

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER 2018 TERM

Dawud Rahim #166774

Petitioner

v.

S.C. Dept of Probation
Parole and Pardon Services

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Dawud Rahim #166774
Prose Petitioner
F3 B27 Allendale Corr. Inst.
PO Box 1151
Fairfax S.C. 29827

Counsel of Record:

S.C. Dept. of Probation
Parole and Pardon Services
2221 Devine St., Ste 600
PO Box 50666
Columbia SC 29250

Questions / Issue(s) Presented

1. Was the Appellant denied procedural due process:

a) by the Respondent when they failed to notify him prior to the reconvening of the Parole Hearing Board to reconsider and rescind his parole, not providing him a timely and meaningful opportunity to be present?

b) by the Fourth Circuit Court of Appeals (and lower U.S. District Court's) failure(s) to uphold his right to such procedural due process?

2. Does the decision of the Fourth Circuit U.S. Court of Appeals dismissal of the Appellant's petition for Appeal and rehearing en banc, conflict with rulings and decisions of this Supreme Court, and as well are contrary to previous decisions and rulings made by that (Fourth Circuit) court and other U.S. Court of Appeals' rulings and decisions? thus necessitating application of the Stare Decisis Doctrine?

3. When the Respondent unconstitutionally effectuated an estoppel of the Appellant's parole by rescission, did this estoppel invoke and create a circumstance of detrimental reliance on a mutually agreed upon contract of parole and the breaching of the established existing contract between the Petitioner and the Respondent?

PARTIES TO THE PROCEEDING

Dawud Rahim #166774
Prose Petitioner
F3 B21 Allendale Corr. Inst.
P O Box 1151
Fairfax SC 29827

S.C. Dept. of Probation
Parole and Pardon Services
Respondent
2221 Devine St. Ste. 600
P O Box 50666
Columbia SC 29250

TABLE OF CONTENTS

Opinions	<u>19-21</u>
Jurisdiction	<u>1</u>
Table of Authorities	<u>iii-iii</u>
Question Presented	<u>i</u>
Statement of the Case	<u>2-3</u>
Reasons For Granting Petition	
1. The Petitioner was denied Procedural due Process by the Respondent, and the U.S. Court of Appeals Fourth Circuit affirmed such deprivation thereby denying him his Constitutional right to such as protected by 14 USC to receive notice of hearing.	<u>4-9</u>
2. The decision of the Fourth Circuit Court of Appeals conflicts with the decisions of this Supreme Court, numerous other Circuit US Courts of Appeals as well as conflicting with its own decisions involving Procedural due Process thereby mandating application of the Stare Decisis Doctrine.	<u>10-13</u>
3. The Petitioner has become subjected to a Detrimental Reliance due to the estoppel and breach by the Respondent directly effecting the Petitioners liberty.	<u>14-17</u>
Conclusion	<u>18</u>
Exhibits	<u>22-28</u>

TABLES OF AUTHORITIES

Cases:

Armstrong v Manzo, 380 US 545, 85 S.Ct. 1187, 1191 (1965)	5
Baldwin v Hale, 68 US 223 (1863)	5
Board of Pardons v Allen, 482 US 369, 376-78 (1987)	11
Connally v Gen. Construction Co. 269 US 385, 391 (1926)	5
Elmore v Cone Mills Corp 187 F 3d 442 (4 th Cir 1999)	16
Franklin v Shields 569 F 2d 784, 789-90	11
Fuentes v Shavin 407 US 67, 92 S.Ct. 1983 (1972)	5
Heckler v Community Health Svcs. 467 US 57, 59 (1984)	16
Hill v Jackson 64 F 3d 163 (4 th Cir	12
Jackson v Wise (C.D. Cal 1974) 390 F Supp 19	7
Lang v Payne 476 US 926, 935 (1986)	15
Memphis Light Gas & Water Div v Craft 436 US 1 (1978)	9
Morrissey v Brewer, 408 US 486-88	5, 7
Morrissey v Brewer 408 at 471	7, 8
NAACP v Wilmington Med Center Inc. (D.C. Del 1978) A 53 F Supp 330	7
Sessions v Dimaya 138 S.Ct. 1204 (2018)	5
Sullivan v S.C. Dept. of Corr. (2003) 355 SC 437	5
Training Inc v Data Gen. Corp. 963 F 2d 680, 690 (4 th Cir 1992)	16
Valdivia v Schwarzenegger 599 F 3d 984, 989 (2010)	8
Vatela v Whalen 946 F 2d 888	11
Wolff v McDonnell 418 US 539 (1974)	7, 8
Young v Harper 520 US 143 (1972)	7

