

April 20, 2014

SOUTH CAROLINA Department
OF Probation, Parole and
Pardon Services,
% Larry Ray Patton, JR.
2221 Devine Street, suite 600
P.O. Box 50666
Columbia, SC, 29250

James Tinsley #171943
Livesay C.I. A-15
P.O. Box 580
Uma, S.C. 29378

RE: My desire to Appeal the boards decision
denying PAROLE AND REQUEST FOR
TRANSCRIPT

Mr. Patton:

I have received your letter of April 9,
2014 informing me of the Boards decision to deny me
PAROLE. However, your letter does NOT inform me of
my right to appeal this decision, the appeal BRIEF
Form, the Address of the Administrative Law Judge
where the Appeal must be sent, and MORE importantly,
IT does not tell me how to order the transcript of
the proceedings, how much IT COSTS OR where to send
the Funds. Could you please let me know OR call
my father Doug Tinsley at (864) 269-2890 who
will send out a money order in the proper amount.

Thank You,

James Tinsley

Tinsley, James
7010115
5014566

STATE OF SOUTH CAROLINA) In The Administrative Law Court
COUNTY OF SPARANBURG)

James Tinsley, #171943
Appellant,

CASE No: _____

vs.

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

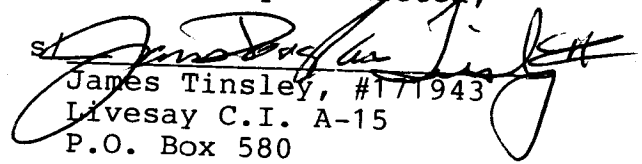
**NOTICE OF APPEAL FROM THE DENIAL
OF PAROLE**

Comes Now, James Tinsley, the above Appellant, with his Notice of Appeal challenging the decision of the Parole Board to deny Parole.

A Parole hearing was conducted on April 9, 2014 and Appellant received the Board's written decision on April 17, 2014 denying Parole. Appellant seeks this appeal because the board erred by relying upon expunged records that may not be considered by the board and their maintaining of such records constitutes a constitutional violation and contempt of court on their part.

April 20, 2014

Respectfully submitted,

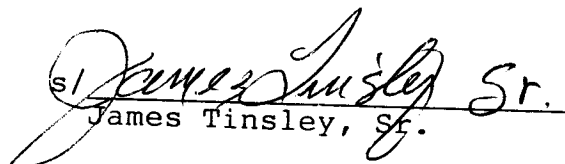

James Tinsley, #171943
Livesay C.I. A-15
P.O. Box 580
Una, S.C. 29378

CERTIFICATE OF SERVICE

I, James Tinsley Sr., hereby certify that I did cause the above notice of appeal to be served upon the appellees at the address below, by placing a true and correct copy in the U.S. mail, with proper postage affixed thereto.

South Carolina Department of Probation, Parole and
Pardon Services,
c/o Larry Ray Patton, Jr.
2221 Devine Street, Suite 600
P.O. Box 50666
Columbia, S.C. 29250

This 23 DAY OF April, 2014


James Tinsley, Sr.

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

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

April 9, 2014

Mr. James Tinsley #00171943
Livesay Pre-Release Center
P.O. Box 580
Una, SC 29378

RE: NOTICE OF REJECTION

Dear Mr. Tinsley:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Failure To Successfully Complete A Community Supervision Program

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support Services

April 20, 2014

Govenor Nikki Haley
1205 Pendleton Street
Columbia, S.C. 29201

Senator Mike Fair
P.O. Box 142
Columbia, S.C. 29202

Senator Larry Martin
1101 Pendleton Street
Columbia, S.C. 29201

South Carolina Department of Probation,
Parole and Pardon Services,
c/o Larry Ray Patton, jr.
2221 Devine Street, Suite 600
P.O. Box 50666
Columbia, S.C. 29250

James Tinsley, # 171943,
Livesay C.I. A-15,
P.O. Box 580
Una, S.C. 29378

Re: SOUTH CAROLINA PAROLE BOARDS CRIMINAL CONTEMPT
OF COURT USE OF EXPUNGED RECORDS AND FALSE
ALLEGATIONS TO DENY PAROLE

This letter is in regards to the Parole Boards flagrant abuse of its power and its criminal use of expunged records or false findings of fact as grounds for denying parole to prisoners, who, through their good behavior, have earned the opportunity to be placed on community supervision.

On April 9, 2014, I went before the Parole Board. I am a 43 year old prisoner who had no prior felony convictions and was convicted here of three non-violent charges of receiving stolen goods and related offenses. During my almost seven (7) years of incarceration I have had relatively little disciplinary problems except once after receiving a Christmas package, I was found to have one pair of socks too many, (your allowed seven pair and I had eight), and a highlighter that my attorney had given me. (Apparently the charging officer did not understand that I was in hobby craft and was allowed highlighters, pens, etc...) SCDC considered this a minor contraband infraction of some sort and it was several years ago.

