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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah B. Durden, Administrative Law Judge

Case No. 21-ALJ-15-0023-AP

Appellate Case No. 2022-001585

Matthew Williams, #215077,

Appellant,

v.

South Carolina Department of
Probation, Parole and Pardon Services

Respondent.

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**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 DENYING APPELLANT'S
MOTION FOR REHEARING**

This matter is before the Administrative Law Court (Court) pursuant to the motion of counsel for Appellant, Matthew Williams, seeking a rehearing of the Court's Order filed on September 13, 2022. The motion merely reiterates the arguments made in Appellant's Brief and Motion to Remand, which were carefully considered and ruled upon by this Court. This motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore,

IT IS HEREBY ORDERED that Appellant's Motion for Rehearing is **DENIED**.
AND IT IS SO ORDERED.

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

October 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

October 13, 2022
Columbia, South Carolina



**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 & Env’tl. 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 & Env'tl. 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, 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



State of South Carolina
Department of Probation, Parole and Pardon Services

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Governor



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September 22, 2021

Mr. Matthew Williams #00215077
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

RE: NOTICE OF REJECTION

Dear Mr. Williams:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Vote Count: Unanimous To Reject

Sincerely,

A handwritten signature in cursive script that reads "Nettie C. Jacobs".

Nettie C. Jacobs
Board Support Services

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Matthew Williams, 00215077	)	Civil Action No. 21-ALJ-15-0023-AP
)	
Appellant,)	
)	
v.)	
	)	<u>MOTION FOR REHEARING</u>
South Carolina Department of Probation, Parole, and Pardon Services,)	
)	
Respondent.)	
)	
)	
)	
_____)	

Appellant Matthew Williams, by and through his undersigned counsel, hereby files this Motion for Rehearing pursuant to SCALC Rule 40 and Rule 59(e), SCRCPP. On October 22, 2021, Appellant appealed the Parole Board’s decision denying him parole, arguing that the Board did not comply with its statutory duties and through its errant decision-making processes, deprived Appellant of constitutional due process. Appellant later moved for this Court to supplement the record on appeal, while the Department of Probation, Parole, and Pardon Services (“Respondent” or “PPP”) moved for a dismissal. On May 16, 2022, this Court issued an order denying Respondent’s Motion to Dismiss and granting Appellant’s Motion to Supplement the 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 the Parole Board considered the information it is required by statute to carefully consider in reaching its decision. On September 13, 2022, this Court dismissed Appellant’s Motion for Remand and granted the Motion to Dismiss pursued by Respondent.

Appellant moves for a rehearing for the following reasons:

i. The Parole Board's decision must be reviewable and the Administrative Law Court is the most appropriate venue for appeals of agency decisions.

- i. The Administrative Law Court is charged with performing reviews of agency decisions based on the record the agency creates in the matter that is the subject of the review. When an agency board relies solely on a rote recitation of factors determined unilaterally by the board chair after the agency board vote and without any consideration on the record of facts or law to support its decision, the Administrative Law Court has nothing meaningful to form the basis for its review and cannot fulfill its statutory responsibility.
- ii. Article I, § 22 of the South Carolina Constitution guarantees citizens the opportunity to have judicial review of agency decisions affecting their rights, liberty interests or property.

ii. The Record on Appeal does not support the Parole Board's decision; thus this Court should consider a remand limited to consideration of Appellant's risk assessment and the other statutory factors.

- i. S.C. Code Ann. § 24-21-10(F)(1) requires that the Parole Board consider the COMPAS risk assessment alongside other criteria and there is no evidence that Appellant's favorable COMPAS assessment was considered. Further, S.C. Code § 24-21-640 instructs the board to "carefully consider" an inmate's record and the appropriate criteria for parole.

iii. While Compton advises the ALC not to remand a case back to the Parole Board if the Parole Board's form denial recites that it considered the factors outlined in 24-21-640 and the factors published in Form 1212, that guidance must be read in a manner consistent with the ALC's statutory duty to undertake a review of the agency's record and to determine whether that factual record supports such decision and is consistent with the applicable law.

- i. When the Parole Board's record is devoid of any consideration of the facts that form the basis for its decision or would demonstrate compliance with the Parole Board's statutory obligations to consider the petitioner's risk assessment, the guidance in Compton is inapposite.

iv. The Court overlooks or misapprehends that the Parole Board did not follow its deliberative function, as mandated by statute and its own rules.

- i. The Court does not address the fact that the Parole Board apparently failed to take into account the factor that is mandated by statute and its own rules to consider, namely the actuarially sound evidence generated by Respondent concerning whether the petitioner, if parole were granted, would be a risk to the community.

- ii. The Court should also note that the Parole Board does not follow its own instructions to deliberate the merits of parole for each prisoner before them. The Orientation Manual of the South Carolina Board of Pardons and Paroles provides that “after the witnesses in opposition are heard, they are excused from the hearing room, and the Board or the panel then deliberates.” The Parole Board’s internal rules direct that “after deliberations, a voice and/or electronic vote is cast and documented.”

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September 23, 2022

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Matthew Williams, 00215077)	Civil Action No. 21-ALJ-15-0023-AP
)	
Appellant,)	
)	
v.)	
	)	<u>REPLY IN FURTHER SUPPORT OF</u>
South Carolina Department of Probation,	)	<u>APPELLANT'S MOTION TO</u>
Parole, and Pardon Services,	)	<u>REMAND AND RESPONSE IN</u>
	)	<u>OPPOSITION TO RESPONDENT'S</u>
Respondent.	)	<u>MOTION TO DISMISS</u>
)	
)	
)	

Appellant Matthew Williams, by and through his undersigned counsel, hereby files this Reply in Further Support of Appellant’s Motion to Remand and Response in Opposition to Respondent’s Motion to Dismiss. On August 10, 2022, Respondent filed a Motion in Opposition to Mr. Williams’ Motion to Remand and renewed its Motion to Dismiss. Respondent contends that the Record shows the Parole Board’s findings of fact support of its decision. Respondent further argues that the because the Parole Board followed the strictures of *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008) and included in its notice of rejection a statement declaring it considered the mandatory and statutory criteria, their decision to deny Appellant parole constituted a “routine denial” of parole and thus is unreviewable by this Court. *Id.* at 500, 661 S.E.2d at 112. *See also Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 685 S.E.2d 175 (2009). Respondent asserts that the aforementioned cases and the statutory text of S.C. Code Ann. § 1-23-600(D) operate to strip this Court of the authority to review “routine denials” of parole.

Respondent's arguments are akin to a tautological merry-go-round: the Parole Board followed its mandatory and statutory duties because the Parole Board said so and because the Parole Board said so, the Record supports the Parole Board's decision. Even considering the minimal due process afforded prisoners, this perception of unfettered Parole Board discretion is antithetical to the South Carolina Constitution, the Administrative Procedures Act (the "APA") and is not supported by practical realities. Petitioners who seek judicial review of agency decisions should be satisfied that well-plead complaints are reviewable and meet the substantial evidence standard.

Appellant respectfully requests that the Court remand this matter to the Parole Board for an actual consideration of the underlying basis for its decision and deny Respondent's Motion to Dismiss.

I. As an Executive Agency, the Department of Probation, Parole, and Pardon Services is to Abide by its Internal Policies, the Title 24 of S.C. Code of Laws, and the Administrative Procedures Act.

The Parole Board's decision-making and ultimate denial of Appellant's parole does not comport with the Parole Board's statutory duties, its internal policies, nor the APA. In considering whether an inmate is entitled to parole, the Parole Board is required to "carefully consider the record of the prisoner before, during, and after imprisonment, and....that the interest of society will not be impaired thereby; and that suitable employment has been secured by him." S.C. Code § 24-21-640. The legislature also mandates that the Department of Probation, Parole, and Pardon Services establish the COMPAS Assessment and "use [it] in making parole decisions, including additional objective criteria that may be used in parole decisions." S.C. Code Ann. § 24-21-10(F)(1). The APA requires that all agency orders include findings of fact and conclusions of law, and a statement of the underlying facts supporting the findings if the findings of fact are expressed

in statutory language. S.C. Code Ann. §1-23-350. Courts sitting in review are to “defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations.” *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). However, when an agency does not follow the law or its own regulations, the ALC may take appropriate action. S.C. Code Ann. § 1-23-380(5)(a); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). *See also Cooper*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008) (granting the ALC authority to decide if the Parole Board “deviate[d] from or render[ed] its decision without consideration of the appropriate criteria...essentially abrogat[ing] an inmate's right to parole eligibility and, thus, infring[ing] on a state-created liberty interest.”).

The Parole Board’s own procedures were not followed when rendering its decision to deny Mr. Williams parole. The Orientation Manual of the South Carolina Board of Pardons and Paroles provides that “after the witnesses in opposition are heard, they are excused from the hearing room, and the Board or the panel then deliberates.” **Exhibit A**. The Parole Board’s internal rules direct that “after deliberations, a voice and/or electronic vote is cast and documented.” *Id.*

Clearly, the Record indicates that Mr. Williams was favorably evaluated using the statutorily prescribed COMPAS Assessment. But there is no substantial evidence to support the Parole Board’s denial of parole because there is nothing in the Record reflecting any consideration of the other prescribed statutory criteria. By statute, the Parole Board is *required* to give weight to an inmate’s actuarial risk and needs assessment evaluation. But the Parole Board *may* also use “additional objective criteria” to make its decisions.

The Parole Board skipped the crucial deliberative step that is required of it by its own regulations. The voice votes were recorded without any consideration or deliberation or findings of fact beyond the form letter of rejection. Respondent’s contrast of the Parole Board’s functions

with that of a jury does not fully appreciate that a jury is presumed to have deliberated, considered, and applied the evidence before it against a standard ruled upon by a Court. The Parole Board has statutory duties and its own regulations to look to—it must at least comply with those. Without the critical nexus between the required evaluation of the COMPAS assessment and Parole Board’s decision, this Court is left to speculate whether the statutory evaluation was considered in the Parole Board’s decision to deny Appellant parole.

II. The Parole Board’s Decision Must be Reviewable and thus this Matter Should be Remanded so that the Board is in Compliance with the Statute and the Constitution.

Where an inmate has experienced a denial of parole, he is entitled to procedural due process. *See Cooper v. S.C. Dep’t of Prob., Parole, and Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111–12 (2008) (“Parole is a privilege and Cooper has no right to be paroled; however, Cooper does have a right to require the [Parole Board] to adhere to statutory requirements in rendering a decision.”). The South Carolina Constitution fully endorses the idea of judicial review of agency decisions, irrespective of a person’s status as a prisoner. *McIntyre v. Sec. Comm’r of S.C.*, 425 S.C. 439, 446, 823 S.E.2d 193, 196 (Ct. App. 2018) fully explains the purpose of Article 1, Section 22:

“In 1966, the Legislature appointed a commission chaired by then Senator (later Governor) John C. West to study and propose amendments to the South Carolina Constitution. Among its recommendations, the West Committee recognized the creeping rise of the administrative state, noting agency decisions often “are more significant than laws enacted by the General Assembly or decisions made by the courts.” *Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895*, at 21 (1969). The West Committee registered its agreement “with many other constitutional study groups throughout the country that judicial and quasi-judicial decisions of administrative agencies should be consistent with due process of law and complete fairness to the citizen.” *Id.* The language it drafted “as a safeguard for the protection of liberty and

property of citizens,” *Id.* at 20, was adopted and ratified in 1970 as our current Article 1, section 22.”