TABLE OF AUTHORITIES

Code of Federal Regulations (CFR)

28 CFR § 2.34 (b) 515

Constitutional:

A. South Carolina Constitution:

(a) Art. I § 61

B. United States Constitution:

(a) Due Process Clause 46, 18, 91, 10, 11, 12

(b) Equal Protection Clause 12

(c) FIFTH Amendment (5 USC) 17

(d) FOURTEENTH Amendment (14 USC) 4, 17, 9, 10, 11, 12

(e) 28 USC § 1254 (1) 1

(f) 42 USC § 1983 2

Doctrine:

(a) Horizontal Stare Decisis 12, 13

(b) Stare Decisis 10, 12

Secondary Sources:

(a) Reinstatement (second) of Contracts § 90 (1991) 16

(b) Textualism As Fair Notice 123 Harv L. Rev 542 5

South Carolina Statutes:

(a) S.C. Code § 24-21-221 61

(b) S.C. Code § 24-21-620 6

(c) S.C. Code § 24-21-645 (D) 61

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully prays that a writ of Certiorari be issued to review the judgment below.

The decision of the United States Court of Appeals Fourth Circuit appears at Appendix pg 19-20 to the Petition and is not reported.

JURISDICTION

The date on which the United States Court of Appeals Fourth Circuit decided my case was December 21, 2017. A copy of the decision is attached as noted above.

A timely petition for rehearing en banc was denied by the United States Court of Appeals Fourth Circuit on February 21, 2018; and a copy of the order denying rehearing appears at Appendix Page 21.

An extension of time to file for a writ of Certiorari was granted to and including July 27, 2018 on June 8, 2018.

The Court's jurisdiction rest on 28 USC § 1254(1).

STATEMENT OF THE CASE

The Petitioner was convicted on March 28, 1990, and sentenced to fifty-five (55) years in the South Carolina Dept. of Corrections, (SCDC) with Parole eligibility. After previous denials of Parole the Petitioner went before the South Carolina Probation Parole and Pardon Services, (SCDPPPS, herein referred to as Respondent), hearing panel on December 10, 2014 and by unanimous vote was approved for Parole, with a scheduled release date of February 19, 2015. (Exhibits 1 and 2, pages 22, 23)

On February 21, 2015, seventy-three (73) days after the unanimous approval of his Parole the Petitioner received a letter from the Respondent stating the Parole Board had reconvened, reconsidered and rescinded his Parole on February 18, 2015, one (1) day prior to his scheduled date of release (See Exhibit, 3 Page 24)

In response to the Parole rescission the Petitioner filed an action against the Respondent in the South Carolina Court of Common Pleas, case No. 2015-CP-03-00137 filing Complaint, and Interrogatories on June 19, 2015. The attorney for the Respondent, Mr. Thomas Nicholson, filed the Response on behalf of the Respondent on July 15, 2015. The action was dismissed.

The Petitioner in turn filed a federal habeas which the South Carolina U.S. District Court construed as a 42 USC § 1983, Docket Number 0:16-cv-02440-JMC. The petition for federal habeas was dismissed June 7, 2017. The Petitioner was denied a Certificate of Appealability, (C.O.A.). The Petitioner filed for a C.O.A. by filing his Notice of Appeal to the U.S. Court of Appeals, Fourth Circuit, and was allowed to file an Informal Preliminary Brief.