I have highly sought after skills in the machinist and manufacturing industry and made \$50,000.00 per year at my last employment as a CNC programmer. Because prisoners are unable to participate in job interviews and discuss their experience with potential employers, it is difficult for prisoners to obtain employment while still in prison. Nevertheless, I was fortunate in that I was able to obtain pre approval for employment upon my release.

I had a free place to live with my Grandmother if needed and she and my Father testified during the Parole hearing that I was welcome to stay with them. I have never had any drinking or drug problems and have never associated with people who do. While I was in prison I won a large settlement against the County Officers who arrested and prosecuted me. As such, I am financially secure and could have purchased my own home if I were unable to stay with my Grandmother. I also have purchased a dependable vehicle that is paid for and as such my living expenses would have been much less than a typical prisoner might face if under community supervision.

During nearly all of my sentence, I have been under the highest security level attainable within SCDC - because of my good behavior and lack of threat to the community - and have worked outside the prison fences on a daily basis, often completely unsupervised, in parks and playgrounds around women and children. No one has ever complained that I was doing something that I shouldn't or that they feared for their safety because of my presence.

Obviously, SCDC feels that my offense is non-violent - in fact not long ago it was considered a misdemeanor in South Carolina - and that I am not a threat to the community. I believe that most people would feel the same way about me and that if anyone in SCDC were a good risk for parole it would be me. Most would believe that my record while incarcerated, would indicate a willingness and ability to follow the rules and laws of the State upon my release. Most might even say that through my good behavior and hard work, I have "earned" the chance to be placed on parole.

There has been no community or victim pressure to deny parole, and in fact, the victims are being hurt the most by denying someone like myself parole, because they cannot receive restitution until I am released. I am not eligible for a paying job, (which includes restitution payments) for sixteen (16) more months and by that time I will be nearly maxed-out. I owe nearly \$20,000.00 in restitution and the victims have had to wait already nearly seven (7) years and now it looks as though they will have to wait at least another year or two to begin receiving restitution. This seems like an exaggerated response when dealing with prisoners such as myself, who are non-violent, have a good work history, do not use drugs, have no prior criminal record and have the family support and financial capabilities that would make it unlikely that he would find himself contemplating criminal activities to survive.

The board denied parole and it appears that their decision was motivated by inappropriate criminal use of expunged records or false claims of prior unsuccessful supervision programs. The board suggests that they denied parole because of the characteristics or seriousness of my current convictions. The

board utilizes this boiler-plate ground for denial in nearly every case. It seems that the board is of the opinion that regardless of what their true motivation for denying parole might be, they can overcome any challenge to their decision simply by listing one of the approved grounds for denial. They even seem to believe they are justified when there is no evidence in the record to support a finding or if they make false claims to support their decision. I believe that if they are denying parole because of the characteristics or seriousness of the offense, that the record must support that claim.

In cases where the prisoner has been convicted of murder or violent acts against persons rather than property offenses, the justification tends to make more sense. But the parole board gives this response in nearly every case, violent and non-violent. Here, the characteristics and seriousness of my current offenses do not justify the denial of parole because they are not that serious and do not suggest that I am a danger to society. First, receiving and related offenses are non-violent and as I said previously, were at one time misdemeanors. See: e.g. State v. Mills, 81 S.E.2d 285, 286 (1954)(In all cases... where any goods have been...stolen... every person who buys or receives...such goods...shall be deemed guilty of...a misdemeanor). Secondly, they are crimes against property, not persons and are treated differently than crimes against persons precisely because they are not that serious. See: e.g. State v. Jones, Opinion No. 25257, filed March 12, 2001 (crimes against persons differ from crimes against property). Therefore, the record should support any claim by the board that the offense is serious. See: e.g. United States v. Goodwin 457 U.S. 368, 374 (1982)(quoting North Carolina v. Pearce, 395 U.S. 711, 726 (1969)(whenever a judge imposes a more severe sentence upon a defendant, the reasons for doing so must be based upon objective information concerning identifiable conduct on the part of the defendant and must be made part of the record)).

Here, there was no evidence in the record that I had committed a serious crime that would be comparable to violent offenders or which might indicate that I was a danger to society. The boards use of this criteria is being quoted as cover for the true reasons behind their decision. Because the record is silent as to any objective information concerning identifiable conduct which might suggest that my convictions constitute a serious offense or that I am a danger to society, there must be a presumption of vindictiveness behind the boards decision to deny parole or some unjustified scheme outside the parole criteria, that suggests they are attempting to somehow profit from my continued incarceration.

In a time when SCDC is complaining of overcrowding and underfunding, one might think that similarly situated prisoners would be perfect methods for relieving overcrowding and the taxpayers from the burden of paying for non-violent offenders

continued incarceration. But a closer look at the circumstances surrounding prisoners who are granted parole, reveals that most prisoners have five (5) months or less remaining on their sentences. In other words, the board keeps denying parole until the prisoner reaches his last opportunity to go up for parole. In this way, they can continue to receive taxpayers money to keep them incarcerated and then right before they are released, the board grants them parole so they can receive even more money in supervision fees.

