

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Case No. 2013-000526

Ronald Tate, #114188, Appellant,

v.

S.C. Department of Probation,
Parole and Pardon Services, Respondent.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD OF APPEAL

Appellant proposes the following be included in the record of appeal:

- 1. Order of Februar 12, 2013

I certify that this designation contains no matter which is irrelevant to this appeal.

Ronald Tate, #114188
Appellant

Perry Correctional
Institution Q-2 B-220
430 Oaklawn Road
Pelzer, S.C. 29669
(No Phone)

This ____, day of June 2013,
at Pelzer, South Carolina.

FILED

FEB 12 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Ronald Tate, #114188,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Probation,)
Parole and Pardon Services,)
)
Respondent.)
_____)

Docket No. 11-ALJ-15-0010-AP

ORDER

This case is before the Administrative Law Court (ALC) pursuant to the appeal of Ronald Tate (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On February 9, 2011, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Board of Parole and Pardon (Board) had rejected him for parole. Appellant filed a notice of appeal on February 28, 2011. Appellant challenges the Board's denial of parole as well as its procedures related to his parole eligibility hearing.

An individual has a right to ALC review of a final decision of the Department only when that decision affects a liberty interest for which due process is required. See Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146, 149, 150 (2003); see also Sullivan v. S.C. Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review). In Furtick, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, the statute creates no such liberty interest in the granting of parole itself. Furtick, 352 S.C. at 598, 576 S.E.2d at 149 n.4. Therefore, claims arising from the Board's decision denying parole are not appealable to the ALC.

Appellant is challenging the Board's decision alleging that it was made upon unlawful procedure that was not in effect at the time of his conviction, thereby violating ex post facto clause of the South Carolina and United States Constitutions. When comparing the section that was in effect at the time of his incarceration to the current version, it differs only by the word "shall" being replaced by the word "may." This change is considered procedural, and therefore

it cannot be considered as an ex post facto violation. Even though it may work to the disadvantage of the defendant, a procedural change is not ex post facto. Roller v. Gunn, 107 F.3d 227 (1997). In both versions of the statute, the Parole Board has full responsibility to decide whether or not a person should be granted parole. The current statute does not change the criteria or the decision makers relating to the acceptance or the denial of parole. The current statute is exactly like the past statute; therefore the application of the current statute cannot be considered an ex post facto violation.

The application of the current statute or the department created criteria does not cause an additional punishment, nor does it make it more difficult for Appellant to be granted parole. Since this does not add to Appellant's punishment; it cannot be considered a violation of ex post facto. The ex post facto clause protects against retroactive legislative provisions which are disadvantageous to the offender; a mere procedural change in law, not increasing punishment or changing the elements of the offense, does not result in an ex post facto violation. Elmore v. State, 305 S.C. 456, 409 S.E.2d 397 (1991).

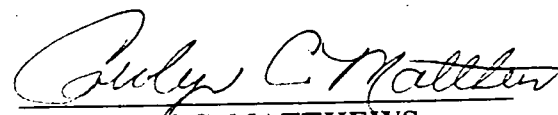
Appellant also challenges that the requirement that he appear before the entire seven-member Board, with a two-thirds majority vote for the granting of parole is a violation of his Constitutional Rights. At the time Appellant committed the crime, South Carolina law determined that a person needed a majority vote to be denied parole. As part of the 1986 omnibus crime act the legislature established that two thirds of the Parole Board must sign orders authorizing parole for persons convicted of violent crimes as defined by statute. Since this differs from the law that existed when he committed the offense, Appellant believes that applying the two thirds law is a violation of ex post facto. Appellant further argues that when he committed the crime it was not classified as violent so he should be allowed to appear before the three person panel which is only for non-violent offenders. Appellant is currently serving a sentence for crimes classified as violent offenses. Pursuant to South Carolina law, a person serving a sentence for a violated offense can only be released on parole by a two-thirds majority vote of the full board. S.C. Code Ann. § 24-21-30 (Supp. 2012). The appearance of Appellant before the full board with the two-thirds requirement is not in violation of ex post facto.

Appellant also asserts that Respondent's failure to allow him to appear before the Board exactly every twelve months is a violation of South Carolina law. However, Appellant must show that he was in some way prejudiced by the delay in not appearing exactly every twelve

months in order to reverse judgment. Fields v. Regional Medical Center of Orangeburg, 354 S.C. 445, 581 S.E.2d 489 (S.C. App. 2003). There is no evidence that Appellant has shown prejudice by the delay. Moreover, the Board's decision clearly states that it considered "all of the criteria listed with Section 24-21-640 and the Department policy" in reaching its decision. Thus, its decision to deny Appellant's parole sufficiently complied with the Court's decision in Cooper v. South Carolina Department of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008) (stating that an inmate's state-created liberty interest is infringed upon if the Board does not render an inmate's parole determination in consideration of the appropriate criteria) and Compton v. South Carolina Department of Probation, Parole and Pardon Services, 385 S.C. 476, 685 S.E.2d 175 (2009) (stating that the result in Cooper "could be avoided in the future if the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212, and that if the Parole Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC will have limited authority to review the decision."). Therefore, I find the decision of Respondent in this matter should be affirmed.

ORDER

IT IS THEREFORE ORDERED that the decision of Respondent is **AFFIRMED**.
AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS
Administrative Law Judge

February 12, 2013
Columbia, South Carolina

This is to certify that the undersigned has in his state received this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 12 day of February 2013
by: Raye P. Lynch
Clerk

THE STATE OF SOUTH CAROLINA

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Case No. 2013-000526

Ronald Tate, #114188, Appellant,

v.

S.C. Department of Probation,
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CERTIFICATE OF SERVICE

I, Ronald Tate, certify that I have served the Brief of Appellant and Designation of Matter to be included in the Record on Appeal on Carolyn C. Matthews, Administrative Law Court, by depositing a copy of it in the U.S. Mail, postage prepaid, on June __, 2013 addressed to her at Administrative Law Judge Division, 1205 Pendleton St., Suite 224, Columbia, S.C. 29201.

I further certify that I have served a copy of same to Tommy Evans, Jr., Legal Counsel for the South Carolina Department of Probation, Parole and Pardon Services at 2221 Devine St., Suite 600, P.O. Box 50666, Columbia, S.C. 29250.

RECEIVED

JUN 04 2013

P.C.I. MAILROOM

Ronald Tate
Ronald Tate, #114188
Appellant

Perry Correctional
Institution Q-2 B-220
430 Oaklawn Road
Pelzer, S.C. 29669
(No Phone)

This 4 day of June 2013,
at Pelzer, South Carolina.