

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

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DEC 31 2021

SC Court of Appeals

Case No. 2021-000726

Calvin Bryant, #189164, Appellate.

v.

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

NOTICE OF APPEAL

Calvin Bryant
Calvin Bryant, #189164
386 Redemption Way
McClemick, SC 29899

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Statement of The Case

Around or about January, 2012, appellant had a parole hearing, in which, he was told by an unknown parole examiner, that he had received four (4) votes out of the six (6) members present at the parole hearing. However, on January 24, 2012, appellee received correspondence from the respondent, informing him that he was denied parole.

Statement of Issue on Appeal

Did the South Carolina Department of Probation, Parole, and Pardon Services improperly deny Appellant parole based on an 'incorrect' interpretation of the statute setting forth the number of votes required by the parole board?

Standard of Review
Rule 201, SCAER

Rule 201. Right To Appeal

(a) Judgments, Orders and Decisions Subject to Appeal. Appeal may be taken, as provided by law, from any final judgment, appealable order or decision....

(b) ... a party aggrieved by an order, judgment, sentence or decision may appeal. Appellate Court Rule 201, SC R A CT Rule 201

Argument

"... for years, the department of probation, parole, and pardon services (DPPPS) improperly denied inmates parole based on an incorrect interpretation of the statute setting forth the number of votes required by the parole board." Rose, 838 S.E.2d 505.

Appellate argues that he received the requisite number of votes in favor of parole in 2012, but he remains in jail to this day. (David Rose v. S.C. Dept. PPS, 838 S.E.2d 505).

The parole board is comprised of seven members who vote on whether an inmate should receive parole. However, only a quorum - four of the seven members - need be present and vote at the hearings of those convicted of violent crimes. See *GARRIS v. GOVERNING Bd. of S.C. Reins. Facility*, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (1998) ("In the absence of any statutory or other controlling provision, the common-law rule that a majority of the whole board is necessary to constitute a quorum applies.").

Prior to 1986, to receive parole, an inmate was required to obtain a simple majority vote in his/her favor. See S.C. Code Ann. § 24-21-645 (Supp. 1984). However, in conjunction with the passage of the Omnibus Criminal Justice Improvements Act of 1986, the General Assembly amended section 24-21-645 (A) to prescribe "at least two-thirds of the members of the board [] authorize and sign orders authorizing parole for persons convicted of a violent crime." Act No. 462, 1986 S.C. Acts 2955, 2959, 2990-91; See also S.C. Code Ann. § 24-21-645 (A) (Supp. 2019).

Between 1986 and 2013, DPPPS interpreted Section 24-21-645 to require an inmate receive five (5) votes in his/her favor out of seven possible parole board members' vote - at least two-thirds of the entire parole board - to receive parole, regardless of when the inmate was sentenced, even if it was prior to 1986 when the simple-majority vote requirement was in effect. DPPPS also did not relax the five-vote requirement in the event that less than a full parole board was present and voting on a particular inmates' fate.

However, in the 2013 Barton decision, the South Carolina Court of Appeals held DPPPS's adherence to the five-vote requirement was contrary to the statute - 404 S.C. at 415-17, 745 S.E.2d at 121-22. In particular, this Court found DPPPS's retroactive application of the two-thirds vote requirement violated the federal and State Ex Post Facto Clauses for those inmates sentenced prior to 1986 when the simple-majority vote requirement was the law. Id. at 403-14, 745 S.E.2d at 114-20. Additionally, this Court interpreted section 24-21-645 as only requiring inmates sentenced after 1986 to receive favorable votes from two-thirds of the parole board members actually present at the hearing. Id. at 414-19, 745 S.E.2d at 120-23 (noting that DPPPS's prior interpretation led to absurd results, for under that interpretation, it was possible for four members of the parole board (a quorum) to be present and unanimously vote to grant the inmate parole, but DPPPS nonetheless deny the inmate parole because he failed to receive five votes in his favor).

Conclusion

Appellant prays this Honorable Court grant the appeal and reverse the improper denial of parole pursuant to Barton v. South Carolina department of probation, parole, and pardon services, 745 S.E. 2d 114 and David Rose v. South Carolina Department of probation, parole, and pardon services, 429 S.C. 136 838 S.E. 2d 505, and grant appellate parole in accordance with S.C. Code Ann. § 24-21-645 (supp. 1984), and David Rose supra.

Respectfully submitted,

Calvin Bryant
Calvin Bryant, #189164
386 Redemption Way
McLormick, SC 29899

December 27, 2021

McLormick, South Carolina

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

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Administrative Law Court and the South Carolina Department of Probation, Parole, and Pardon Services by depositing a copy of it in the United States Mail, postage prepaid, on December 27, 2021, addressed to the Department of Probation, Parole, and Pardon Services, P.O. Box 50666, Columbia, SC 29201; and Administrative Law Court, Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, SC 29201, on December 27, 2021.

December 27, 2021

Calvin Bryant
Calvin Bryant, #189164
386 Redemption Way
McCormick, SC 29899

Calvin Bryant - 189164
MC E F-3-A-171
386 Reclamation way
M'Conneek S.C. 29899

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South Carolina Court of Appeals
Jenny Abbott Kelching, Clerk
P.O. Box - 11629
Columbia S.C. 29211

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