EXHIBIT A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Matthew Williams, #215077, Appellant, v. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No. 21-ALJ-15-0023-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Matthew Williams (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. Appellant is appealing a September 22, 2021 decision of Respondent South Carolina Department of Probation, Parole and Pardon Services (Respondent, Department, or Board) to deny his parole. On October 22, 2021, Appellant filed an appeal with the Court, arguing the Board failed to comply with statutory authority by not carefully considering his record or weighing the materials in the record to make findings of fact. On May 16, 2022, this Court issued an order denying Respondent's Motion to Dismiss and granting appellant's Motion to Supplement the Record. That order established a new briefing schedule to allow the parties to submit supplemental briefs in light of the supplemented record. On August 1, 2022, Appellant filed a Motion to Remand for a new parole hearing on the ground that there is no evidence in the record suggesting that the Board considered the information it is required by statute to carefully consider in reaching its decision. On August 10, 2022, Respondent filed a return to Appellant's Motion to Remand and renewed its motion to dismiss. Respondent argues that this appeal should be dismissed pursuant to the holding in Compton v. S.C. Dep't of Prob., Parole & Pardon Servs., 385 S.C. 476, 685 S.E.2d 175 (2009).

ISSUES

1. Whether the Board abused its discretion in denying Appellant parole.
2. Whether this Court has a duty or jurisdiction to review the issue of whether the record supports the Board's statement that it considered the proper factors.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court (Supreme Court) decisions in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals), and Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). The Al-Shabazz decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Because being granted parole is a privilege and not a right, the routine denial of parole does not implicate such a liberty interest; however, the denial of eligibility for parole does involve such a liberty interest, and thus is a matter properly before the Court for review. See James v. S.C. Dep't of Prob., Parole & Pardon Servs., 376 S.C. 392, 395-96, 656 S.E.2d 399, 401–02 (Ct. App. 2008); see also Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 443 n.4, 586 S.E.2d 124, 127 n.4 (2003).

When reviewing a decision of the Department, the Court sits in an appellate capacity. See Furtick, 352 S.C. at 599, 576 S.E.2d at 149; Al-Shabazz, 338 S.C. at 377, 527 S.E.2d at 754. Under the appellate standard of the Administrative Procedures Act (APA), the Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2021). The Court may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2021). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id. A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

DISCUSSION

Appellant argues the Board failed to follow the appropriate process before denying parole in that there is no evidence in the record showing the Board weighed the pros and cons of parole for Appellant or the evidence in the record and made findings of fact based upon the materials it is required by law to consider.

> The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner 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. . . . The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records.

S.C. Code Ann. § 24-21-640 (Supp. 2021).

> If a Parole Board deviates from or renders its decision without consideration of the appropriate criteria, we believe it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest. Undoubtedly, the Parole Board is the sole authority with respect to decisions regarding the grant or denial of parole. However, the Legislature created this Board to operate within certain parameters. We do not believe the Legislature established the Board and intended for it to render decisions without any means of accountability.

Cooper v. S.C. Dep't. of Prob., Parole and Pardon Servs., 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008).

> We emphasize that in future parole review hearings the Parole Board may avoid [reversal of its denial of parole] if it clearly states in its order denying parole that it considered the factors outlined in section 24–21–640 and the fifteen factors published in its parole form. **If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision** to determine whether the Board followed proper procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

Id., 377 S.C. at 500, 661 S.E.2d at 112 (emphasis added).

The word "factors" does not appear in section 24-21-640. Instead, the statute uses the word "criteria." The term "factors" is first mentioned in the Cooper opinion. Cooper, 377 S.C. at 494, 661 S.E.2d at 109. The Supreme Court referenced the term from the Department's parole form provided to inmates in compliance with section 24-21-640, which lists as its fifteenth criterion "Other factors considered relevant in a particular case by the Board." Id., n.2. The Department's

Form 1212 continues to use this language and uses the terms "factors" and "criteria" interchangeably. The Supreme Court in Cooper referred to the Department's form listing the fifteen items, stating "This form lists the following non-inclusive criteria. . . ." Id. Therefore, the term "factors," as used in the Department's forms and in the relevant case law, is identical to the term "criteria" as used in section 24-21-640.