Id. “The ALC was created to provide for a cadre of neutral hearing officers not employed exclusively by or tethered to any specific agency. The General Assembly was motivated by its desire to achieve the fairness in administrative hearings mandated by Article I, § 22 of the South Carolina Constitution.” *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 45, 766 S.E.2d 707, 724 (2014)

Respondent’s reliance on S.C. Code Ann. § 1-23-600(D) does not fly. In *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 629, 733 S.E.2d 211, 217 (2012), the Supreme Court considered the meaning, purpose, and legislative history of Section 1-23-600(D) and found that the Legislature was responding to the Court’s decision in *Furtick* (*Furtick v. S.C. Dep't of Corr.*, 374 S.C. 334, 340, 649 S.E.2d 35, 38 (2007)) which found that the loss of the opportunity to earn sentence-related credits implicated a state-created liberty interest. Section 1-23-600(D), enacted only months after the Court’s decision in *Furtick*, was meant to prohibit the hearing of certain inmate appeals by the ALC—appeals that would call into question the Department of Corrections’ internal disciplinary procedures and application of sentence-related credits. *Id.* It is unlikely the Legislature intended the wholesale removal of this Court’s jurisdiction to decide whether the Parole Board comported with the law.

Whether a denial of parole by the Parole Board is presumed to be “routine” or proper is decided by this Court. Respondents continue to argue that the Parole Board’s denial of Appellant’s parole by voice vote and the subsequent notice of denial suffices as a “routine denial” under the strictures of *Cooper.*, 377 S.C. 489, 661 S.E.2d 106 (2008). Respondents say nothing of the weight that Mr. Williams’ COMPAS assessment was afforded, if any, during the Parole Board’s process. Nothing in the Record shows that the actuarial risk and needs assessment evaluation required by

statute to be “use[d] when making parole decisions” was considered by the Parole Board or given any weight along with or against the objective criteria. The transcript of the Parole Hearing shows that the Parole Board members going straight to a voice vote without deliberation. The Chairman the declared Mr. Williams’ denial and recited “one, two and three.” The fact that the Parole Board did not designate grounds for their decision before the Chairman ratified the denial of parole strongly suggests that the Parole Board made no findings of fact. Regardless, it remains clear that the Parole Board did not consider the statutorily required COMPAS Assessment.

Clearly, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann. § 1-23-380. However, from the Record, it is impossible to ascertain what, if any, weight was given to all of the evidence before the Parole Board, particularly Appellant’s COMPAS Assessment. The voice votes pronouncing each of the Parole Board members’ denial, coupled with the Chairman’s recitation of the numerals are the only effects from the Parole Board resembling findings of fact. Without more, namely the Parole Board’s evaluation of Mr. Williams’ COMPAS Assessment, substantial evidence does not support the Parole Board’s decision to deny Mr. Williams parole. Nor is it clear that the Parole Board followed the law or its own rules.

III. Conclusion

The Parole Board’s decision to deny Mr. Williams’ parole is without substantial evidence. The Parole Board’s denial of parole by a voice vote and the subsequent notice of denial sent to Mr. Williams were rote declarations that do not suffice as findings of fact or follow the Parole Board’s own procedures. Appellant respectfully requests that this matter be remanded for proceedings consistent with the spirit of the Parole Board’s operating procedures and statutory charge.

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August 22, 2022

EXHIBIT A

South Carolina Board of Pardons and Paroles

South Carolina Department of Probation, Parole and Pardon Services
DIVISION OF PAROLES AND PARDONS AND RELEASE SERVICES

November, 2019

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PREFACE

The Parole System In South Carolina

Parole is a form of early release from prison based on the prisoner's agreement to abide by certain conditions of supervision during the balance of the sentence. The South Carolina Board of Pardons and Paroles (hereinafter "Board") is a gubernatorial appointed, independent decision making body vested with sole authority in making discretionary parole decisions in the State of South Carolina. Upon release on parole, the parolee continues to serve the sentence outside the prison walls and remains under the legal jurisdiction of the Board, and must comply with the terms and conditions of release as set by the Board.

The South Carolina Department of Probation, Parole, and Pardon Services (hereinafter "Department") is a cabinet agency of the Governor, and through its Director (hereinafter "Department Director") is vested with supervision responsibilities for adult parolees.

While on parole, the parolee should show reasonable promise of being able to function in society as a responsible, self-reliant person. Subject to the conditions of parole, the parolee can be gainfully employed. The parolee can enter into contracts and go to court without a guardian ad litem. The parolee is free to be with family and friends and to form other attachments of normal life. Within the limits defined by the conditions of parole, the parolee is free to come and go as he/she pleases, to travel anywhere in the state that is supervising parole, on occasion, to travel out of that state, and even to reside in another state with proper authorization. The parolee's liberty is regarded as a "privilege." The United States Supreme Court has said it is valuable enough to deserve the protection of certain minimal requirements of procedural due process under the Constitution.

Any expectation or desire that a convicted prisoner may have to be released on parole, however, is not a constitutional right. In South Carolina, paroles are granted as a privilege. The Board retains absolute and exclusive discretion to grant or deny parole in all cases, except community supervision, once a prisoner has become eligible to be considered. Community supervision release is not reviewed by the Board. (Certain offenders, it must be noted, are disqualified by statute from eligibility for parole.) The parole release decisions of the Board are final. They are not reviewable in the courts of South Carolina.

The purpose of parole is universally recognized to be reformatory or rehabilitative. Parole is intended as a means of rehabilitating then restoring the offender to society as a law-abiding and productive member. Under the structured supervision that parole sets up, the parolee has the opportunity to participate in a wide array of health and human services programs designed to help him/her. As an

early-release mechanism, parole also serves to alleviate the high costs to the state, and ultimately to the taxpayer, of keeping offenders in prison, not to mention the costs of building and operating new prisons. Further, parolees are required to pay supervision fees to help defray the cost of administering the parole system.

Aside from the obvious economic benefit to the state of releasing offenders on parole and then requiring them to pay supervision fees, there is a certain element of moral instruction also at work. In being required to shoulder at least a part of the economic burden that would otherwise fall entirely to the state, parolees are encouraged to assume moral responsibility for their actions. Requiring parolees to pay restitution to their victims, as a condition of supervision, goes even further in this most worthwhile direction.

Pardons, Reprieves, and Commutations

In addition to the clemency power to grant (and revoke) paroles, the Board also has the absolute and exclusive power to grant pardons. Like the grant of parole, the grant of a pardon is not a matter of right. Anyone who wants a pardon may apply through the Department, but the Board will consider only those applicants who are by statute eligible to be considered for a pardon. The Department is responsible for investigating all pardon applications, reporting its findings, and making recommendations to the Board.

Under South Carolina law, all pardons are full pardons. Thus, when a person receives a pardon from the Board, he/she is fully pardoned from all the legal consequences of the crime and the conviction, direct and collateral, including the punishment, whether of imprisonment, monetary penalty or whatever else the law has provided. A pardon fully restores all civil rights lost as a result of a criminal conviction. These rights are enumerated in the statute. A pardon also restores the pardoned person's ability to own and possess firearms.

Although in South Carolina a pardon does relieve the pardoned person of the consequences of the criminal conviction for which he received the pardon, a pardon does not establish the innocence of the person pardoned. Nor does a pardon expunge the criminal conviction for which the pardon was granted. The idea, often and widely expressed, is that a pardon forgives but it does not forget. The criminal record remains intact and preserved; the fact of the underlying criminal conviction survives the pardon. Anyone who receives a pardon and is on the Sex Offender Registry will remain on the Registry per statute. Indeed, state law requires that the record of that conviction, together with the pardon, be maintained by the clerks' offices. Similarly, under current law a pardoned person is barred from holding public office if the crime for which the pardon was granted involved embezzlement of public funds. Finally, even though a person has a pardon, he/she may be barred by the licensing authority from obtaining a professional license or certification where good moral character is required, because the criminal

conviction, though pardoned, will still be on the record and may be regarded as showing bad moral character.

The Governor of South Carolina, in whom the pardon power once resided, now retains only the power to grant reprieves and commutations. A reprieve is defined as the withdrawing of a sentence for an interval of time whereby the execution of the sentence is suspended to a certain day. The Governor's power to grant reprieves applies only in capital cases and is not subject to review in the courts. A commutation of sentence or punishment is simply a reduction in punishment to something less severe than was originally imposed. In South Carolina, the Governor's power to commute sentences is restricted by law to the commutation of death sentences to life imprisonment. The Governor may refer these matters to the Board, which must then consider them and make recommendations to the Governor. The Governor may or may not adopt the Board's recommendations. If the Governor chooses not to adopt the Board's recommendations, the reasons for the decision must be submitted to the General Assembly. The Governor may act without any reference to the Board.

Date: November 06, 2019

Kim Frederick, Chairman

MISSION

The South Carolina Board of Pardons and Paroles, as part of the criminal justice system, makes independent, quality conditional release and pardon decisions and clemency recommendations. The Board contributes to the protection of society by facilitating, as appropriate, the timely integration of offenders as law-abiding citizens.

MAKING THE MISSION A REALITY

In making quality decisions regarding conditional releases and pardons, as well as recommendations in clemency cases, the Board's primary objective is the long- term protection of society. The Board firmly believes that law-abiding behavior can best be achieved by timely and supervised conditional release and effective administration of sentences. In making its decisions, the Board is autonomous and independent, however, it is accountable for its actions, not only by virtue of its internal framework, but to the Governor of this state and ultimately, to all South Carolinians.

OBJECTIVES

- To ensure that every Board decision is based on the risk presented by the offender and is consistent with the goal of protection of the public.
- To promote the safe integration of every offender who is conditionally released by imposing necessary release conditions and by responding, as appropriate, to significant changes in the risk presented.
- To ensure that Board members are provided with effective risk assessment tools and with complete and accurate information about each offender.
- To work in collaboration with the Department of Corrections and others in identifying better ways to attain the shared goals of preventing crime and protecting society.
- To ensure that victims who so wish are duly informed and treated fairly and their input is fully considered in the conditional release process.
- To recognize the rehabilitation of former offenders through the granting of pardons.
- To ensure that the Board's decisions are communicated clearly and distributed in a timely manner to those who are entitled to be notified of them.

PART I

ADMINISTRATIVE PROCEDURES

A. BOARD OF PAROLES AND PARDONS

1. COMPOSITION OF THE BOARD

The Board is composed of seven members, one from each of the state's seven Congressional districts. Members are appointed by the Governor, with the advice and consent of the senate, to a six-year term and serve until a successor is appointed and confirmed. Vacancies occurring before the expiration of a term are filled by the Governor.

2. STATUTORY POWERS

The Board is vested with the following statutory powers:

- To grant or deny paroles and pardons;
- To revoke, modify, or re-hear paroles;
- To make recommendations on petitions for reprieves and commutations referred by the Governor;
- To preserve order at its meetings.