These tactics are so far from the desires for rehabilitation that they almost suggest that the board members are somehow getting kickbacks for keeping prisoners in the system for as long as possible. Even though it should be public record, no one seems to know what board members get paid. They do receive per-deim, but no one knows what that consists of or actually means. Perhaps that is how they are receiving kickbacks.

At any rate, the amount of time a prisoner has served on his sentence is not a proper consideration or criteria for the board to focus on. The Statute determines the amount of time a prisoner must serve before being eligible for parole. In this case $\frac{1}{4}$ of the prison sentence and that decision has already been made before the prisoner appears before the board. If the board is determining that a prisoner has not served enough time on his sentence to be given parole until he appears for the last time before the board, the board is utilizing unauthorized criteria for determining parole. Moreover, I should have been sentenced to a single offense because the receipt or possession of multiple stolen goods at one time constitutes a single offense. Stevens. State, 617 S.E.2d 366 (2005). Under the law, I could only legally have been sentenced to a maximum of ten (10) years. If I had been sentenced properly, I would have already maxed-out my sentence and been released. This issue is currently before the appropriate PCR court but may take several more years to be fully resolved.

Moreover, the characteristics of the crime is not something a parole board should be considering at all - in any case - because that is something that a prisoner cannot change with good behavior. That is a question for Legislature and the sentencing court following a conviction. If Legislature believes that a crime is too serious they should make it a no parole offense. If a judge believes that a defendants crime is too serious or that he is a danger to society, then the judge should sentence the defendant to some term of imprisonment that does not include parole. But to sentence a defendant and make him parole eligible and then have the board refuse to grant parole due to the characteristics of the offense, in effect amounts to the wrong entity making that decision.

In other words, what the board is saying is, we don't like the sentence the judge gave you. If we were Legislature, we would have made this a no parole offense, and since we don't

like what Legislature and the judge did, we just won't give you parole even though you meet all the criteria for parole. The board is attempting to render the trial judges decision and Legislatures intentions to nothing more than extraneous verbage.

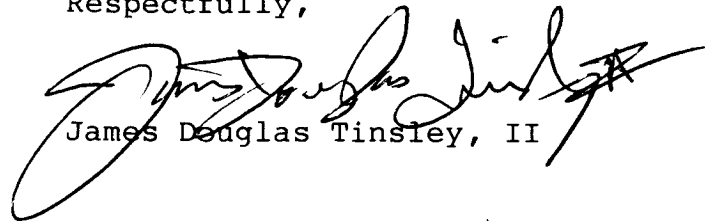
Finally, the actual findings of fact utilized by the board for denying me parole was their contention that I had a prior criminal record or had failed to successfully complete a prior supervision program. There should have been no evidence in the record that I had a prior criminal conviction or had failed to successfully complete a prior supervision program. In fact, the record suggested that I had no prior felony criminal record. However, there were prior felony convictions that were overturned and expunged because I was later proven to have been innocent of the offenses. The board erred in relying upon these expunged charges. In fact, the board has violated the laws of this State and face arrest and jail time for contempt of court for maintaining a record of those expunged offenses. See: S.C. Code, § 17-1-40(A); Townsend v. Burke, 334 U.S. 736 (1948) (The use of criminal records which are untrue, whether caused by carelessness or design, is inconsistent with due process of law).

Moreover, in connection with these expunged offenses, I was under supervision, but did successfully complete the program and in fact was so successful - by maintaining employment and making timely supervision fee payments - that I was released from supervision early. Following that release, the offenses were overturned and expunged. There should be no records being maintained for the arrest, conviction, supervision or other acts associated with those expunged offenses. The use of these expunged records to deny parole has violated my Constitutional rights to due process of law because I am being punished by the board and my length of incarceration extended based upon offenses in which I have not been convicted.

For these reasons, I believe the parole process is unfair, unconstitutional and meaningless. If the board members cannot be made to operate in a fair manner, I believe the board should be dismantled in favor of a more simple practice of granting parole to anyone who has earned an opportunity for community supervision through their good behavior and otherwise meet all the criteria. In cases in which there is concern as to whether a given prisoner will be successful on parole because of his lengthy criminal record, prior drug use, or the nature and seriousness of the offense, those prisoners could be placed on electronic monitoring to further protect the community. At any rate, it should not be at the expense of the victims to be denied speedy restitution, or the community to house prisoners who meet the criteria, who have through their good behavior, earned an opportunity for parole, or where electronic monitoring or other forms of community supervision would suffice.

While it will probably make little difference, I do plan to appeal the boards decision to the Administrative Law Judge and if that does not get the proper results, I will seek the arrest and prosecution of anyone who maintained my expunged records or provided them to the board. Moreover, I may be forced to file a federal civil suit for damages for the denial of due process of law and the injury that has resulted in increaseing my punishment by decreasing the likelihood of release on parole. Your assistance and thoughts on this matter would be greatly appreciated.

Respectfully,

A handwritten signature in black ink, appearing to read "James Douglas Tinsley, II". The signature is stylized with a large, looping initial "J" and a long, sweeping underline that extends to the right.

James Douglas Tinsley, II