The Petitioner filed his Informal Preliminary Brief with the Fourth Circuit Court of Appeals on September 18 2017. The Petitioner brought forth four (4) issues with supporting facts.

The Fourth Circuit dismissed the the Petitioner's filing December 21 2017, and the Petitioner filed for a rehearing en banc January 17 2018. The Fourth Circuit Court of Appeals denied the petition for rehearing February 27 2018.

The Petitioner filed for an enlargement of time to file his Petition for writ of Certiorari on May 8 2018, the enlargement was granted by this Court on June 8 2018, to and including July 27 2018.

REASONS TO GRANT THE PETITION

1. The South Carolina Department of Probation, Parole and Pardon Services, (SCDPPPS), (herein as Respondent), denial and deprivation of the Petitioner's Procedural due Process involving "Notice"; and the Fourth Circuit Court of Appeals' decision dismissing his, (Petitioner's) appeal, does not uphold, protect nor preserve the Petitioner's expected right to Procedural due Process. The decision of/by the Fourth Circuit will have an adverse ripple effect and consequences throughout the federal and state jurisdictions / judicial systems as it relates to a Prisoners Constitutionally Protected right to Procedural due Process regarding the notification of hearing(s) involving Parole and rescission of Parole.

The primary question in the present case is whether the rescission procedure of the Petitioner: granted Parole violated Procedural due Process, inasmuch that prior to convening and reconsidering his Parole for rescission, the Petitioner was Constitutionally entitled to notification, to be made aware of such adverse action against his liberty interest and provide meaningful opportunity to be present and heard. (14 USC Due Process Clause)

This Supreme Court has the ultimate authority on what the United States Constitution represents, and the decisions of this Court interpreting the Constitution become the law of the land, establishing standards that are binding on the states, and lower courts, both federal and state jurisdictions. These laws and interpretations as given by this Court envelop and harvest the FOURTEENTH Amendment of the U.S. Constitution which regulates the conduct of the State of South Carolina and its government entities under the states authority, all of which are under the mechanism of the Due Process Clause.

It has been determined by this Supreme Court that Parole is valuable enough to deserve protection of certain minimal requirements of Procedural due Process under the U. S. Constitution's FOURTEENTH Amendment Due Process Clause.

These Procedural requirements under the Constitution are clear: If Parole eligible, the law requires the right to be heard. If the Parole Board has discretion to revoke or rescind in a given factual situation the Prisoner who has been granted Parole also has the right and may show circumstances which should preclude any rescission or revocation. See Morrissey v. Brewer, 408 US 486-488. This would require notice be provided to the Petitioner. Although the Petitioner is a state prisoner, see also 28 CFR § 2.34(b) and Parallelisms applying 14 USC redue Process and notice.

The rescission and termination of the Petitioner's parole involves a state action that adjudicates important rights; in this case, a liberty interest. The Petitioner should, in the fairness implicit in due process, have been notified and have had a chance to explain any mitigating circumstances.

Justice Kagan of this Supreme Court noted in his ruling of Sessions v. Dimaya, 138 S.Ct 1204 (2018) "Perhaps the most basic of due process's customary protections is the demand of fair notice. See Connally v. General Construction Co., 269 US 385, 391, 46 S.Ct. 126 (1926). (See also "Textualism As Fair Notice" 123-HARV. L REV 542).

Justice Stewart of this Court has noted in Fuentes v. Shevin, 407 US 67, 92 S.Ct 1983 (1972), "... the central meaning of procedural due process has been clear. 'Parties whose rights are to be affected are entitled to be heard and in order that they may enjoy that right they must first be notified' " citing Baldwin v. Hale, 68 US 223 (1863). It is equally fundamental that the right to be heard 'must be granted at a meaningful time and in a meaningful manner' Citing Armstrong v. Manzo, 380 US 545, 552, 85 S.Ct. 1187, 1191 (1965).