3. ELECTION OF OFFICERS

The Chair, Vice-Chair and the Secretary are elected annually, between January 15th and 31st, each by majority vote of the Board.

4. TRAINING

New members of the Board are required to complete a comprehensive training course developed by the Department using training components consistent with those offered by the National Institute of Corrections or the American Probation and Parole Association. The training hours will be tracked via the Agency's in-house automated training system.

- a. **Board Orientation Training:** Within 90 days of a Board member's appointment by the Governor and confirmation by the Senate, the Board member will complete a comprehensive training course of at least sixteen (16) hours including (but not limited to) the following components:
 - National and State Crime Statistics and Trends
 - Decision Making and evidence-Based Practices in the Justice System
 - Offender Risk and Needs Assessment
 - Offender Case Planning

- South Carolina Department of Corrections (SCDC) Classifications, Programming and Disciplinary Processes
 - Violations
 - Criminal Victimization
 - Criminal Justice Collaboration, Offender Success and Public Safety
 - PPP Organization and Functions
- b. Board Annual Training:** Each Board member is required to complete at least eight (8) hours of training annually including (but not limited to):
- Review of Policies and Procedures
 - Review of Critical Programs within the Department
 - Review of the Department Risk /Needs Assessment Tool
 - Review of the Department Public Safety Goals
 - Decision Making and Data
 - Evidence-Based Practices/Corrections
 - Evidence-Based Practices/Crime Victims

Members of the Board shall also participate in additional training as may be required by the Board's Chair and Department Director pursuant to accreditation standards.

5. COMPENSATION

Members of the Board are entitled to reasonable and necessary expenses incurred in the discharge of their official duties and consistent with state law governing the compensation of board or commission members. Members of the Board receive no salary. In addition to fees for hearings, members of the Board receive per diem compensation for the following activities directly associated with their service on the Board:

- Parole hearings, including revocations;
- Pardon hearings;
- Training required by the Board's Chair and Department Director;
- Review of paroles, parole revocations, and pardons prior to the actual hearing of the matter

6. QUORUM FOR CONDUCTING BUSINESS

Five members of the Board constitutes a quorum for conducting business. Effective 11/06/2019 the Board enacts the following exception: By unanimous vote on 11/06/2019, the Board of Pardons and Paroles elected to change the quorum for conducting business from five members to four members. This will be in place until March 15, 2020, at which time the quorum will revert back to five members. This is being enacted due to current appointment vacancy and member absences.

7. RULES AND REGULATIONS FOR CONDUCTING BUSINESS

- a. **Implied Powers.** In the exercise of its statutory powers, the Board may make such rules and regulations as are necessary and proper to conduct its business

- b. **Attendance at Hearings.** Members are required to attend all hearings of the full Board or of their respective panel.

B. PANELS OF THE BOARD

1. COMPOSITION OF PANELS

Parole panels consist of any three members of the Board, as appointed by the Board Chair and the Board Liaison of the Department's Office of Board Support Services (hereinafter "Board Liaison").

2. STATUTORY POWERS

A panel may grant, deny, revoke, or otherwise decide paroles in only those cases involving nonviolent offenders who become eligible for parole after having served one-fourth of their sentence. A panel may also revoke any offender released under EPA and any violent offender released by the full Board.

- a. **Vote.** In all cases properly decided before a three-member panel of the Board, a unanimous vote is required to grant parole or to revoke parole or EPA I. A unanimous vote of a panel constitutes the final decision of the Board. Any vote of a panel which is not unanimous must be referred to the full Board for a final decision.
- b. **Pardons.** Panels may not decide pardons. See Part IV.

3. MEETINGS OF THE PANELS

Meetings of the panels are scheduled by the Board Liaison acting under the authority of the Director. Under routine procedure, panel members are assigned the cases for their review no less than two weeks before the date of the hearing.

4. DUAL PANELS

Dual panels of the Board have the same statutory powers to hear cases as single panels. Dual panels are scheduled at the discretion of the Department Director when the need arises because of a backlog of cases. Members are appointed by the Chair and the Director of the Department's Office of Board Support Services Director (hereinafter "Board Support Services Director"), according to the usual procedure.

C. CHAIR OF THE BOARD

1. ELECTION AND TERM OF OFFICE

The Board's Chair is elected annually in January, by majority vote of the Board and serves a one year term. The Chair may not serve more than two consecutive terms in office.

2. GENERAL RESPONSIBILITIES

The Chair manages and oversees the Board. The Chair meets at least monthly with the Board Support Services Director and/or Board Liaison. The following list enumerates the general responsibilities of the Chair in that capacity.

- a. **Policies and Procedures.** The Chair is responsible for seeing that the policies and procedures set forth in this manual are carried out.

- b. **Presiding Over Meetings.** The Chair is responsible for presiding over meetings and proceedings of the full Board and panels of the Board and for maintaining order and proper decorum during proceedings.
- c. **Assigning Members to Panels.** The Chair is responsible for assigning members of the Board to panels as often as is necessary and for appointing a member to serve as Chair on each of the various panels.
- d. **Overseeing Panels.** The Chair is responsible for overseeing the various panels by periodically serving on them.
- e. **Absence of a Panel Member.** The Chair is responsible for arranging a substitute member to serve on a panel whenever a member cannot be present.
- f. **Coordination of Scheduling.** The Chair is responsible for coordinating the scheduling of hearings with the Board Support Services Director.
- g. **Minutes.** The Director is responsible for ensuring that the Board Support Services Director keeps complete and accurate minutes of all public meetings and proceedings of the Board or of its panels.
- h. **New Member Training.** The Chair will participate in and promote appropriate training for new Board members.
- i. **Public Relations.** The Chair or designee is responsible for acting as the Board's spokesperson on matters relating to the work of the Board. Board members shall direct all inquiries from the media to the Department's Office of Public Information.
- j. **Appearances before Legislative Committees.** The Chair or designee is also responsible for appearing before legislative committees from time to time to report on the work of the Board.

D. RESPONSIBILITIES OF THE DEPARTMENT DIRECTOR AND STAFF

1. MANAGING THE DEPARTMENT

As part of the general restructuring of state government brought about by the Restructuring Act of 1993, the responsibility for overseeing and managing the Department has been transferred from the Board to the Department Director. The Department Director, however, still has most, if not all, of the same responsibilities to assist the Board that he/she had before the enactment of this legislation. These responsibilities are considered below.

2. SCHEDULING MEETINGS AND HEARINGS OF THE BOARD

Acting under the Department Director's authority, the Board Support Services Director is responsible for the timely scheduling of meetings and hearings of the Board. See S.C. Code Ann. §24-21-220 (1993).

- a. **Number of cases.** The number of cases scheduled for hearing on any given day is set by the Department Director and Chair of the Board.
- b. **Violent versus non-violent.** Offenders convicted of a violent crime will be scheduled for parole hearings before the full Board only. Offenders convicted of a non-violent crime may be scheduled for parole hearings before either the full Board or a three-member panel.

3. INVESTIGATING AND PREPARING CASES FOR REVIEW

The Department is responsible for investigating and preparing parole and pardon cases for the Board's review and for ensuring that these cases reach the members no less than two weeks before the date of the hearing.

- a. **Date of Eligibility for Parole.** The South Carolina Department of Corrections is responsible for determining the dates of parole eligibility for offenders who are eligible for parole.
- b. **Assigning Cases.** The Board Support Services Director is responsible for assigning cases for timely review to members of the Board, as may be necessary.
- c. **Preliminary Hearings.** The Department is responsible for scheduling and conducting such preliminary hearings as may be required by law.

4. PROVIDING NOTICE OF HEARINGS TO INTERESTED PARTIES

The Department is responsible for providing timely notice of hearings. See Part II, A., Parole Hearings.

5. EXECUTING DECISIONS AND ORDERS OF THE BOARD

The Department Director and his/her staff are responsible for seeing that the decisions and orders of the Board and its panels regarding paroles, pardons, and revocations are fully carried out.

6. INFORMING THE BOARD OF CURRENT PAROLE LAWS

Through its Office of General Counsel, the Department is responsible for keeping the Board informed of current parole laws as they affect the Board's practices and procedures.

7. MAINTAINING THE OFFICIAL RECORDS OF THE BOARD

The Board Support Services Director and Department's Office of Records Management Services are responsible for maintaining the official records of the Board. These records, including hard copy, electronic and audio, will be maintained until the inmate maxes out, is paroled, until death, or for five (5) years, whichever is sooner.

E. CONFIDENTIALITY AND THE DISCLOSURE OF INFORMATION

1. STATE LAW IN GENERAL

Both the Department and the Board are subject to certain state laws governing confidentiality and the disclosure of information. This section considers those laws and their effect.

- a. **Confidentiality of the Department's Files.** Under S. C. Code 24-21-290, all information obtained by probation and parole agents in the discharge of their official duties is privileged information. It may not be received as evidence in any court, except, in probation cases, in the court with jurisdiction over the probation case. And it may not be disclosed, directly or indirectly to anyone other than the judge of that court or others entitled to receive reports under the law, unless ordered by a court with jurisdiction or by the Department's Director. The Board is therefore entitled to receive this information from the Department. But the Board is required to preserve the confidentiality of the files it receives for its review.

- b. **The Freedom of Information Act.** Under the Freedom of Information Act, any part or all of a prisoner's in-prison disciplinary records are subject to disclosure. This applies to records involving all awards, honors, earned work credits and educational credits. Similarly, certain other matters are declared public information by the Act, and are subject to disclosure as such. These matters are listed below:
 - The names, sex, race, title and dates of appointment of all members of the Board;
 - Administrative manuals, including this manual, and instructions to staff that affect a member of the public;
 - Final decisions and orders of the Board;
 - Any statements of policy and interpretations of policy, statute, and the Constitution which are adopted by the Board;
 - Written policies and goals;
 - Information in or taken from any account, voucher or contract dealing with the receipt or expenditure of public funds by members of the Board;
 - The minutes of all proceedings of the Board and all votes at those proceedings.

2. MATTERS EXEMPT FROM DISCLOSURE UNDER THE FOIA

Although the reach of the Freedom of Information Act is far and wide, the following matters are exempt from disclosure under its terms:

- The Department's files on offenders;
- Medical and psychological reports on the offender which, if disclosed to the offender, could reasonably be thought to disrupt his treatment and rehabilitation;
- Facts which, if disclosed, could reasonably be thought to reveal a source of information who had been promised confidentiality;
- Any information which, if disclosed, could reasonably be thought to result in physical or emotional harm to someone.
- Any information regarding the victims including address and input regarding an inmate's parole.

- Parole case summary.

3. INFORMATION RELEASABLE ON REQUEST

The following information must be made available to any person who requests it:

- The offender's name, identification number, and date of birth;
- The offense upon which the offender was convicted or pleaded guilty;
- The county in which the offense was committed;
- The date of parole eligibility or reconsideration for parole following a rejection;
- The sentencing judge;
- The disposition of the hearing (parole granted, parole denied, parole revoked, parole rescinded, hearing postponed, pardon granted, pardon denied, and so on);
- Any transcripts of hearings and meetings;
- Information about detainees;
- The date of the offender's release;
- The vote of the Board;
- Any order of parole signed by the members of the Board.

