

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Administrative Law Court  
The Honorable Debora Brooks Durden, Administrative Law Judge  
SC Court of Appeals

Appellate Case No. 2022-001585

MATTHEW WILLIAMS, #215077..... APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND  
PARDON SERVICES,.....RESPONDENT

**FINAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUES ON APPEAL

1. Whether an inmate may challenge the Board's decision-making process when its members do not deliberate on the record despite the Board following the requirements in the Supreme Court cases of *Cooper* and *Compton* and the Administrative Law Court's own rules of evidence?
2. Whether the ALC properly dismissed the appeal when the Parole Board followed the procedure outlined in *Compton*, despite making several errors including expanding the record unnecessarily and then making certain incorrect findings about what evidence is in the record?
3. Whether an inmate may appeal a routine denial of parole even though well-settled South Carolina law prohibit such appeals, just because he argues that his denial was not routine because of a lack of on-the-record deliberation by the Board members when nothing in the Code requires the Board members to do so?

## STATEMENT OF THE CASE

On December 30, 1992, a woman was walking intoxicated, at night along Rivers Avenue in North Charleston. She got into a vehicle occupied by Appellant and several other men. These men took her to a mobile home on Stall Road where they engaged in sexual acts. Though she initially consented to these acts, she soon objected, but the men continued to gang rape her over her protests. When they were finished with her, they instructed her to bathe, then handcuffed and blindfolded her before taking her to a waiting car. They drove quite a way, into a different county, before the victim freed herself from the handcuffs and began to struggle. A co-defendant shot her twice in the face, then pulled the car over and shot her three more times. Her body was left on the roadside while the men returned to the trailer and went out to a nightclub. The victim was alive when a passerby first found her, but died shortly thereafter. All defendants fled the state, though most were arrested in January 1993. Appellant remained at large until October 1994 when he was arrested in Philadelphia.

On January 30, 1996, Appellant was convicted of murder and sentenced to life imprisonment with the possibility of parole after twenty years of service.

Appellant became parole eligible in January 2013 and has had five parole hearings with his most recent on September 22, 2021. (R.p.11). Upon his denial, he filed an appeal in the Administrative Law Court (ALC) on October 22, 2021. In his appeal, Appellant alleged one main issue with four subparts: Respondent's decision in denying Petitioner parole and the procedure and process by which DPPSS denied Williams parole are: (i) in violation of constitutional or statutory provisions; (ii) in excess of the statutory authority of the agency; (iii) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and (iv) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Appellant followed up with a motion to supplement the record and conduct discovery on January 31, 2022.

Respondent filed a reply opposing the motion to supplement the record and a corresponding motion to dismiss the appeal on February 2, 2022, explaining that the Parole Board followed the requirements laid out in *Cooper v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008), and *Compton v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 385 S.C. 476, 685 S.E.2d 175 (2009). (R.p.86-p.95). Appellant then filed a reply in support of his motion to supplement the record on February 15, 2022 (R.p.15-21) and a response in opposition to the motion to dismiss on February 17, 2022. (Supp.R.p.6 - p.16).

The Honorable Deborah Brooks Durden, administrative law court judge, denied the motion for additional discovery and Respondent's motion to dismiss while granting Appellant's motion to supplement the record on May 16, 2022. (Supp.R.p.1-p.5). Appellant then filed a motion to remand the matter back to the Parole Board on July 29, 2022. (R.p.74-79) Respondent filed a return to the motion and renewed its motion to dismiss on August 10, 2022. (R.p.68-p.73).

On September 13, 2022, Judge Durden issued an order denying the motion to remand and affirming the decision denying Appellant's parole. In her order, she acknowledged that *Compton* controlled and that because the Board followed the requirements outlined in *Compton* she had limited authority to review the Board's decision.(R.p.3-p.9).

Appellant now brings this appeal, in which he argues that the ALC prejudiced his substantive rights by dismissing the appeal, and that the South Carolina Constitution's due process guarantees afford him the right to judicial review of a Board's decision denying him parole.

In its reply, the Respondent will explain that the ALC was correct in its affirmation of the Board's denial of parole – despite making several findings that are not supported in the record that

are immaterial to the ultimate decision and contrary to well-established jurisprudence regarding appeals from Parole Board decisions. Furthermore, Respondent will argue that Appellant's argument about the South Carolina Constitution's due process guarantees were not preserved for appellate review, not having been decided upon by the lower court, and that even if it were, there are no due process rights in the routine denial of parole of an otherwise parole-eligible inmate.