The South Carolina Supreme Court has made determination in Sullivan v. S.C. Dept of Corrections (SC 2003) 355 SC 437, "Minimal due process is required for a Prisoner's State Created liberty interest which are not necessarily limited to sentence credit issues and major disciplinary decisions." The principles of extending the right of minimal due process as set forth by this South Carolina court in Sullivan, have been ignored and disregarded in the case of the captioned Petitioner in this matter.

by the State of South Carolina's court system and government entity the Respondent (SCDPPPS). Therefore by not providing any prior adequate and timely notice the entire procedure and action of reconvening, reconsidering, and rescinding the Petitioner's granted parole, the State and its entity (Respondent) have deprived the Petitioner of his protected right to procedural due process and violated Constitutional Law prescribed in both the United States and South Carolina State Constitutions. Art. I § 3.

When the Petitioner was granted parole December 10, 2014, a state created liberty interest was invoked by the usage of the mandatory language "shall", and "must", within the Statutes of South Carolina Law governing parole. S.C. Code § 24-21-620 as written states, "Upon affirmative determination, the prisoner must be granted a provisional parole or parole-"; (emph. added). S.C. Code § 24-21-645(D) as written states, "Upon satisfactory completion of the provisional period the director or one lawfully acting for him must issue an order which if accepted by the prisoner shall provide for his release from custody-"; (emph. added).

After being approved for parole, this state created liberty interest is protected by the Due Process Clause of both the U.S. Constitution as well as the South Carolina State Constitution. The Petitioner therefore has an expected right of/to procedural due process; which entails being notified of any action to be taken to deprive him of his liberty interest and a due process hearing of any alleged violations and/or reason(s) for reconsideration and/or rescission of his parole.

The Respondent, SCDPPPS, was also under a statutory obligation to notify the Petitioner pursuant to S.C. Code § 24-21-221, "Notice of Hearing to Consider Parole to Whom Required". This statute as well uses mandatory language, "must", stating "The Director MUST give a thirty-day written notice of any hearing which the board will consider parole for a prisoner-"; (emph. added). This statute does not in any respect separate, classify, limit, stipulate or restrict notification to what "type" of parole consideration(s), but unambiguously mandates "any hearing which the board will consider parole for a prisoner." This includes a rescission hearing.

as there is a liberty interest in the balance at stake. Thus by failing to comply with the statutes of South Carolina Laws as well as Constitutional law regarding due process (both US and State) the Respondent has denied and deprived the Petitioner of his right to procedural due process of notice unlawfully and unconstitutionally. See also Respondent's Policy and Procedure Manual "Parole Hearings" Exhibit 4 Page 25.

Procedural due process places restraints on states in this instance South Carolina, its government, and agencies. It forbids the deprivation of life liberty and property the process due under law. The Fourth Circuit Court of Appeals has failed to uphold and preserve this right and its integrity as intended by legislation when it did not address the adverse action of the lower courts in their denial by not upholding the Petitioner's right. This was prejudicial towards the Petitioner in keeping him from his expected liberty once Parole had been approved/granted, then rescinded, and neither the State nor Federal judicial system upheld his Constitutional right to defend his liberty when it was unlawfully taken from him.

"Procedural due process protections serve to constrain governmental decisions that deprive individuals of either a 'liberty' or property interest within the meaning of the FIFTH or FOURTEENTH Amendment." (See NAACP v Wilmington Med Center Inc (D.C. Del 1978), 53 F. Supp 330. These protections as set forth within due process are required before the government (Respondent/SCDPPPS) can revoke or rescind a person's Parole as ruled by this Supreme Court in previous cases, (see Morrissey v Brewer, 408 US 471 and Young v Harper 520 US 143 (1972)), as it involves a citizens liberty interest.