4. INFORMATION NOT LISTED AS RELEASABLE ON REQUEST

Any other information not listed as releasable upon request, or required to be released under the FOIA, may be released only by express permission of the Department Director.

Exceptions. Information not listed as releasable upon request, or otherwise required to be released under the FOIA, may be released to the S. C. Department of Corrections, the United States Department of Probation, and any federal, state, or local law enforcement agency, insofar as the release serves the best interests of the Department, and the broader interests of cooperation among these various agencies. When any agency receives information from the Board under this exception, that agency must be notified that the information is exclusively for the use of law enforcement and corrections, that it is confidential information, and that it may not be released outside of the agency that has received it.

5. ASSESSMENT OF COSTS

The Department may assess reasonable costs for producing documents, audio recordings and other material.

6. SECURITY AND OTHER MATTERS OF ORDER AT HEARINGS

The Chair or designee is responsible for preserving order at parole and pardon hearings.

- Addressing the Board.** No person may address the Board unless called by the Board to be heard. The Chair may order any or all visitors to leave the hearing room if their presence becomes disruptive.

- b. **Visitor Conduct.** Visitors, including the news media, are not permitted to enter or leave the hearing room while proceedings are in progress, except in case of emergency.
- c. **During Deliberations.** No visitor appearing for or against parole or pardon may remain in the hearing room during the Board's deliberations.
- d. **The News Media.** The Chair may limit the presence of the media to a reasonable number. The Chair may regulate the activities of the media during hearings to limit disruption of the proceedings. The media may be allowed to film or record hearings. Before members of the media may attend a hearing they are asked to notify the Department's Office of Public Information. Depending on considerations of space and security, the media are subject to being pooled at the discretion of the Department's Office of Public Information and the Board Support Services Director. Members of the media are asked to seek consent from victims and witnesses appearing before the Board prior to filming that portion of any hearing.
- e. **Preserving Order.** The Chair is responsible for maintaining order and decorum in the hearing room, and may punish any disrespect or disruption by the removal from the hearing room and/or by imposing a fine of no more than fifty (\$50.00) dollars.

7. LOCATION OF HEARINGS

The Board or any of its panels will convene for parole and pardon hearings at the Department's Central Office in Columbia at 2221 Devine Street, Suite 400.

- Parole eligible offenders make their presentations to the Board from prisons throughout the state via video conferencing.
- Pardon applicants may appear at the Columbia location
- Victims may appear at the Columbia location or have the option of appearing at other video conferencing locations.

8. RECUSAL OF A BOARD MEMBER

Board members must recuse themselves if they have any personal involvement in the case which would affect or give the appearance of affecting the fairness and impartiality of their decisions.

a. Reasons for Recusal.

- The Board member is a family member of the offender, the offender's attorney, or the victim. "Family member" includes the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild; or a member of the individual's immediate family; or
- The Board member has a personal or business relationship with the offender, the offender's family, the offender's attorney, the victim, or the victim's family; or
- The Board member has served as counsel for the offender or the victim in legal proceedings; or

- The Board member has any other interest in the proceeding that he/she knows would affect or reasonably give the appearance of affecting his/her judgment in the matter.
- b. **Determining Recusal.** Each Board member is responsible for determining the appropriateness of their own recusal under the guidelines established by this policy.
- c. **Guidelines for Recusal.** Pursuant to S.C. Code 8-13-700(B), a Board member who, in the discharge of his/her official responsibilities, is required to take an action or make a decision which affects an economic interest of himself/herself, a member of their immediate family, an individual with whom he/she is associated, or a business with which he/she is associated shall:
- Prepare a written statement describing the matter requiring action or decisions and the nature of the potential conflict of interest with respect to the action or decision;
 - Furnish a copy of the statement to the Chair who shall cause the statement to be made a part of the record of the matter; the Chair's statements should be furnished to the Vice-Chair and the Director; and
 - The Board member shall be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the record of the matter.

In establishing these guidelines for recusal for members of the Board, it is not the intent of the Board to create a right or basis to challenge the actions of this Board, or any member of the Board, which is not otherwise provided by the laws or the Constitution of this State or the United States. In the event a Board member abstains or recuses from a vote for parole, revocation or pardon, this action is final and cannot be changed.

9. ELECTRONIC INFORMATION AT HEARINGS

This may include information submitted by film, videotape or other electronic media that is both visual and aural. The Board will consider, prior to making a determination, any information submitted pursuant to its policies.

In lieu of a personal appearance, a presentation may be made by film, videotape or other electronic media may be submitted.

The submission must be received one week prior to the scheduled hearing date by the Department's Office of Board Support Services and must identify the voice of each person heard and each person seen; contain a visual or aural statement of the date the information was recorded and contain a visual or aural statement of the name of the person whose parole is being considered.

The Board will not retain any information submitted. The presenter can take the information after its presentation. If the presenter provides an adequate postage prepaid mailer, with the addressee and the addressor the same, the information will be returned. Any information not taken at the hearing, or for which a mailer with postage prepaid is not provided, will be destroyed following the hearing.

The Board is only equipped to receive electronic media in VHS or DVD format.

PART II

PAROLE PROCESS

A. PAROLE HEARINGS

1. PROCEDURAL REQUIREMENTS UNDER THE CONSTITUTION

Because there is no federal constitutional right to parole, and because South Carolina's parole laws leave the decision to grant or deny parole entirely in the discretion of the Board, very little is required in the way of procedural due process at parole hearings. For prisoners eligible to be considered for parole on their sentence the law requires the following:

- The right to be heard for parole if eligible and the right to waive such hearing;
- Fair written notice of the specific parole criteria, which are required to be established by the Board under South Carolina law and which must be made available to all prisoners at the time of their incarceration;
- Fair written notice of the date, time, and place of the parole hearing;
- The opportunity to be heard by a fair and impartial Board or panel;
- The opportunity to present evidence and to have up to three witnesses to speak on their behalf, and to have the Board or panel carefully consider the complete record before, during, and after imprisonment;
- At the offender's own expense, to have an attorney present at the hearing;
- When parole is denied, written notice of the Board's reasons for denying parole.

2. NOTICE REQUIREMENTS

All notices pertaining to parole hearings that are required by law to be given by the Board are given on its behalf by the Department. For the Board's information, these notices are briefly considered below.

- a. **Notice to the Offender.** The Board Support Services Director is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the offender.
- b. **Notice to Other Interested Parties.** The Department's Director of Victims Services is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the following parties:
 - The victim or the victim's immediate family if the victim is deceased;
 - The solicitor or his successor in office in the jurisdiction in which the offender was prosecuted;
 - The law enforcement agency that made the arrest;
 - The judge of the court in which the offender was convicted and sentenced.
- c. **Notice of Rejection.** The Board Support Services Director is responsible for providing to offenders who are denied parole a written notice of rejection stating the reasons for that decision and giving the date of the offender's next parole hearing.

- d. **Notice of Release.** In certain cases, the Department's Director of Victims' Services is required by law to provide notice to victims and witnesses of the release of an offender on parole.

3. PREPARATION OF CASES FOR THE BOARD'S REVIEW

The Department, through its Division of Field Operations and Office of Board Support Services, prepares cases for the Board's review. Before every hearing of the Board or a panel of the Board, all members receive a list of offenders who will be appearing for a parole hearing, together with the respective parole file on each prisoner. Board Members will receive these files no less than two weeks before the actual date of the hearing.

4. CONTENTS OF THE PAROLE CASE SUMMARY REPORT

Every file that the Department prepares for the Board's review includes, though it is not limited to, the following information:

- The criminal offense and a description of it;
- The sentencing date, the "max-out" date, the parole eligibility date, the date of any previous parole hearings, the names of any co-defendants;
- The offender's criminal record;
- The offender's prison and disciplinary records;
- Risk classification reports;
- A medical history and psychological reports, if any;
- A history of the offender's supervision on probation or parole, if any;
- A proposed place of residence and employment;
- The parole examiner's recommendation(s);
- Any statements from law enforcement;
- Any statement from the prosecuting witness or the prosecuting witness's next of kin, if the witness is deceased;
- Any statement from the solicitor or his successor;
- Any statement from the sentencing judge;
- The offender's social history;
- The offender's employment experience.

5. STANDARD PROCEDURE FOR CONDUCTING HEARINGS

Parole hearings are informal proceedings, and the Board or its panels may properly conduct them within its discretion. Hearings may be conducted as follows:

- The Department, through its Office of Board Support Services, schedules hearings. The names and case numbers of offenders who have been scheduled for a parole hearing are then

published at the respective prisons where they are confined, so that they can begin preparing themselves for their hearing.

- The Department, through its parole examiners, then interviews these offenders, investigates their cases, and submits a recommendation for or against parole.
- At the hearing, the offender or offender's counsel, if any, appears first and presents to the Board or panel. The Department of Corrections sets the limit for family members or other supporters appearing on behalf of the offender, however, the Board may limit the number of speakers.
- Members of the Board or the panel may ask questions of the offender and his witnesses. The Chair or the member presiding over the panel leads the questioning.
- Once the case has been presented, the offender is excused from the hearing room, and those appearing in opposition to parole are given their opportunity to be heard.
- After the witnesses in opposition are heard, they are excused from the hearing room, and the Board or the panel then deliberates.
- After deliberations, a voice and/or electronic vote is cast and documented.
- The offender and the other interested parties are informed of the decision by Department staff. If the offender is rejected for parole, the Department gives a written notice of the reasons for rejection.

6. THE PRESENCE OF THE OFFENDER AND HIS/HER ATTORNEY

Offenders scheduled for a parole hearing must be allowed to appear via videoconferencing. If they are represented by counsel, their counsel must also be allowed to be present. Counsel must appear at the location of the offender. Request for exceptions must be submitted to the Chair two weeks in advance of the hearing date. The Chair has discretion regarding requests for exceptions.

a. **Exceptions.** Exceptions to this rule are given below:

- The offender is prevented because of illness from attending the hearing, or is confined at a state hospital.
- The offender has been placed in punitive segregation by the Department of Corrections.
- The offender has been transferred to prison outside South Carolina, or is otherwise serving a sentence in another state, in which case the Board may decide the case in the offender's absence. If the offender in this case wishes to be present at the hearing, he/she must make arrangements with South Carolina Department of Corrections.
- The offender has waived appearance at the hearing.

b. **Absence from hearing.** If the offender is unable to be present at his hearing either because of illness or because he is in punitive segregation, the hearing may be postponed until such time as he is able to be present.

c. **Waivers.** In the event that the offender waives his appearance, such waiver shall form the basis for denying parole on an automatic vote of the Board or the panel. In these cases, the parole examiner is responsible for seeing that the signed waiver of the offender is delivered to the Board or the panel. If the offender refuses to sign the waiver and refuses to attend the hearing, the Board

or the panel may deny parole on this basis. These offenders will then be considered for parole one year or two years from the date of this denial, as would normally occur after an offender has been rejected for parole.

7. THE PRESENCE OF OTHER INTERESTED PARTIES

Parole hearings are public hearings. As such, they are open to victims, witnesses, the media and any other members of the general public who may wish to attend.

a. Victims and witnesses. Although victims and witnesses are members of the public and must be allowed to attend parole hearings, they are given priority under the South Carolina victims' and witnesses' bill of rights because of their special relation to the offense. The following procedures are designed specifically to accommodate their presence at parole hearings.