Respondent's brief supporting these points follows.

### **STANDARD OF REVIEW**

When reviewing a parole case, the ALC sits in an appellate capacity. *Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2004). However, an administrative law judge may not consider an appeal from an inmate involving the denial of parole if the inmate is otherwise parole eligible. S.C. Code Ann. §1-23-600(D) (Supp. 2019). Under the appellate standard of the Administrative Procedures Act, the ALC's review is limited to the record, absent irregularities in the procedure of the agency. S.C. Code Ann. § 1-23-380(4) (Supp. 2008). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but 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. 2008).

In an appeal from an ALC decision, the Administrative Procedures Act provides the standard of review. S.C. Code Ann. § 1-23-610(B) (Supp. 2008). This Court may only reverse the decision of the ALC if that decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;

- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

*Id.*

“The court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact.” S.C. Code Ann. § 1-23-610(B). In determining whether the ALC's decision was supported by substantial evidence, this court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached. *Hill v. S.C. Dep't of Health and Env'tl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

### ARGUMENTS

- I. The ALC properly dismissed the appeal when the Board followed the procedure outlined in *Compton*, despite making several errors including expanding the record unnecessarily and then making certain incorrect findings about what evidence is in the record.**

Appellant submits that this case is far simpler and straightforward than Appellant is attempting to make it out to be. To follow his argument to its logical end would upend the parole system and invite countless appeals from routine denials of parole even though South Carolina law explicitly prohibits them.

Essentially, the Parole Board denied parole at Appellant's most recent hearing. The Board, through the Department of Probation, Parole and Pardon Services (the Department), provided notice of the denial of his parole which informed him that the Board carefully considered the

requisite factors.<sup>1</sup> This follows the clear and straightforward procedure outlined in *Cooper* and further clarified in *Compton*. (R.p.11).

Yet, the ALC agreed to supplement the record pursuant to Appellant's argument that the letter was insufficient evidence that the Board actually did carefully consider the requisite factors. The supplemented materials show that the Board received materials prepared by both the Department as well as information supplied by Appellant's attorneys and supporters. Also included was the transcript of the hearing, which showed that the Board heard from Appellant, his attorney, and an acknowledgment that the Board received the supporting materials. (R.p.81-p.85). The transcript also showed the Board's vote to deny him parole, which was unanimous. (R.p.85). The Board did not deliberate before reaching its decision. (R.84-p.85).

Somehow, because Respondent conceded the fact that the Board did not deliberate amongst its members – as the recording of the hearing clearly shows – the ALC took that to mean that Respondent also conceded that no consideration took place at all. This is incorrect, and furthermore Respondent vehemently does *not* concede that point. As a matter of fact, the Department's procedures are in place to *ensure* that the Parole Board's members are given ample time to review all the materials provided from both its investigators and everything timely received from the inmate's supporters and attorneys.

Note that S.C. Code Ann. § 24-21-221 requires thirty days' notice of a scheduled hearing be given to solicitors, law enforcement, and victims related to the case. During this time frame, the Board members are provided the materials at least two weeks in advance of the scheduled parole

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<sup>1</sup> Outlined in S.C. Code Ann. § 24-21-640 and the fifteen criteria for parole consideration published in Form 1212, as well as the criminogenic risk-needs assessment mandated in S.C. Code Section 24-21-10(b). Respondent will hereinafter refer to these elements of parole consideration criteria as the "requisite factors."

hearing so they are afforded plenty of time to review the cases prior to the actual hearing. The materials prepared by the Department include the COMPAS score, a list of the criteria for parole consideration that match Form 1212, as well as details about the underlying offense, the inmate's criminal history, institutional record, and statements from victims, solicitors, judges, and law enforcement officials. (R.p.43-p. 45); (R.p.96).

The private reading and internal deliberations conducted by each Board member are something that cannot be shown or reflected in the record. The ALC presumably knows this, for its own rules require the Department supply only a copy of the agency decision and the decision following a motion for reconsideration, if applicable. SCALC Rule 61.

