

TUESDAY, FEBRUARY 17, 2009
11:00 A.M.

NO. 3

#24963

RODNEY COWANS,
Petitioner and Appellee,

vs.

SOUTH DAKOTA BOARD OF
PARDONS AND PAROLES and
DOUGLAS WEBER, WARDEN,
Respondents and Appellants.

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(FOR APPELLANTS)

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(FOR APPELLEE)

The Honorable Peter H. Lieberman
Second Judicial Circuit
Minnehaha County

(CIV 05-117)

20-20-10

#24963

STATEMENT OF LEGAL ISSUES

I

WHETHER COWANS HAD AN ABSOLUTE RIGHT TO A COURT-APPOINTED ATTORNEY AT THE PAROLE BOARD INDETERMINATE SENTENCE HEARING?

The circuit court held that Cowans had an absolute right to a court-appointed attorney at the Parole Board indeterminate sentence hearing and issued a Writ of Habeas Corpus ordering the Board to hold a new indeterminate sentence hearing at which Cowans should have a court-appointed lawyer.

Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973)

Bergee v. South Dakota Bd. of Pardons and Paroles, 2000 S.D. 35, 608 N.W.2d 636

State v. \$1,010 in American Currency, 2006 S.D. 84, 722 N.W.2d 92

SDCL 23A-40-6

II

WHETHER RODNEY COWANS WAIVED AN ATTORNEY AT THE PAROLE BOARD INDETERMINATE SENTENCE HEARING?

The circuit court held that Cowans did not knowingly or intelligently waive an attorney at the Parole Board indeterminate sentence hearing.

Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973)

Bergee v. South Dakota Bd. of Pardons and Paroles, 2000 S.D. 35, 608 N.W.2d 636

Austad v. South Dakota Bd. of Pardons and Paroles, 2006 S.D. 65, 719 N.W.2d 760

United States v. Rapert, 813 F.2d 182 (8th Cir. 1987)