The lower Courts (federal and state) seem to have turned a "blind eye" to the Petitioner's situation of the states failure to afford due process of notice. The Fourth Circuit's non-recognition of this deprivation sends a message that 'notice' is not of concern or importance Constitutionally, or imperative when liberty interest is at stake.

The California Court noted in Jackson v Wise, (C.D Cal 1974) 390 F. Supp 19 comparing the rescission of Parole to a prison hearing subject to the requirements of Wolff v McDonnell 194 Sct 2963 418 US 539 (1974); in determining the minimum

due process for rescission. The first two (2) points of the six (6) outlined in Wolff, id were: a) advance written notice, and b) the right of the prisoner to be present. The ruling in Morrissey by this Supreme Court "...that the paroled individual must receive notice of the alleged violation and hearing Purpose," (emph. added).

Numerous cases ruled upon by this Supreme Court affirm the liberty interest invoked by parole as it involves rescission and revocation, and the procedural due process that is required concerning notification of any action to be taken regarding that liberty interest.

The Court determined in Valdivia v Schwarzenegger, 599 F3d 984 989 "One who has been granted parole has a liberty interest that cannot be taken away without certain minimum requirements of due process including a --- hearing that includes the right to confront witnesses"

It has been clearly determined that the principle involving notice is a facet of the Due Process Clause which cannot be overlooked. It has also been made clear in definitive measure and terms with rulings by this United States Supreme Court that notice when it involves liberty or property must be adhered to.

The Respondent has not complied with these requirements as set forth by this Court or the Constitution. In doing so they created a direct consequence, suffered by the Petitioner - the deprivation of liberty. The Petitioner didn't have opportunity to speak on his behalf nor defend his liberty interest. It was noted in Wolff, id. "Part of the function of notice is to give the party a chance to marshal the facts in his defense and clarify what charges are in fact." As the Petitioner was entitled to this opportunity the State's entity / Respondent deprived him of such.

If the decision of the Fourth Circuit Court of Appeals is allowed to stand allowing the Petitioner to be denied and deprived of his right to due process, other forthcoming actions which may follow involving notice of prisoner's hearings overall, not just parole, could or even will be affected and prisoners possibly could suffer and experience similar situations of not being properly and timely notified of actions being considered against them.

US Supreme Court Justice Powell affirmed the decision of the Honorable J. W. Peck, of the Sixth Circuit Court of Appeals in Memphis Light Gas and Water Div. v. Craft 436 US 198, 54-1554 (1978) "Procedures were constitutionally insufficient in respect to due Process requirements of a hearing" (See 34 F 2d 684 (1976)). Justice Powell stated in his decision affirming Judge Peck's ruling "Because of the failure to provide notice reasonably calculated to apprise ... of availability of an administrative procedure ... and failure to afford ... opportunity ... Petitioners deprived respondents of an interest in Property without due Process."

The US Constitution has set forth the components of due Process that cannot be denied which are life liberty and Property. The Petitioner in this matter before this Court has been denied a liberty component resulting from being deprived procedural due Process by the State of South Carolina's government agency (the Respondent), and by its (South Carolina's) Courts, and by the Federal Court's failure to protect, uphold and ensure that the Petitioner's right under 14 USC Due Process Clause remains intact and unbridged.

Given the inconsistency of the holding and decision of the Fourth Circuit's dismissal of the Petitioner's claim and with the decisions of this Supreme Court and other Court of Appeals, it is of no surprise that the Fourth Circuit's decision is unsupportable; as it has been herein and forthcoming demonstrated, ironically the the Fourth Circuit has recognized the importance of procedural due Process in previous matters before that Court but failed to do so in this instance.