Respondent followed the rules of the ALC, and provided the copy of the agency decision which is sufficient under *Compton*. Then inexplicably the ALC seemed to hold the Department at fault for failing to show evidence of careful consideration – even though Respondent followed the ALC's own evidentiary rules. The ALC somehow concluded that the record shows no evidence of careful consideration of the requisite factors, when the copy of the agency decision *explicitly states* that the Board carefully considered them. The ALC also criticized the Department's use of "boilerplate decision language,"<sup>2</sup> as if the term "boilerplate" meant, "false."

The term "boilerplate," according to Black's Law Dictionary 7<sup>th</sup> Ed., means, "1. Ready-made or all-purpose language that will fit in a variety of documents. 2. Fixed or standardized contractual language that the proposing party views as relatively non-negotiable." Clearly, "boilerplate" does not mean false or fraudulent. In fact, "boilerplate" is an imprecise term in this context. Instead, the language of the letter of denial is simply repeated because it applies to all inmates who were considered for parole, and is supported by the processes in place by the

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<sup>2</sup> R.p.8.

Department – stating that the inmate received the required careful consideration for parole yet was still denied.

Respondent respectfully suggests that this Court consider Appellant's inherent bias: he wants to receive parole, and firmly believes that he should receive it. He and his supporters have presented what they feel is a case that fully supports the decision to award him parole. He may even feel that he is entitled to parole, and views his denial through that lens. If the Board denied him parole in the face of all his good qualities and his purported rehabilitation, then the only conclusion he makes is that the Board must not have considered everything and only looked to his crime.

This is, of course, a fallacy. It is still possible for the Board to view all the relevant factors, his institutional record, his actuarial risk and needs assessment, and all the parole consideration criteria, and yet still deny him parole. Respondent respectfully submits that this is what happened – because Respondent followed its regular processes, supplied the Board members with the required information, gave them ample time to review and consider the relevant factors, and conducted a hearing in which Appellant and his counsel were able to speak on his behalf. The only perceived “deficiency” is that the Board voted to deny parole before any deliberation. However, since they unanimously voted against parole, Respondent submits that deliberation was unnecessary. To agree with Appellant, and require on-the-record deliberation to show that the Board is carefully considering the required factors would only invite more appeals to answer further questions – how much deliberation is enough? Does every Board member have to say something? If every Board member is in agreement, what amount of deliberation would satisfy the ALC? If the Board members state on the record that they carefully considered the requisite factors,

would that be sufficient – even though it would inevitably be accused of being a rote recitation just as the rejection letter is accused as being “boilerplate decision language.”

Requiring the Board to deliberate on the record is not the answer. The Board’s decision-making may not be appealed, because South Carolina law vests the Board with sole authority over the granting or denial of parole, and specifically does not make parole a right. Consequently, there is no point to demanding the Board show exactly why or how they reached their decision – only that they considered all the required factors, and *Cooper* and *Compton* show how the Board can do that.

Appellant’s argument has cleverly put Respondent behind an eight ball. He submitted his biased conclusion that the only way the Board could have denied him parole is that they failed to consider all the requisite factors, because in his mind he should have received parole. He has demanded – and the ALC agreed – that Respondent show proof that the Board considered all the factors. The ALC’s rules and the Supreme Court’s decisions in *Cooper* and *Compton* have only required Respondent to provide the rejection letter which stated that the Board considered those factors. Now with such a limited record Respondent is somehow expected to fully display its processes that demonstrate that the Board truly has considered all the requisite factors.

This Court should reject Appellant’s clever manipulation of well-established precedent and the resultant rules of the ALC. As Respondent first submitted, this is a simple matter wherein an otherwise parole-eligible inmate received a routine denial of parole. Under §1-23-600(D), an ALC judge may not hear an appeal under such circumstances. While the ALC found that the Board followed the requirements of *Compton*, and ultimately properly dismissed the appeal, the ALC should have promptly and immediately dismissed the appeal rather than engage with Appellant’s attempts to subvert precedent.

## **II. The denial of Appellant's parole was routine, despite his attempts to claim otherwise.**

Appellant claims that the Board's denial of his parole was not routine, and argues that two facts make it so: "(1) no indication in the record suggests that the Board carefully considered William's record in compliance with its obligation to do so under section 24-21-640 of the South Carolina Code; and (2) the Board apparently conceded that it did not discuss his case at his parole hearing." Brief of Appellant, P. 12.