- Cases in which victims and witnesses are present should be heard first whenever possible;
- The Board may allow up to three victims and witnesses to be heard in any given parole or pardon case. The Chair has the discretion to allow additional victims and witnesses to be heard if in his/her judgment it is believed the case warrants it;
- Victims and witnesses will be given a reasonable amount of time by the Chair in which to be heard.

b. The public and other interested parties. Although parole are open to the public, the number of visitors is limited by the space available and security concerns. To ensure that all hearings proceed in an orderly fashion, the Board has limited the number of persons who may attend parole hearings as follows:

- Administrative staff from the Department who are needed to support the Board or panel;
- An interpreter or translator for any offender or victim;
- Up to three supporters (family, employers, ministers counselors, and so forth as allowed by the Department of Corrections;
- The offender's attorney;
- A representative from the arresting law enforcement agency;
- Victims and witnesses;
- News media;
- Other people, as determined by the Board.

B. ELIGIBILITY FOR PAROLE AND DISQUALIFICATION FROM ELIGIBILITY

1. GENERAL RULES OF ELIGIBILITY

a. Crimes Committed Prior to June 15, 1981. The offender has to serve one-third of the sentence before being eligible for parole.

- b. **Crimes Committed Between June 15, 1981 and June 3, 1986.** The offender has to serve one-fourth of the sentence before being eligible for parole except burglary first degree and second degree.
 - Between June 15, 1981 and June 20, 1985, offenders with burglary first and burglary second degree convictions must serve one-fourth of the sentence before being eligible for parole.
 - Between June 20, 1985 and June 3, 1986, offenders with burglary first and burglary second degree convictions must serve one-third of the sentence before being eligible for parole.
- c. **Crimes Committed on and after June 3, 1986.** A parolable violent crime requires service of one-third of the sentence before being eligible for parole and non-violent crimes requires service of one-fourth of the sentence before being eligible for parole except for crimes with specific eligibility requirements and certain specific rules.

2. CRIMES WITH SPECIFIC PAROLE ELIGIBILITY RULES

As set forth in the following S. C. Code sections, there is no parole consideration, on the following crimes, until parole eligibility is satisfied. (Note the effect of consecutive sentencing.)

- a. First degree sexual exploitation of a minor has a minimum three (3) year parole eligibility. Sentences to be consecutive. §16-15-395. After April 26, 2004, this offense is a no parole offense.
- b. Second degree sexual exploitation of a minor has a two (2) year parole eligibility. §16-15-405.
- c. Promoting prostitution of a minor has a three (3) year parole eligibility. Sentences to be consecutive. §16-15-415. After April 26, 2004, this offense is a no parole offense.
- d. Participating in prostitution of a minor has a two (2) year parole eligibility. Sentences to be consecutive. §16-15-425.
- e. Additional Punishment. There is a five year additional punishment for possession of a firearm or knife during the commission or attempt to commit a violent crime. These five (5) years are to be served without parole and without good time or work credits. Sentences may be consecutive or concurrent. §16-23-490. (Effective after June 3, 1986.)
- f. Armed Robbery. Must serve at least seven (7) years to be eligible for parole if crime committed prior to January 1, 1996. After January 1, 1996, no parole crime. §16-11-330(A).
- g. Manufacturing, Distribution, or PWID under §44-53-370(b) or §44-53-375(b) are parole eligible for first or second offenses. Third offenses are only parole eligible if all prior drug offenses are for possession.
- h. Trafficking in drugs under §44-53-370(e) or §44-53-375(c).

- (1) Trafficking in drugs under §44-53-370(e) and sentenced to: "a mandatory minimum term of imprisonment of twenty-five years." The no parole provision applies if the crime was committed on or after June 19, 1984, and before January 1, 1994, or on or after January 12, 1995.
 - (2) Trafficking in drugs under §44-53-370(e) and sentenced to: "a mandatory term of imprisonment of twenty-five years." The no parole provision applies if the crime was committed on or after July 1, 1998, and before January 1, 1994, or on or after January 12, 1995. See *Kerr v. State*, 345 S.C. 183.547 S. E.2d 494 (2001).
 - (3) Trafficking in drugs under §44-53-370(e) and sentenced to: "a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years." The no parole provision applies if the crime was committed on or after January 12, 1995.
 - (4) Trafficking in drugs under §44-53-375(c) and sentenced to: (1) "a mandatory minimum term of imprisonment of twenty-five years;" (2) "a mandatory term of imprisonment of twenty-five years;" or (3) "a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years." The no parole provision applies if the crime was committed on or after January 12, 1995.
- i. Murder. For murder convictions after January 1, 1996, the offender is sentenced either to death, life without parole, or a thirty (30) year mandatory minimum without credits or parole eligibility.
 - j. No Parole Crimes. A no-parole crime is an A, B or C felony or a crime with a penalty of twenty (20) years or more. (Effective date: January 1, 1996.)
 - k. Most Serious Crimes. Upon a second conviction for a most serious crime, the offender must receive life without parole. §17-25-45(A). (Effective date: January 1, 1996.)
 - l. Serious Crimes. Upon a third conviction, the offender may, at the solicitor's discretion, receive life without parole. §17-25-45(B). (Effective date: January 1, 1996.) Parole is possible on a life sentence for a serious or most serious crime if SCDC requests the Board to consider the case and the inmate:
 - is sixty-five (65) years of age;
 - has served thirty (30) years;
 - is seventy (70) years of age and has served at least twenty (20) years; or
 - has an illness where life expectancy is one year or less.

3. PAROLE ELIGIBILITY AND DOMESTIC VIOLENCE

- S. C. Code 16-25-90 allows the Board to hear an inmate for parole after serving one-fourth of the sentence if the Board finds evidence in the transcript of the guilty plea, nolo contendere or conviction, of a history of domestic abuse against the inmate by the household member. This history can also be taken from a transcript of a post-conviction relief hearing. "Household member" is defined as spouses, former spouses. Prior to January 1, 2004, Household member included persons who have a child in common, and a male and female who are cohabiting or formerly have cohabited.
- If the Board makes a favorable ruling, the inmate gets a one-fourth eligibility calculation, annual parole consideration and a two-thirds vote is required to be granted parole.

- Allows an inmate to obtain a parole hearing after being convicted of a no parole crime.

4. SUBSEQUENT VIOLENT OFFENDER ANALYSIS

- a. The following are general rules governing subsequent violent offender analysis:
 - The Board must not grant parole to an offender serving a sentence for a second or subsequent violent conviction, following a separate sentencing event for a prior conviction of a violent crime. S. C. Code 24-21-640.
 - Crimes committed within one 24-hour period are treated as one offense.
 - Crimes committed as one continuous course of conduct are treated as one offense.
- b. Determination of continuous course of conduct falls under the Board's jurisdiction, not the Court's. State v. McKay, 386 S.E.2d 623 (1989).
- c. The subsequent crime must have been committed after June 3, 1986 and have been defined as violent at the time of commission of the crime.
- d. The prior crime can be committed at any time including after the offense date of the subsequent crime because the focus is on the date of conviction.
- e. For only the period of January 1, 1994 - January 12, 1995, the prior crime must have been defined as violent at the time the prior crime was committed.
- f. Crimes from other jurisdictions are not considered to determine SVO status.
- g. Manufacturing Methamphetamine (44-53-375(B)) cannot be a Subsequent Violent Offense.

C. STANDARDS FOR GRANTING PAROLE

1. THE ABSOLUTE DISCRETION OF THE BOARD

Under South Carolina law the Board has the sole and exclusive power to grant or deny paroles.

2. PAROLE CRITERIA CONSIDERED BY THE BOARD

In making its parole decisions, the Board is required by law to carefully consider the record of the prisoner before, during and after imprisonment. In addition, the law also requires the Board to establish written, specific criteria for the granting of paroles. These criteria must be made available to all prisoners at the time of their incarceration, as well as to the general public. The Board will not parole a prisoner unless it determines, based on the following criteria, as well as any other factors the Board may consider relevant, that the conduct of the offender merits a lessening of the rigors of imprisonment; that the interests of society will not be impaired by granting parole; and that the offender has secured, or will be able to secure, suitable employment and residence. The publishing of these

criteria in no way binds the Board to grant a parole in any given case. The Board's specific parole criteria are set out below:

- The risk that the offender poses to the community;
- The nature and seriousness of the offender's offense, the circumstances surrounding that offense, and the prisoner's attitude toward it;
- The offender's prior criminal record and adjustment under any previous programs of supervision;
- The offender's attitude toward family members, the victim, and authority in general;
- The offender's adjustment while in confinement, including his progress in counseling, therapy, and other similar programs designed to encourage the prisoner to improve himself;
- The offender's employment history, including his job training and skills and his stability in the workplace;
- The offender's physical, mental, and emotional health;
- The offender's understanding of the causes of his past criminal conduct;
- The offender's efforts to solve his problems;
- The adequacy of the offender's overall parole plan, including his proposed residence and employment;
- The willingness of the community into which the offender will be paroled to receive that offender;
- The willingness of the offender's family to allow the offender, if he is paroled, to return to the family circle;
- The opinion of the sentencing judge, the solicitor, and local law enforcement on the offender's parole;
- The feelings of the victim or the victim's family, about the offender's release;
- Any other factors that the Board may consider relevant, including the recommendation of the parole examiner.

3. PAROLE FOR NON U.S. CITIZENS

In considering paroles in the case of non-U.S. citizens, the Board gives the same consideration as it gives to U.S. citizens. When the Board receives requests to parole non-U.S. citizens to their native countries or to the Immigration and Customs Enforcement (ICE) for deportation, the Board considers this factor, along with all the other criteria it normally considers, in making its decision to grant or deny parole.

4. PSYCHOLOGICAL EXAMINATION OF CERTAIN OFFENDERS

S. C. Code 24-21-610

No prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist. The examination itself assesses the inmate's current mental condition and ability to adjust to life outside prison. The class of inmates for whom such an examination is required:

- Any offender who has served a total of ten (10) consecutive years or more in prison.

5. THE EFFECT OF UNRESOLVED DETAINERS AND DEFAULTS

The existence of an outstanding detainer or default against an offender who is eligible for parole does not operate as an automatic bar to parole. The Board may in its discretion parole such offenders in any of the following circumstances:

- An offender who has certain minor defaults (such as minor violations of prison rules) may still be paroled, on the special condition that any such defaults are cleared before release. In these cases, the grant of parole may be particularly desirable when the offender's incarceration on the current sentence has caused the minor defaults to occur. The Board may define what constitutes a "minor" default as it sees fit.
- An offender may be paroled to an in-state detainer or another state's detainer and be allowed to serve out the remainder of his/her sentence concurrently in that state.

D. PAROLE DECISIONS

In addition to the decision to grant or deny parole, the Board or its panels may order a number of other actions as their decision. This section considers not only the decision to grant parole and the various forms that grant of parole may take, but it also considers those other decisions that the Board may make when it wants to do something other than grant parole outright.