2. The decision of the Fourth Circuit Court of Appeals to dismiss the Petitioner's Petition for a Certificate of appealability, (C.O.A.), and appeal of the South Carolina U.S. District Court's denial of his federal habeas conflicts with this Supreme Court's rulings and other U.S. Courts of Appeal of various circuits as previously brought forth.

This decision also conflicts with previous rulings as determined by that Court (Fourth Circuit) concerning the same subject matter, therefore requiring the application of the Stare Decisis Doctrine.

The Fourth Circuit Court of Appeals has ruled in its previous decisions of failing to provide adequate notice prior to actions, vacating and remanding the cases/matters to the District Courts. Such determinations to vacate and remand upheld the Constitutional rights involved concerning Procedural due Process as protected by the FOURTEENTH Amendment as well as equal protection of the law.

The Fourth Circuit Court as well ruled in matters of "state created liberty interest" invoked by state statutes using mandatory language "shall" and "must", and affirming that liberty as Constitutional rights involving liberty interest being violated when lower courts and states failed to acknowledge or preserve such rights. These protections concerning notice, liberty, as invoked by a state created liberty interest and mandatory language usage, are protected by the Due Process Clause and cannot be ignored nor denied as the South Carolina U.S. District Court and Fourth Circuit Court of Appeals have done.

The decision of the Fourth Circuit not to acknowledge the Petitioner's claim of the Respondent's failure to notify him of its convening to reconsider his approved parole and its rescission (as discussed previously was brought forth as a Constitutional deprivation issue being appealed from the South Carolina District Court's ruling of his federal habeas) continues to echo the deprivation committed by the South

Carolina State agency (Respondent) the Courts of South Carolina both Federal and State and now the Fourth Circuit Court of Appeals in the Petitioner's instance.

However, the Fourth Circuit in the matter of Varela v Whalen, 946 F.2d 888 (4th Cir 1991), the Court vacated the claim and remanded the case to the U.S. District Court on the basis of inadequate notice concerning the rescission of Parole. The Petitioner in this instance presented the exact same claim on the basis of the failure of the Respondent to provide adequate notice of the action to be considered and taken against him - denying him the opportunity to be present.

The Fourth Circuit Court of Appeals has also made rulings concerning state created liberty interest as it relates to and results from the mandatory language used within state statutes and is protected by the FOURTEENTH Amendment's protection of liberty and liberty interest of Due Process. The matter of a state created liberty interest is especially relevant in matters of due process involving parole as incarcerated individuals rely on the implied promise of their liberty with parole and the laws governing such liberty.

The Fourth Circuit ruled in Franklin v Shields, 569 F.2d 784, 789-90 (4th Cir 1977), "State statute mandating conditional release when the requirements fulfilled created a liberty interest". This Supreme Court ruled in Board of Pardons v Allen, 482 US 369, 376-384 (1987), stating: "State statute mandating that the parole board shall release inmates when specified criteria are met created a protected liberty interest. Liberty interest found where Montana statute using mandatory language created presumption that release would be granted."

The Petitioner also has presented a claim demonstrating the South Carolina statutes using the mandatory language "shall" and "must" governing parole establishing a state created liberty interest. He has presented this issue of a state created liberty interest in every action filed of each court state and federal levels. However, he has not been afforded the protected due process affirmation of his claim by the Courts, a right he is entitled to, due to the courts continued refusal to acknowledge the deprivation of such by the Respondent. This direct denial has prejudiced the Petitioner in and by depriving him of his liberty. (See Hill v Jackson 64 F3d 163 (4th Cir 1995) "...statute gives rise to expectation of parole...").

Directly related and in conjunction with the 14 USC Due Process Clause is the Equal Protection Clause which guarantees that no person or class of person shall be denied the protection of the laws enjoyed by other persons or classes in the same place and under like circumstances. The Fourth Circuit has not protected or preserved the Petitioner's Constitutional rights as it has for others in the same circumstances involving the same subject matter involving procedural due process and state created liberty interest.