As discussed above, the record contains the letter of rejection which states the Board carefully considered the requisite factors, so clearly the first purported fact is incorrect. Furthermore, as also discussed above, the Department's processes are in place to make sure the Board members have ample time to review the materials in preparation for the parole hearing, and the Board followed both the requirements of *Cooper* and *Compton* as well as the ALC's own rules when providing the record on appeal.

The second purported fact – that the Board conceded that it did not discuss the case at the hearing – is also incorrect. The transcript shows that the Board engaged with Appellant and his attorneys. The only thing Respondent conceded is that the Board members did not *deliberate* before they cast their votes. As discussed above, there is no requirement – nor should there be – for the Board to deliberate on the record before voting.

Appellant then further reaches by relying on several unpublished opinions by this Court to support his hope that his case will be treated as anything other than a routine denial of parole. Respondent submits that these cases are cited by Appellant in violation of Rule 268(d)(2), SCACR, "Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Therefore, this Court should not

consider Appellant's references to the unpublished cases and strike any relevant arguments derived from same.<sup>3</sup>

Regardless, Appellant appears to be citing to the unpublished cases in an attempt to persuade this Court to rule against precedent. The actual *published* case law clearly point to the proper resolution in this case – that the Respondent followed the requirements of *Cooper* and *Compton*, and that dismissal of the appeal was proper.

**III. Appellant's argument that he has a due process right to judicial review in routine parole denials was not preserved, and also fails because inmates do not have a right to parole.**

Appellant argues that Article I, Section 22 of the South Carolina Constitution affords him the right to judicial review, despite the clear language of § 1-23-600(D) which explicitly states appeals from parole-eligible inmates may not be heard by administrative law judges if the denial of parole is routine.

Initially, this argument must be dismissed as it is not preserved for review by this court. Appellant admits that it was only discussed in his reply in support of his Motion to Remand and response in Opposition to Respondent's Motion to Dismiss. That was limited to a statutory history of South Carolina Constitution Article I, Section 22. For Appellant to now attempt to embrace this fact as an argument before this court is inappropriate. Most importantly, this issue was not ruled upon by the ALC, as recognized by Appellant in footnote 6 of its Initial Brief. "Issues or arguments

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<sup>3</sup> Appellant's use of *Tinsley v. S.C. Dep't of Probation, Parole and Pardon Servs.*, No. 2015-000196, 2016 WL 1367046 (S.C. Ct. App. Apr. 6, 2016), is especially misplaced because Respondent SCDPPPS had filed a motion to reconsider that opinion, which was ultimately left unresolved when the Court of Appeals dismissed the appeal on August 10, 2016 after *Tinsley* received parole at a subsequent hearing. *Tinsley v. S.C. Dep't of Probation, Parole and Pardon Servs.*, Op. No. 16-UP-163, (S.C. Ct. App. *Withdrawn, Substituted and Refiled* Aug. 10, 2016).

that were not raised to and ruled on by the ALJ ordinarily are not preserved for review.” *Al-Shabazz v. State*, 338 S.C. 354, 379, 527 S.E.2d 742, 755 (2000); *State v. Franks*, 432 S.C. 58, 79, 849 S.E.2d 580, 591 (Ct. App. 2020) (“Generally, this [c]ourt will not consider issues not raised to or ruled upon by the trial [court].” (quoting *State v. Williams*, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991))). As such, this ground must be dismissed under preservation rules.

In the alternative, should the court decline to dismiss this ground as not preserved for argument on appeal, relief must be denied. Appellant misplaces and misconstrues reliance on Article I, Section 22 of the South Carolina Constitution for the idea that he is entitled to full due process despite his status as a convicted person. Appellant concedes that due process protections under the federal constitution do not apply equally to prisoners, but argues that case law in South Carolina allows our constitution to provide an “additional guarantee of important due process rights.” *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 423, 444, 511 S.E.2d 48, 54 (1998). This is despite the fact that Appellant received hearings ‘on due notice and an opportunity to be heard’ with “the right to judicial review.” S.C. Constitution Art.I, Sect. 22.