1. PAROLE

The full Board or one of its panels votes to grant parole and orders that a Certificate of Parole be prepared and issued by the Department. Voting by proxy or absentee ballot violates due process and is therefore not allowed. The order of parole must include the conditions to be met by the offender during parole. The Board or one of its panels may grant parole on the condition of the occurrence of some future event. For example, parole may be granted on the condition that the offender is accepted into a particular treatment program, or on condition that the offender obtain suitable employment or an approved residence. Whatever the condition upon which parole is contingent, the Board or the panel should indicate that condition in its vote. The case will be referred to the Board if the offender does not meet the conditions for parole.

- a. **Vote in the Case of Violent Offenders after 1986.** In the case of violent offenders whose offenses occurred after January 1, 1986, the vote to grant parole must be by at least two-thirds of the members of the Board members present; however, only a quorum must be present to conduct business.
- b. **Vote in the Case of Violent Offenders prior to 1986.** In the case of violent offenders whose offenses occurred before January 1, 1986, the vote to grant parole must be by a majority of members of the Board members present. These offenders cannot be considered by a three-member panel.
- c. **Vote in the Case of Non-violent Offenders.** In the case of non-violent offenders, the vote to grant parole must be by at least a majority of the members of the Board members present, or by a unanimous vote of a three-member panel.

- d. **Case Referred to the Full Board.** If a three-member panel fails to arrive at a unanimous vote, the case is then referred to the full Board for a final decision.

2. PROVISIONAL PAROLE

- a. This form of parole may be granted not more than ninety (90) days prior to the initial date of parole eligibility, nor after the initial parole eligibility date. An order of provisional parole must include the conditions to be met by the offender during the provisional parole, as well as the conditions to be met by the offender while on parole.
- b. **Administrative Review for Non-violent Offenders.** In the case of non-violent offenders, the Director may appoint an administrative hearing officer to review cases for parole. In this event, the hearing officer must submit to the full Board written findings of fact and recommendations, which shall then form the basis for the Board's decision.

3. PAROLE FOR MEDICAL REASONS

- a. Not sooner than one year before the date of any prisoner's parole eligibility, the Board is authorized by law to grant parole for medical reasons. In order to grant such a parole, the Board must first determine on the record the following facts:
 - The offender is terminally ill; and
 - Because of his illness, the offender cannot be reasonably expected to live for more than one year.
- b. As a matter of policy, the Board requires the medical opinion of two licensed physicians, whose prognosis states that the offender is terminally ill and to a reasonable degree of medical certainty cannot be expected to live for more than one year. One of these medical opinions must come from a physician attached to the Department of Corrections; the other may come from any other licensed physician. In no case is the Board ever required to grant a parole for medical reasons.

4. PAROLE FOR TERMINALLY ILL, GERIATRIC, OR PERMANENTLY DISABLED INMATES

S. C. Code 24-21-715 (A) (1) 'Terminally ill' means an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing or, since the time of sentencing, has progressed to render the inmate terminally ill, and that will likely produce death within two years, and that is so debilitating that the inmate does not pose a public safety risk. (2) 'Geriatric' means an inmate who is seventy years of age or older and suffers from chronic infirmity, illness, or disease related to aging, which has progressed so the inmate is incapacitated as determined by a licensed physician to the extent that the inmate does not pose a public safety risk. (3) 'Permanently incapacitated' means an inmate who no longer poses a public safety risk because of a medical condition that is not terminal but that renders him permanently and irreversibly incapacitated as determined by a license physician and which requires immediate and long term residential care. (B) Notwithstanding another provision of law, only the full Board, upon a petition filed by the Director of the Department of corrections, may order the release of an inmate who is terminally ill, geriatric, permanently incapacitated, or a combination of these conditions. (C) The parole order issued by the Board pursuant to this section must include findings of fact that substantiate a legal and medical conclusion that the inmate is terminally ill, geriatric, permanently incapacitated, or

a combination of these conditions, and does not pose a threat to society or himself. It also must contain the requirements for the inmate's supervision and conditions for his participation and removal. (D) An inmate granted a parole pursuant to this section is under the supervision of the Department of Probation, Parole and Pardon Services. The inmate must reside in an approved residence and abide by all conditions ordered by the Board. The department is responsible for supervising an inmate's compliance with the conditions of the Board's order as well as monitoring the inmate in accordance with the department's policies. (E) The department shall retain jurisdiction for all matters relating to the parole granted pursuant to this section and conduct an annual review of the inmate's status to ensure that he remains eligible for parole pursuant to this section. If the department determines that the inmate is no longer eligible to participate in the parole set forth in this section, a probation agent must issue a warrant or citation charging a violation of parole and the Board shall proceed pursuant to the provisions of Section 24-21-680.

5. SPECIAL PAROLE OF VETERANS FOR PSYCHIATRIC TREATMENT

Any offender who is a veteran and who is otherwise eligible for parole, except that the offender's mental condition is deemed by the Board to be such that he or she should not be released from confinement, may be released on special parole to the custody of the Veterans Administration for psychiatric treatment, subject to its approval. Or, the offender may be released on parole to the custody of a committee appointed to commit such offenders to a Veterans Administration Hospital.

- The Board retains sole discretion to grant this kind of special parole.
- When the Board, in its sole discretion, grants special parole, the offender must be transferred directly from the place of confinement to a Veterans Administration Hospital which provides psychiatric care.
- When any offender who has been paroled to the Veterans Administration for psychiatric treatment is determined to be in suitable mental condition to be released from confinement, he/she may be released to continue their parole under community supervision of the Department, subject to all standard and any special conditions of parole.

6. PAROLE TO DETAINER

The Board or a panel may parole an offender to a detainer in this state or in another state for confinement or otherwise to answer the charges set forth in the detainer. The Board may further order that the parole on the South Carolina sentence run concurrently with any sentence to be served in the state where the detainer originated.

7. PAROLE TO ANOTHER AUTHORITY

The Board or a panel may parole an offender directly to another state for supervision under that state's parole authority.

8. CONTINUED OR DEFERRED CASES

The Board or panel may continue or defer any case to allow for further investigation to be conducted and additional relevant information to be gathered when the interests of fairness and justice seem to require it. Whenever any case is continued or deferred, the Board or the panel must inform the

offender of its reasons for taking that action, and it must also schedule a date when the offender can next be heard. The date on which the hearing is re-scheduled must be fixed on the day the continuance or deferral is ordered, and it should be set on the first available date after the date of the continuance or deferral.

9. POSTPONED CASES

After hearing any parole case, the Board or panel may, where it seems appropriate under the circumstances to do so, postpone giving its final decision for up to one year in order to allow an offender to complete a treatment program, vocational training course, or other similar worthwhile endeavor.

E. THE DENIAL OF PAROLE AND ITS EFFECT

1. REASONS FOR DENIAL OF PAROLE

A denial of parole continues the status quo: the offender remains in prison until his next parole hearing or until he maxes out of his sentence.

Taking these standards and criteria of parole into account in its deliberations, the Board will not as a general rule grant parole when it is reasonably satisfied that the offender does not deserve a lessening of the rigors of imprisonment and that the interests of society will not be best served by granting parole. When the Board or a panel decides to deny parole, due process of law requires it to express its reasons for rejection in writing. To do this, the Board or panel should begin by making some such general introductory statement as the following:

"The Board (or the panel) is reasonably satisfied that (Offender's Name) does not at this time deserve a lessening of the rigors of imprisonment and that the interests of society will not be best served by granting parole now."

After this general statement, the Board or the panel should then enumerate its reasons for denying parole. Due process requires that these reasons be sufficient to explain to the offender why he was denied parole. Further, due process also requires that the reasons for denying parole be rationally related to the written standards and criteria of parole which the Board has adopted and published. The following reasons for denying parole are rationally related to the Board's published parole criteria:

- Nature and seriousness of the current offense
- Indication of violence in this or a previous offense
- Use of a deadly weapon in this or a previous offense
- Prior criminal record indicates poor community adjustment
- Failure to successfully complete a community supervision program
- Institutional record is unfavorable

2. SUBSEQUENT HEARING FOLLOWING A DENIAL

- a. **A denial of parole continues the status quo.** The offender remains in prison until his next parole hearing or until he maxes out of his sentence, whichever occurs first.

- b. **Subsequent Hearing of non-violent offenders.** Following a denial of parole, offenders serving a sentence for a non-violent crime will have a parole hearing one year after the date of the last hearing in which parole was denied.
- c. **Subsequent Hearing of violent offenders.** Following a denial of parole, offenders serving a sentence for a violent crime will have a parole hearing two years after the date of the last hearing in which parole was denied, unless the law provides for annual review.

F. CONDITIONS OF PAROLE

Underlying every parole is the contractual agreement between the State and the parolee. In exchange for the privilege of receiving a parole, the parolee agrees to abide by the terms and conditions of supervision. If the parolee refuses the offer, in whole or in part, then parole is not granted. If the offer is accepted, with all standard and special conditions, then parole is granted.

1. THE STANDARD CONDITIONS

Attached to every grant of parole is a set of ten standard conditions of parole which is always reduced to writing on the formal Certificate of Parole issued by the Department. These are set forth below:

- I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my release or not later than 8:30 a.m. on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.
- I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
- I shall not use controlled substances, except when properly prescribed by a licensed physician, not consume alcoholic beverages to excess nor visit establishments whose primary business is the sale and drinking of alcoholic beverages. Furthermore, I shall submit to a urinalysis or a blood test when requested by an Agent of the Department, and I agree that any of these test results may be used as evidence in any hearing.
- I shall not possess or purchase any firearms, knives, or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
- I shall work diligently at a lawful occupation, furthermore, I shall notify my Agent if I become unemployed.
- I shall not violate any federal, state, or local laws, and shall contact my supervising agent if I am ever arrested or questioned by a law enforcement officer for any reason whatsoever.
- I shall pay supervision fees as determined by the department.
- I shall not leave the state without permission from my agent. Furthermore, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the Court, Board or by a warrant.
- I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.

- I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agent.
- Unless I was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year, I shall be subject to search or seizure, without a search warrant, with or without cause, of my person, any vehicle I own or am driving, and any of my possessions by: (1) any probation agent employed by the Department; or (2) any other law enforcement officer.

2. SPECIAL CONDITIONS

The Board has discretion to impose additional, special conditions of parole in addition to the standard conditions. These special conditions of parole must be reasonably related to the offender's crime, necessary to further some rehabilitative purpose, and not violate of any state or federal law or public policy. Conditions may not be punitive in nature.

Within these limitations, the Board has a fairly broad power to impose any special conditions that might reasonably serve to further the general purposes of supervision on parole. The special conditions which the Board most commonly imposes are selected from the list of special conditions given below. This list is not exhaustive. Within the limitations referred to above, the Board may impose other special conditions of parole.