The issue presented here is, what is the "procedure" that the Board must comply with in order to meet its obligations outlined in the statute and Cooper. The Department takes the position that so long as its decision document recites the words that it considered the factors published in Department Form 1212, the factors outlined in S.C. Code Ann. sections 24-21-640 and 24-21-10(F)(1), and the actuarial risk and needs assessment, this Court has no jurisdiction to review its procedure and decision. The Department's position is that if the Board complies with the procedure outlined in Cooper by **stating that it considered the factors** in section 24-21-260 and the criteria in Form 1212, this is a routine denial of parole, and section 1-23-600(D) divests the ALC of jurisdiction to consider the appeal. In fact, the Department has evidently created a form order which recites these words in every decision denying parole.

Appellant here challenges the truth of the assertion that the appropriate factors and criteria were considered. The issue, then, is whether merely reciting the words that the factors were considered is sufficient to demonstrate that the procedure required under Cooper has been afforded the inmate where the inmate challenges the veracity of that assertion.

The Department acknowledges that the Board did not deliberate or consider the relevant factors as a body at any point, stating, "[T]he Board is comprised of seven individual members, and each member has a single vote. Unlike a jury, which must deliberate ..., the Board members vote, and parole is granted or denied based on the vote count. Deliberation on the record is...unnecessary." See Respondent's Return in Opposition to Appellant's Motion to Remand at p. 2-3. The Department does not claim that any Board member actually viewed or discussed the information contained in the record.

The Department asserts its recitation of the language outlined in Cooper satisfies section 24-21-640 in its entirety, including the requirement to carefully consider the inmate's record. "[O]ur deference doctrine provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations 'unless there is a compelling reason to differ.'" Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411

S.C. 16, 34, 766 S.E.2d 707, 718 (2014) (quoting S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005)). "We defer to an agency interpretation unless it is '. . . manifestly contrary to the statute.'" Kiawah, 411 S.C. 15 at 34-35, 766 S.E.2d at 718 (quoting Chevron, U.S.A., Inc. v. Nat. Res. Def. Council Inc., 467 U.S. 837, 844 (1984)). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Statutes concerning parole eligibility are penal in nature and therefore must be construed strictly in favor of the defendant and against the state. Cooper, 377 S.C. at 496, 661 S.E.2d at 110 (citing Hair v. State, 305 S.C. 77, 79, 406 S.E.2d 332, 334 (1991)).

The plain meaning of section 24-21-640 is that careful consideration of the inmate's record is a separate obligation from the consideration of the appropriate criteria. Merriam-Webster defines "criterion" as "a standard on which a judgment or decision may be based" or "a characterizing mark or trait." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/criterion. Section 24-21-640 states "The board must carefully consider the record of the prisoner before, during, and after imprisonment, **and** no such prisoner may be paroled until it appears to the satisfaction of the board [that the prisoner satisfies the appropriate criteria]." (emphasis added). "[C]arefully consider the record" is a command, not a standard on which a decision may be based. Therefore, careful consideration of the record cannot be folded into the notion of the criteria the procedure in Cooper requires the Board to consider. Section 24-21-640 plainly states the Board must perform two actions. First, the Board must carefully consider the inmate's record. Second, the Board must determine whether the evidence in the record satisfies the appropriate criteria for parole.