As can be gleaned from the case name, *Garris* does not concern convicted persons or their due process rights and, as such, is inapplicable in this situation. The same is true for *McIntyre v. Sec. Comm’r of S.C.*, 425 S.C. 439, 446, 823 S.E.2d 193, 196 (Ct. App. 2018), to which Appellant cites for the proposition that individuals must be protected from “the creeping rise of the administrative state.” More appropriate, yet still unhelpful to Appellant, is his citation to *State v. Forrester*, 343 S.C. 637, 644, 541 S.E.2d 837, 841 (2001). This direct criminal appeal concerns a defendant’s constitutional rights, and Appellant cites it for the proposition that our state courts can interpret state law “in such a way as to provide greater protection than the federal Constitution.”

Notably, though, the opinion includes the idea that “state courts can develop state law to provide their citizens with a second layer of constitutional rights.” *Id.*, internal citation omitted.

Appellant also relies on *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 636, 733 S.E.2d 211, 221 (2012) for the holding that an ALJ must “consider whether the appeal implicates a state-created liberty or property interest.” As such, he argues, review of the Parole Board’s decisions by the ALC is appropriate. This case cites the portion of Section 1–23–600(D) dealing with earning sentence-related credits.<sup>4</sup> It is well-settled case law that the routine denial of parole, as differentiated from a permanent denial of eligibility from parole, does not create a liberty interest. *Sullivan v. South Carolina Dept. of Corrections*, 355 S.C. 437, 443, 596 S.E.2d 124, 127 (2003); citing *Furtick v. South Carolina Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 598 n.4, 576 S.E.2d 146, 149 n.4 (2003). *Howard*, however, requires the ALC to hear a case even if it contains the loss of the opportunity to earn sentence-related credits (which Section 1-23-600(D) says it cannot) if the case also implicates state-created liberty or property interests. *Howard* at 630. Because the right to parole is not a state-created liberty interest, this case is inapplicable.

As clearly explained by the above-cited cases, and in contradiction to Appellant’s argument, Appellant does not have “a liberty interest in ensuring that the Board considers his parole within the appropriate legal parameters.” Appellant’s Initial Brief, p.21. He has a right to parole consideration, but that right does not extend to allowing him to dictate exactly how that consideration takes place. His argument is that the parole consideration process is flawed because

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<sup>4</sup> It remains Respondent’s position that the portion of this statute preventing the ALC from hearing “appeal[s] involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services” should have barred this matter from any consideration by the ALC.

the Board did not deliberate on the record at his hearing. As Respondent has argued previously, on-the-record deliberation is not necessary, nor should it be.

As Appellant states repeatedly, this appeal is based on his belief that there is no link between the Board's review of his claims and his rejection. He seeks deliberation on the record, notes, or more detailed findings of facts, none of which are required by any statute or case law. Furthermore, Rule 61 of the Rules of Procedures for the Administrative Law Court limit the immediate record on appeal to the notice of rejection – which is sufficient because the letter clearly states that the Board carefully considered the requisite factors.

Lastly, Appellant contends that an ALJ can remand this matter back to the Parole Board for further consideration. Quite simply, this is incorrect. The code sections cited by Appellant (24-24-640 and 1-23-610(B)) do not provide for remand or reconsideration. Appellant's argument that he is now "toothless" in terms of review of his parole denial is nonsensical. All procedural safeguards and rules were followed. All statutes and case law were followed. Even Article I, Section 22 of the South Carolina Constitution was followed as Appellant was given "due notice and an opportunity to be heard" both at his parole hearing and at the ALC. There is no evidence, other than Appellant's misplaced beliefs, that anything untoward, illegal, or improper occurred and, as such, this appeal must be dismissed.

### CONCLUSION

The ALC correctly dismissed the appeal, though it conducted numerous errors when it expanded the record in a search for proof of careful consideration that its own rules state is satisfied when the Respondent supplies the letter of rejection that states that the Board carefully considered the requisite factors. Appellant's efforts to conflate a routine denial of parole into a constitutional crisis should not be entertained, when well-settled law does not give inmates the right to parole,

and South Carolina law does not grant the ALC the right to consider an appeal if *Cooper* and *Compton* are followed. As the record clearly reflects the Board followed those requirements, Respondent respectfully submits that this Court should deny the requested relief and dismiss this appeal.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Reply Brief of Appellant filed March 1, 2023, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 1<sup>st</sup> day of March, 2023.



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