- The offender must attend and successfully complete a substance-abuse rehabilitation program for as long as may be necessary to receive treatment, and he must submit to drug tests whenever asked to do so.
- The offender is to be placed on intensive supervision for an indeterminate period not to exceed six (6) months, as determined by the Department.
- The offender must attend a mental-health care program for as long as may be necessary to receive adequate treatment.
- The offender must avoid any contact with the victim or the victim's family while on parole.
- The offender must attend and successfully complete substances abuse program as determined by the Addictions Treatment Unit and attend aftercare program.
- The offender must attend the Parole Employment Program (PEP).
- The offender must be placed under home detention for an indeterminate period not to exceed ninety (90) days, as determined by the Department.
- The offender must be placed on electronic monitoring for an indeterminate period not to exceed six (6) months, as determined by the Department.
- The offender shall be ordered to pay restitution to the victims.
- The offender must pay court ordered fines.
- The offender must secure acceptable residence and employment
- The offender is granted parole, subject to his having undergone a psychological examination and received an acceptable evaluation from a duly qualified psychologist. (This is required for offenders who have served 10 consecutive years and sex offenders.)
- The offender may be paroled to a detainer only.
- The offender must attend and successfully complete the Self Paced In-Class Education Program (SPICE).

- The offender may be paroled to another state for supervision provided approval by receiving state. The offender is exempt from having to pay South Carolina supervision fees while being supervised on parole in another state. The offender may request to return to South Carolina through the SCDPPPS Interstate Compact Office.
- For Provisional Parole. The offender must diligently seek and obtain acceptable employment within 90 days of the grant of his provisional parole or have that parole revoked. Further, the offender must comply with all other conditions of his provisional parole. The offender is exempt from having to pay supervision fees while he is actively and diligently seeking acceptable employment while under provisional parole.
- The offender must participate in the Department of Corrections' Pre-Release Program.
- Exempt supervision fees
- The offender must be placed in a Restitution Center and must comply with the rules and regulations. Recommend 90 days, however, may be extended to 6 months.
- The offender is to complete _hours of Public Service Employment while on parole (up to 100 hours), excepting violent offenders and sex offenders.
- The offender must reimburse the Department for the cost of the psychological evaluation.

PART III

REVOCATIONS, MODIFICATIONS AND RECONSIDERATIONS

A. REVOCATION OF PAROLE CASES

If a parolee willfully violates any of the conditions of parole, a final determination must be made by the Board as to whether the offender's parole should be revoked and whether he/she should be required to serve any remaining unserved part of his sentence.

1. CONSTITUTIONAL REQUIREMENTS OF PROCEDURAL DUE PROCESS

Parolees are entitled to both a preliminary and a final revocation hearing before parole may be revoked.

- a. Preliminary Hearing.** Preliminary hearings are conducted by hearing officers employed by the Department, who must be neutral, detached, fair and impartial. At the preliminary hearing, the hearing officer must make a determination that reasonable grounds exist to warrant going forward with the revocation process. A finding by the hearing officer that probable cause exists to believe that the parolee did willfully violate parole is sufficient to bind over the parolee and return him/her to the detention facility until the final hearing if the parolee has not been released on bond. The Hearing Officer will prepare a written summary of their findings for the Parole Board's consideration at a final hearing.

In cases where a criminal conviction forms the basis of the violation for which the revocation of parole is sought, and the parolee has received a sentence of six months or more to serve, he/she is not entitled to a preliminary hearing. This is because the criminal trial that results in the conviction adequately protects the offender's due-process rights.

- b. The Final Hearing.** If, after an unfavorable decision at the preliminary hearing, the parolee desires a final hearing, due process requires that this be granted within a reasonable time after being taken into custody. The final hearing must go beyond the inquiry made at the preliminary hearing. It must lead to a final evaluation of any contested relevant facts, and it must consider whether the facts, as they are found, warrant full revocation, or something less severe. The parolees are entitled to the following procedural rights:

- Have a final hearing conducted reasonably promptly after the preliminary hearing;
- Receive written notice of the alleged violations upon which revocation is sought;
- Receive a fair and impartial hearing, at both the preliminary and the final hearing;
- Be present at the preliminary and final hearings, to offer evidence in their own defense, and to show that they did not violate the conditions of parole, or that, if they did, the violation was not willful;
- Obtain an attorney at his or her own expense;
- Have a bond set by a circuit court judge pending the outcome of the preliminary and the final hearing;
- Have the evidence against them disclosed;
- Cross examine witnesses to the violation who testify, unless there is good cause for not allowing it;

- Receive a written statement by the Board or the panel of the evidence relied on and the reasons for revoking parole (if the Board or the panel finds by a preponderance of the evidence that the parolee willfully violated parole and decides to revoke the parole).

2. PROCEDURES FOR THE FINAL HEARING

In parole violation hearings, the rules of evidence do not need to be strictly observed. Hearsay is admissible, but may be challenged by the parolee. The Fourth Amendment's Exclusionary Rule does not apply. The standard to support revocation is proof by a preponderance of the evidence that the parolee willfully violated the conditions of parole.

The procedures adopted by the Board, in its discretion to administer this part of its business, should not be confused with the procedural requirements mandated by constitutional due process. Although these procedures conform with those requirements, nothing in them should be construed in such a way as to give parolees any more than their limited due process rights.

- a. **Revocation by the Board or a Panel.** The full Board may revoke parolee by a majority vote. A three-member panel may revoke parole by unanimous vote.
- b. **Call to Order.** The Chair or designee, is responsible for calling hearings to order, identifying by name the members of the Board who are present, and opening and closing the proceedings.
- c. **Presenting the Cases.** The Board Support Services Director or designee will assist the Board or the panel by presenting the cases for review and provide technical assistance. Cases are presented according to the following protocol:
 - The parolee is identified by name and SCDC number.
 - If the parolee has an attorney, the attorney is identified by name.
 - The case against the parolee is presented. This includes all violations alleged in the warrant or citation, the facts surrounding those allegations, and evidence in support of those facts.
- d. **Parolee's Opportunity to be Heard.** Once the case against the parolee has been presented, the Chair must give the parolee or his/her attorney an opportunity to be heard and present any relevant evidence. This may include evidence that tends to show either that the parolee did not violate the conditions of supervision as alleged, or that, if he/she did violate, he/she did not do so willfully, or if he/she did willfully violate them, why parole should not be revoked. The parolee may present either documentary evidence or the testimonial evidence of witnesses at the hearing.
- e. **Examination by the Board or Panel.** After the parolee has had an opportunity to be heard, the Chair may give the members of the Board or panel the chance to ask either party, or any of the witnesses any questions. The Chair presides over the examination and maintains order.
- f. **The Record.** All violation hearings shall be recorded.

3. THE FINAL DECISION

After the Board or the panel has heard all the evidence from both sides, it then deliberates and makes its final decision. The Board is the sole judge as to whether parole has been violated, and no appeal

is allowed. See S. C. Code 24-21-680. Insofar as the Board or the panel is reasonably satisfied that its decision is supported by the evidence, the decision may take any of the following forms.

- a. **Revocation of Parole.** If the evidence is sufficient to show that the parolee willfully violated the conditions of parole, the Board may determine these violations warrant revocation of parole and enter such an order.
- b. **Continued on Parole.** There are two possible bases upon which parole may properly be continued:
 - The evidence is insufficient to show that the parolee willfully violated the conditions of parole.
 - Although the evidence is sufficient to show that the parolee willfully violated parole, evidence presented in mitigation supports continuing the parolee on parole.
- c. **In Addition to a Continuation.** In addition to continuing the parolee on parole, the Board or panel may decide to do any of the following:
 - Reprimand the parolee for his/her conduct and issue a written warning citing the specific misconduct;
 - Order that the parolee's supervision be enhanced;
 - Impose any special condition that may be appropriate;
 - Remove any condition no longer deemed appropriate.
- d. **The Order of Continuation.** At the conclusion of the hearing, the Board or the panel should issue and sign its Order of Continuation. The Order itself should accurately reflect the action taken at the hearing, and should include any further conditions of supervision that were imposed by the Board or the panel. The parolee should be given a copy of this Order.

4. THE EFFECT OF REVOCATION

The offender is remanded to the custody of the Department of Corrections to serve the remaining unserved part of his/her sentence, less any credit for time served on parole before the revocation.

The Board's policy is offenders will be eligible for parole consideration one year following revocation. If the offender is paroled again and then revoked, the Board's policy is that parole eligibility will be two years after the second or subsequent revocation. When the basis of the revocation is a new conviction, then as a matter of law the offender will not be considered for parole until the new sentence becomes parole eligible. The Board may never consider an offender for parole before the eligibility date, except where the law specifically allows it.

B. MODIFICATIONS OF PAROLE CASES

1. IN GENERAL

Violations of parole do not always result in revocation. Revocation of parole is generally reserved for the most serious violations, including but not limited to: new criminal convictions; absconding from supervision; and other violations that threaten the safety of the community.

In such cases, modification of the conditions of parole may be the best solution. Modifications of parole serve two purposes: they respond to the parolee's individual rehabilitative needs as those needs change over time and allow for parole to continue in a way that reasonably ensures the safety of the community, while saving the state the cost of incarcerating the offender. Where modification of parole seems to offer the best course, the law allows the supervising parole agent to issue a citation, instead of an arrest warrant, to bring the parolee before an administrative hearing officer, so that appropriate modification can be made.

As a matter of policy, the Department prefers to continue cases on parole by modifying the conditions of supervision where appropriate and reasonably likely to lead to successful completion of supervision rather than resorting to revocation.

2. PROCEDURE

The Board has delegated the authority to the Department's Administrative Hearings Section to hear and decide all parole cases where a modification of parole is being sought, except with the Board continues parole after a revocation hearing and modifies conditions, the Board has left the matter of modifications to the Department's Hearing Officers.

In addition to being able to modify parole by imposing any additional condition of supervision that an agent could impose, Administrative Hearing Officers may also:

- Place the offender on Home Detention;
- Place the offender in a Halfway House;
- Order the offender to complete Public Service Employment;
- Order the offender to pay restitution (actual damages only) for violations committed while under supervision;
- Place the offender on a higher, or a lower level of supervision, including placement on intensive supervision;
- Restructure the offender's payment schedule;
- Restructure the restitution payment schedule, with Board approval, on which the offender pays restitution;
- Recommend placement at a Restitution Center;
- Exempt or defer the offender's supervision fees;
- Modify any other special conditions of parole as may be appropriate.

C. RECONSIDERATIONS OF PAROLE CASES

After the Board or the panel has decided a parole case, the Board or panel may want to re-consider its decision.

Requests for reconsideration after a parole rejection will not be accepted for routine parole denials. However, if within fifteen (15) days of the date of the notice of rejection letter, the inmate or the inmate's attorney submits a letter to the Director of Board Support Services requesting a reconsideration hearing, and provides information that the Board may have based its decision on erroneous information or can provide additional information that the Board did not have during the hearing, the Board may decide to grant a reconsideration hearing. The Director of the Office of Board Support Services will make a determination as to whether or not the information provided is sufficient to grant a rehearing. If the Director of Board Support Services agrees, this information will be forwarded to the Board's Chair for a final determination. A letter will be sent to the inmate or the inmate's attorney notifying them of the decision. There is no appeal of the final decision.