The Petitioner now asserts the application of the Stare Decisis Doctrine must be applied in these instances brought forth herein, following earlier judicial decisions; as the same points and subject matter have arisen and been adjudicated by the Fourth Circuit upholding the Constitutional rights and argument(s). As a matter of specificity, the doctrine of horizontal stare decisis must be applied. By and with the application of this doctrine, the Court (especially the Appellate Court) must adhere to its own prior decisions unless it finds compelling reason(s) to overrule itself.

In applying this doctrine, it affords and provides the Petitioner equal protection under the law and Constitution. This Court should consider and examine this Petition with the principles of fundamental fairness in mind. The decision of the Court of Appeals to not remand the Petitioner's Complaint back to the lower District Court for review and determination to preserve his Constitutional rights has clearly spoken volumes against the rights of citizens and especially prisoners seeking the compliance of States and their entities adherence to State created liberty interests and procedural due process when parole is involved.

The statement made by the Fourth Circuit's dismissal indicates its decisions and rulings in prior cases as well as cases adjudicated in the future will be unreliable, wavering and do not have the material or judicial weight to have forbearance or withstand attack, as it has overruled its own decision without a compelling reason. It also demonstrates inconsistency within the Circuit to the lower District Courts.

The Fourth Circuit's decision to not uphold and preserve the Petitioner's Constitutional rights by ruling against its own previous decision should not be allowed to remain, and the application of the horizontal stare decisis doctrine should be the basis of allowing the Petition for writ of Certiorari to be granted. If there is any right to parole it has to arise from substantive state law creating a right to release, and the judicial systems to uphold that right and law.

3. The Respondent unconstitutionally effectuated an estoppel of the Petitioner's approved parole and liberty interest by rescission without notice or justification, breaching the established existing mutually agreed upon contract of parole between the Petitioner and Respondent thereby creating a circumstance inducing detrimental reliance.

As defined, detrimental reliance is reliance by one party on the acts or representations of another, causing a worsening of the first party's position.

Detrimental reliance may serve as a substitute for consideration and thus make a promise enforceable as a contract. The principle that a promise was made without consideration may none the less be enforced to prevent injustice if the promisor should have reasonably expected the promisee to his detriment.

As previously brought forth, the Petitioner was approved for parole on December 10 2014 by a unanimous vote of the Respondent's parole hearing panel and a scheduled release date was set for February 19 2015. In accordance with the Respondent's "Parole Policy And Procedure Manual", Section F, "Conditions of Parole", the terminology and wording used in the manual stipulates unambiguously "Underlying every parole is the contractual agreement between the state and the parolee." A binding contract was established between the two parties (Petitioner and Respondent) upon the mutual agreement and acceptance of the terms of the parole on December 10 2014, therefore the manifestation of such constitutes a contractual agreement. (see exhibits 5-7 pages 26-28)

The Petitioner was scheduled to report on February 19 2015 at 9:30 AM to the South Carolina Works to begin employment training and receive job placement as required by the terms and conditions of his parole contract. He, (and his family), expected the Petitioner's release. The Petitioner relied on the Respondent to maintain its commitment and "end" of the contractual agreement, and relied on such to reinstitute his liberty interest of gainful employment, family and productivity.

On February 18 2015, one (1) day prior to the Petitioner's scheduled and arranged release date (February 19 2015) the Respondent reconvened a full Parole board and initiated an estoppel of the Petitioner's Parole and liberty interest by rescinding his approved Parole, prior to his release without notifying him of its intent to do so. The estoppel had a detrimental as well as Presudicial effect on the Petitioner (and his family) due to the Respondent's misrepresentations and anticipatory breach of Contract.

A repudiation by one party may occur before the time of performance has arrived. Such repudiation is called "Anticipatory breach." An anticipatory breach of contract as defined by Black's Law Dictionary is "a breach of contract caused by a party's repudiation, i.e. unequivocally indicating that the party will not perform when performance is due, and under such circumstances the non-breaking party may elect to treat the repudiation as an immediate breach and sue for damages.

