Board and intended for it to render decisions without any means of accountability,"

The parole board's decision, when it denied Appellant parole using only the same fixed (unchangeable) justifications in a rote fashion for the third time, was not a "routine" denial of parole which the Court envisioned in Cooper. The Court in Cooper envisioned a "routine" procedure in which the parole board would actually consider the criteria which the Court specified, and then render a decision based on reason and judgment (discretion) within the parameters of that criteria. By allowing the parole board to arbitrarily and capriciously deny parole based solely on unchangeable factors, when there is substantial evidence before it which shows that the convicted individual "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", is to essentially diminish and/or eliminate the liberity interest in his parole eligibility. In the case of Appellant, his parole eligibility on his life sentence has been turned into a de facto life sentence without the possibility of parole.

Appellant submits that it may have been a justifiable use of discretion when the parole board dinied him parloe at his first parole hearing, using only the unchangeable circumstances of his offenses as reasons for the denial, but the continuous reliance upon unchanging circumstances, when there is evidence that Appellant has demonstrated exemplary behavior and evidence of his rehabilitation over the last thirty (30) years, is to transform the offense for which South Carolina law provides eligibility for parole into a de facto life imprisonment without possibility of parole, in violation of his due process rights. These denials of the parole board amounts to arbitrary and capricious denials, and a gross abuse of its discretion.

The arbitrariness and capriciousness of their decisions is made even more clear by the denial letters which they have sent to Appellant. In each of their letters the exact same wordings is used in their FINDINGS OF FACT:

Nature And Seriousness Of Current Offense

Indication Of Violence In This Or Previous Offense

Use Of Deadly Weapon In This Or Previous Offense

Vote Count Unanimous To Reject

Appellant submits that had the parole board actually reviewed and considered Appellant's record before it, they would have seen that Appellant has no "Previous Offense", and not stated this in their denial letters. In each of their denial letters to Appellant, the parole board's decision to deny parole was based partially on the "Indication Of Violence In" a "Previous Offense" and the "Use Of Deadly Weapon In" a "Previous Offense". Either

the parole board rendered its decisions without any review of Appellant's record before and during his imprisonment, or they just ignored what was in Appellant's record before them, and in a rote fashion, sent Appellant their standard parole denial letter from his file, only changing the date on the letter. Is this the "routine" denial of parole which the Court envisioned in Cooper?

Appellant respectfully submits that the allowance of such a "routine" parole denial process as this, not only diminishes his liberty in his parole eligibility, but also gives the parole board more power than the S.C. Legislature, and the Courts which enforces the law which the Legislature passes. A parole board which, as the Respondent states, has "absolute" discretion (power) to make any decision which it chooses to make, in any way it chooses to make it, and with no accountability for the decisions which it makes.

The notice of rejection from the Board does not show that the Board properly considered all the statutorily required criteria and followed the procedure as set forth in Cooper in arriving at their decision to deny Appellant parole. Their rejection notice simply makes a conclusory statement that it considered the statutory requirements for parole consideration. No further explanation was given as to how the Board came to its decision to deny Appellant parole based solely on the unchanging circumstances of his offenses, when there was substantial evidence before it in Appellant's record showing that Appellant meets all the criteria for parole within the discretion (reason and judgment) of the parole board, as set by the S.C. Legislature in §24-21-640 of the S.C. Penal Code. Appellant submits that this is the procedure which the Court in Cooper said if the Board complies with, their decision will constitute a routine denial of parole.

If there is no evidence in the record showing the Board did in fact comply with this procedure, how can the Court know the Board actually considered the criteria set forth by the Legislature in §24-21-640? Further, if there is substantial evidence in the

record showing the arbitrariness and capriciousness of the Board's decisions, how can this not be prima facie evidence that the Board did not comply with the procedure of considering the factors for parole outlined by the Court in Cooper?

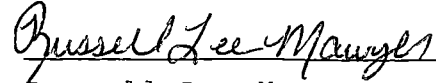
The Respondent has presented no evidence showing why its parole board decided to deny Appellant parole using only the unchanging circumstances of his offense, and a previous offense for which there is no record of Appellant ever being convicted of, for the third time, as justification to do so, when there was evidence before it showing that Appellant "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," in accord with the criteria (parameters) set by the S.C. Legislature in §24-21-640 for the granting of parole within the discretion (reason and judgment) of the parole board. These are the parameters which the Legislature created the Board to operate within, and for the Court to hold the Board accountable for the decisions which it makes that deviates from the parameters of this criteria.

CONCLUSION

Based on the reliable, probative and substantial evidence on the whole record which Appellant has presented and shown, the ALC's decision dismissing Appellant's appeal is clearly erroneous. The Respondent prays the Court also ignore the evidence and facts which Appellant has presented and shown, and give a blanket stamp of approval to the arbitrary and capricious decision making of its parole board, because as the assert, its discretion (power) is absolute (unquestionable and

unaccountable). Appellant prays the Court grant his appeal, and that the decision of the ALC be reversed and vacated.

Respectfully submitted,



Russell Lee Mawyer

SCDC# 139176

Perry C.I., Q4A 221

430 Oaklawn Road

Pelzer, S.C. 29669

December 14, 2021

Other Counsel of Record:

Matthew C. Buchanan, Esq.

General Counsel, SCDPPPS

P.O. Box 207

Columbia, S.C. 29202

RECEIVED
DEC 16 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W.Funderburk, Jr., Administrative Law Judge
Appellate Case No. 2021-001149

Russell Mawyer, #139176, Appellant,

v.

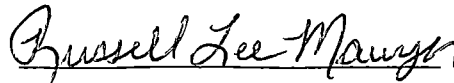
South Carolina Department of Probation,
Parole, and Pardon Services, Respondent.

PROOF OF SERVICE

I, Russell Mawyer hereby certify that I have served the **REPLY BRIEF** in the above-captioned appeal to the Respondent's Counsel of record Matthew C. Buchanan, Esquire, by depositing a copy of same in the U.S. Mail, postage prepaid and addressed as follows:

Matthew C. Buchanan, Esquire
General Counsel, S.C. Dept. of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, S.C. 29202

on the 14th day of December, 2021.



Russell Lee Mawyer

Appellant

Russell Lee Mawyer #139176

Perry C.I., Q4A 221

430 Oaklawn Road

Pelzer, S.C. 29669

December 14, 2021

RECEIVED

DEC 16 2021

SC Court of Appeals

S.C. Court of Appeals
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, S.C. 29211

Re: Russell Mawyer, #139176 v. SCDPPPS
Appellate Case No. 2021-001149

Dear Honorable Clerk:

Enclosed, please find the **APPELLANT'S REPLY BRIEF** in the above referenced case, for filing in your office and with the court.

By copy of this letter and a **PROOF OF SERVICE** I have also served a copy to the Respondent's Counsel of record, Matthew C. Buchanan.

Sincerely,

Russell Lee Mawyer
Russell Lee Mawyer

cc: Matthew C. Buchanan, Esq.
P.O. Box 207
Columbia, S.C. 29202

Russell Lee Mawyer #139176
Perry C.I., Q4A 221
430 Oaklawn Road
Pelzer, S.C. 29669

S.C. Court of Appeals
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, S.C. 29211

RECEIVED
DEC 14 2021
PCI MAILROOM

RECEIVED

DEC 16 2021

SC Court of Appeals

LEGAL MAIL