The Department's interpretation of section 24-21-640 only requires it to "clearly state[] in its order denying parole that it considered the factors outlined in section 24–21–640 and the fifteen factors published in its parole form." Cooper, 377 S.C. at 500, 661 S.E.2d at 112. The Department's interpretation, derived solely from the language in Cooper, only requires the Board to state in its order that it considered the appropriate criteria, not that it actually do so. The Department's interpretation does not address whether the Board actually carefully considered the inmate's record. The ruling in Cooper addressed circumstances where an inmate questioned the criteria the Board considered, but did not allege the Board failed to carefully consider the inmate's record. Cooper did not provide a procedure for how the Department may be held accountable for carefully considering

an inmate's record. The procedure in Cooper is prefaced by the statement "We emphasize that in future parole review hearings the Parole Board **may avoid the result in the instant case . . . .**" (emphasis added). Id. The ruling in Cooper stated:

> In the instant case, the Parole Board apparently failed to consider the requisite factors and, instead, based its decision on certain fixed factors that are unaffected by any rehabilitation efforts on the part of Cooper. Accordingly, we affirm as modified the circuit court's order reversing the ALC and remand the matter to the ALC for disposition in accordance with this opinion.

Id. at 502, 661 S.E.2d at 113. The Cooper ruling does not address the Board's careful consideration of the inmate's record. The procedure announced in Cooper addresses the issue of holding the Board accountable for the criteria it applied to the inmate's record. The Department's position is that compliance with the Cooper procedure alone satisfies the requirement in section 24-21-640 that the Board carefully consider the inmate's record. The "result in the instant case" described in Cooper is reversal of a denial of parole on the grounds of failing to apply the criteria required by section 24-21-640, not reversal of a denial of parole for any other reason. Section 24-21-640 plainly requires both the application of the appropriate criteria to the inmate's record and the careful consideration of the inmate's record. Therefore, the Department's interpretation of section 24-21-640 is contrary to the plain meaning of the statute.

Here, the Department offers no evidence the Board carefully considered the record of Appellant. Instead, the Department appears to concede the Board did not discuss Appellant's case at his parole hearing when it argues verbal discussion of Appellant's record is unnecessary. Reasonable minds cannot conclude the Board carefully considered Appellant's record based solely on the Board's boilerplate decision language stating that it did. The Court finds no indication in the record that the Board carefully considered Appellant's record.

We turn next to the issue of whether, despite all that, our Supreme Court's ruling in Compton is determinative of the outcome here. In Compton, the Supreme Court clarified its ruling in Cooper to make it clear that where the Board states in its order denying parole that it considered the proper factors, the decision will constitute a routine denial of parole and the ALC has limited authority to review the decision. Compton, 385 S.C. at 479, 685 S.E.2d at 177. In Compton, the Supreme Court held that no specific findings of fact reflecting consideration of the inmate's record were required in the Board's order. Id. While the Compton court did not reverse its ruling in Cooper, it is difficult to reconcile the substantive rights recognized in Cooper with the Department's interpretation of Compton. The Department asserts that the Board is required only to make a rote declaration that it

considered all the relevant factors to shield the Board from all review of whether it did, in fact, carefully consider the factors required by law. Nevertheless, the Supreme Court in Compton made it clear that findings of fact specific to a careful review of the individual inmate's record were not necessary to constitute a routine denial of parole for which this Court's review is limited. For that reason, I will adopt the Department's interpretation in reliance on Compton, as I cannot reconcile Compton's instructions that specific findings are not required with concluding that the Board's findings or the record must reflect careful consideration of the factors. Unless and until this issue is clarified by our appellate courts or legislature, I believe that Compton establishes that the Board has unfettered discretion in making parole decisions so long as it includes the boilerplate language present in the decision document here. This Court's duty and jurisdiction is limited from reviewing the Board's decisions to determine if any evidence in the record supports its statement that the proper factors were considered.

ORDER

For the foregoing reasons, Appellant's Motion to Remand is **DENIED,** and the Department's decision denying Appellant parole is **AFFIRMED.**

AND IT IS SO ORDERED.

Deborah Brooks Durden

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 13, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

September 13, 2022
Columbia, South Carolina