This Supreme Court has ruled that "[an] essential element of any estoppel is detrimental reliance on the adverse party's misrepresentations" (see Lang v Payne 476 US 926, 935, 106 S.Ct. 2333 (1986)). The Petitioner's dependence on the Respondent to maintain the integrity of the established contract for Parole, and its failure to maintain that contract, the Petitioner has been deprived of his conditional Parole and freedom without proper showing on his behalf or a tribunal determination that he willfully violated any terms of corrections policy or the agreed upon terms and conditions inclusive of his agreed upon Contract for Parole and release.

The finding of the Parole Panel on December 10, 2014, and mutual agreement between the Petitioner and Respondent clearly shows particular elements of consent and promise with binding intent, and created a reliance on such promise. The repudiation of the contractual agreement by the Respondent gives the Petitioner the option and right to treat the contract as terminated and if so desired sue for damages.

The Respondent's misrepresentations are clearly demonstrated by its failure to provide notice of the rescission hearing, and its failure to meet its own criteria mandating that "new" material facts,

(ie: criminal charges, institutional misconduct, after acquired information, failure to meet conditions of release, etc) are required to warrant reconsideration and rescind Parole approval.

The Petitioner did not meet any of these conditions required for reconsideration, therefore indicating the Respondents intentional misrepresentation when it gave reason for the rescission using the same reasonings used year after year by the Respondent as Previous denials. However, at the December 10, 2014 hearing, the Respondents Panel determined the Petitioner had overcome the "usual denial findings used", and worthy of Parole; and those "standardized usual" reasonings were no longer of merit to deny the Petitioner his Parole.

The Fourth Circuit Court of Appeals noted in its ruling of Elmore v Cone Mills Corp. 187 F 3d 442 (4th Cir 1999) the four (4) elements of detrimental reliance are 1) Promise 2) which promissor should reasonably expect to cause action by promisee 3) which does cause such action and 4) which should be enforced to prevent injustice to the promisee. See Restatement (Second) of Contracts § 90 (1991).

The Fourth Circuit Further stated in Elmore id. "similarly this Circuit has long held that detrimental reliance on a misrepresentation is a prerequisite for restitution under the theory of equitable estoppel, See Service and Training Inc v Data Gen. Corp. 963 Fd 680, 690 (4th Cir 1992)"

The Petitioner has shown that his reliance was reasonable and he did not know nor had any reason to know that his adversary's conduct would be misleading. See Heckler v Community Health Services 467 US 51, 59, 104 S.Ct. 2218 (1984).

Prisoners who have been granted Parole rely on the implied promise that their Parole will be subject to estoppel by revocation or rescission only if they violate their Parole conditions. The Petitioner was reliant upon this promise of liberty and the Respondent's estoppel action has had a direct

effect upon the Petitioner causing him severe emotional distress and injury.

This estoppel action (rescission of Parole) as well is to be considered as an act of Intentional Infliction of Emotional Distress, (IIED) as the rescission was done recklessly with a total disregard for the Petitioner's promised and expected liberty. The extreme impact of this situation also has created such emotional distress, the Petitioner experienced Periods of grief depression anger nausea and insomnia affecting his abilities to the point that at times he was unable to Perform his duties, (Clerical for Institution's Horticulture Department) of his job assignment.

These injurious affects directly resulted from not receiving the expected Promise and Performance as committed to by the Respondent by the contractual agreement of Parole, as well as his reliance upon the Respondent to maintain the integrity of the agreed upon contract. By not doing so and effectuating an estoppel action, the Respondent has created a detrimental reliance of Parole.

CONCLUSION

The Petition for writ of Certiorari should be granted.

Respectfully submitted,

Dawud Rahim

Dawud Rahim
Prose Petitioner

July 23, 2018