1. REASONS FOR CONDUCTING A RECONSIDERATION

- a. Subsequent Misconduct by the Inmate.** In cases where the Board has granted parole conditioned on the satisfaction of some pre-release requirement, and the inmate has committed some violation of prison rules before the actual release from prison, the case will be presented to the Board or panel in order to deal with the subsequent misconduct.
- b. New Criminal Charges Against the Inmate.** The inmate received a new conviction after conditional parole but prior to release.
- c. After-Acquired Information About the Inmate.** If the Board or panel acquires new information after it has made its final decision and in the Board's or panel's judgment is so important as to require an immediate reconsideration of the case, the case will be presented to the Board or panel to review its decision.
- d. Failure of the Inmate to Meet Conditions of Release.** The Board will review cases in which the inmate has failed to meet the conditions of release.

PART IV

PARDONS, REPRIEVES, AND COMMUTATIONS

A. PARDON PROCESS

A pardon is an executive act of grace or clemency releasing an offender from all the legal consequences of a criminal conviction. The Board's decision to grant or deny a pardon is discretionary. The Board may only consider a pardon for those offenders who are eligible to receive pardons under S. C. Code 24-21-950. The Board Support Services Director is responsible for determining which applicants are eligible to be considered for a pardon, with the exception of those applicants whose eligibility is based on the assertion of extraordinary circumstances. Pursuant to S. C. Code 17-25-322(E), the Board may not grant a pardon to an applicant until the restitution and collection fees required by the restitution order have been paid in full.

The Board has complete discretion in all aspects of a pardon consideration. Applicants do not have a right under the due process clause of the constitution to a statement of the reasons for the Board's decision, and the decision may not be appealed.

1. PERSONS ELIGIBLE TO BE CONSIDERED FOR A PARDON*

Anyone may apply for a pardon, but the Board will only consider the applications of those persons who have been determined to be eligible under the law for a pardon. The law also allows the victims of the crime, as well as any member of the offender's family living in South Carolina, to petition for a pardon.

- a. Persons Discharged from Supervision.** Probationers, parolees, and all other individuals under supervision are eligible to apply for a pardon at any time after their discharge from supervision.
- b. Persons Discharged from Prison.** Offenders who are discharged from their sentence without supervision are eligible to be considered for a pardon at any time after their discharge.
- c. Parolees Under Supervision.** Parolees are eligible to apply for a pardon after successfully completing five (5) years of supervision.
- d. Inmates Serving Sentences.** Inmates who have not reached their parole eligibility date may be considered for a pardon only if they can produce evidence showing the most extraordinary circumstances why they should be considered.

The Office of Board Support Services will follow the procedures outlined below for these requests:

- Written requests are received by the Office of Board Support and forwarded to the Office of General Counsel for review.
- The Office of General Counsel will review the inmate's request and submit a recommendation to the Board Chair at the next available parole or pardon hearings.
- If the Board's Chair concurs with the recommendation, either a letter is written to the inmate informing him/her of the decision to deny the request or a pardon application is sent back to the inmate to continue the pardon process.
- If the Board's Chair does not concur with the recommendation, the request will be reviewed by the full Board to make a determination.
- The Board's decision is final.

e. Inmates With Terminal Illness

The Board may also consider the pardon application of any prisoner who is suffering from a terminal illness where the prisoner is not expected to live longer than one year as verified by the Department of Corrections.

*The Board may not grant a pardon to an applicant until the restitution and collection fees required by the restitution order have been paid in full. (S. C. Code 17-25-322(E))

2. FILING OF APPLICATION

Applications may be obtained from the county offices, the Department's Office of Board Support Services, and the Department's website. The non-refundable fee for filing an application is one hundred dollars (\$100.00).

3. PARDON INVESTIGATIONS

The Department's Office of Field Operations thoroughly investigates pardon applications and the Department's Office of Board Support Services prepares cases for the Board's review.

4. REVIEW BY THE BOARD

The Office of Board Support Services will send the pardon applications and the Department's investigation reports to each member of the Board not less than two weeks before the pardon hearing. In preparation for the pardon hearing, the Board carefully reviews all applications.

Pardon hearings are held at the Central Office location. The Department will provide notice of the hearing to the applicant and other interested parties. Pardon applicants are not required to be present at the hearing. The Board may decide pardon cases in the absence of the applicant, so long as the applicant has been given notice of the hearing. The Board hears all scheduled cases and decides each case on its individual merits.

5. THE ORDER OF PARDON

The grant of a pardon requires a two-thirds vote of the Board. When the Board votes to grant a pardon an Order of Pardon is issued.

6. THE CERTIFICATE OF PARDON

After the Order of Pardon has been issued, the applicant will receive a Certificate of Pardon. The certificate states that the person is pardoned from all legal consequences of the crime. However, a pardon will not remove an individual from the Sex Offender Registry. (S.C. Code 23-3-430(F)).

7. RIGHTS RESTORED

Under South Carolina law, a pardon fully restores all civil rights lost as a result of the conviction and sentence. These rights include:

- The right to serve on a jury;
- The right to hold public office, except in the case where the crime was embezzlement of public funds;
- The right to testify at a trial without having the fact of conviction introduced for impeachment purposes, unless the crime indicates a lack of veracity;
- The right to have one's testimony included in a legal proceeding if the crime was perjury;
- The right to be licensed for any occupation requiring a license; and
- The right to own and possess firearms under state law.

8. IRREVOCABLE UNLESS OBTAINED THROUGH FRAUD

Once the Certificate of Pardon is issued, it cannot be revoked or rescinded unless it was obtained through fraud. Pardons obtained through fraud are void.

9. RE-APPLICATION AFTER A DENIAL OF PARDON

Anyone whose application for a pardon is considered but denied must wait one year from the date of the denial to re-apply. The filing fee to re-apply is one hundred dollars (\$100.00).

B. REPRIEVES AND COMMUTATIONS

The Governor has the power to grant reprieves in capital cases only and to commute death sentences to life imprisonment. The Governor may refer these matters to the Board for consideration and recommendations. The Governor may or may not adopt the Board's recommendations; but if he/she does not, he/she must submit the reasons to the General Assembly (See S.C. Code 24-21-910; S.C. Constitution Article 4, Section 14).

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Matthew Williams, #215077,	)	Docket No. 21-ALJ-15-0023-AP
)	
Appellant,)	
)	
v.	)	RESPONDENT'S RETURN IN
	)	OPPOSITION TO APPELLANT'S
South Carolina Department of Probation, Parole and Pardon Services,	)	MOTION TO REMAND AND
	)	RENEWED MOTION TO DISMISS
)	
Respondent.)	
)	

Respondent South Carolina Department of Probation, Parole and Pardon Services, by and through its General Counsel, files this Return in opposition to Appellant's motion to remand and renewed Motion to Dismiss. Respondent submits this Return and Motion to Dismiss because Appellant's Motion ignores statutory limitations on this Court and well-settled case law, and that the supplemented record on appeal does not provide any additional information that would confer authority to this Court to do anything other than dismiss the appeal.

Appellant moved to supplement the record on this appeal from a routine denial of parole, which was granted over the objection of Respondent. In this Court's order, the record was to be supplemented with the risk assessment results, the full case summary, notes from the pre-hearing interview (nonexistent), and any recommendations or summaries created by the parole agent (also nonexistent).

Based on the supplemented record, Appellant now moves for this Court to order the matter to be remanded back to the Parole Board, claiming that the record does not show the Board made any findings of fact or considered the materials before the Board.

Respondent submits that Appellant's motion ignores well-established precedent found in Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs., 377 S.C. 489, 661 S.E.2d 106 (2008) and Compton v. S.C. Dep't of Prob., Parole and Pardon Servs., 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009), as well as S.C. Code Ann. §1-23-600(D). Quite simply yet respectfully, this Court does not have authority to consider an appeal of a routine denial of parole, and must dismiss all such appeals when the Board follows the procedure outlined in Cooper and Compton. Appellant's motion should be denied, and this appeal should be dismissed.

I. The original record on appeal shows the Parole Board's findings of fact in support of its decision.

Appellant argues that, because the supplemented Record on Appeal does not show deliberation by the Board weighing the pros and cons of parole for him, the record does not support the Board's decision. Respondent submits that the Board followed the requirements laid out in Cooper, which clearly states that all that is necessary is that the letter of rejection inform the inmate that the Board considered the mandatory and statutory criteria. "[I]f 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." Id. at 500, 661 S.E.2d at 112.

Appellant argues for judicial review and alleges irregularities in procedure that can apparently only be remedied by a remand requiring the Board put its deliberations on the record. Yet, Appellant can show no irregularity when the record shows the Board followed Cooper. Nowhere in Cooper – or Compton, which further clarified the opinion in Cooper – did the Supreme Court make deliberations on the record a requirement. This makes sense in a practical matter: the

Board is comprised of seven individual members, and each member has a single vote. Unlike a jury, which must deliberate to reach a unanimous verdict, the Board members vote, and parole is granted or denied based on the vote count. See Barton v. S.C. Dept't of Probation, Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110. Deliberation on the record is an unnecessary component of the parole consideration process.

Appellant's assertion that the record does not include the Board's findings of fact is incorrect. The notice of rejection states that the Board's findings were that parole was denied due to the nature and seriousness of the current offense, the indication of violence in this or a previous offense, and the use of a deadly weapon in this or a previous offense. Record at 1. The notice also stated that the Board carefully considered the characteristics of the current offense, prior offense, prior supervision history, prison disciplinary record, and/or prior criminal record; the criteria for parole consideration in Form 1212; and the factors outlined by statute.¹ Again, this is all that is necessary, per Cooper and Compton.

Because the record shows that the Board complied with the procedure, "the decision [constitutes] a routine denial of parole and the ALC will have limited authority to review the decision." Compton at 479, 685 S.E.2d at 177. Here, as in Compton, the Board stated in the notice of rejection letter that it considered the criteria required under Cooper. Therefore, it would be an error for this Court to remand the matter to the Parole Board, just as the Supreme Court held in Compton. Id.

¹ S.C. Code § 24-21-640 and S.C. Code § 24-21-10(F)(1).

II. A remand is unnecessary because this Court has no jurisdiction to hear an appeal challenging the Board's decision-making or deliberation process.

As noted in Part I, Cooper and Compton makes it clear that the ALC errs if it remands a routine denial of parole back to the Parole Board. Compton at 479, 685 S.E.2d at 177. Despite this, Appellant is requesting that this Court do exactly that.

Were this Court to order the remand as requested, the ALC would still be without authority to hear a subsequent appeal on the Board's decision-making process. Per S.C. Code Ann. § 1-23-600(D), the ALC has no authority to consider appeals from parole-eligible inmates regarding a routine denial of parole. A remand would impose upon the Board a requirement to discuss their decisions during the otherwise optional deliberation stage of the hearing. Note that SCALC Rule 61 provides that the Respondent is only required to provide a copy of the notice of rejection.

Respondent insists that a remand is necessary because the COMPAS assessment² showed a low risk of recidivism and, because the Board did not discuss the COMPAS score at the hearing, the only conclusion is that the Board ignored it. This is a strained leap of logic, especially when the notice of rejection *specifically states* that the Board carefully considered the actuarial risk and needs assessment factors.

Although Appellant acknowledges that this Court cannot substitute its judgment for that of the Board, he argues that the record should reflect the weight the Board placed on the evidence. While this may initially seem like a reasonable request, it is ultimately unnecessary because of the ALC's strict limitation on reviewing Parole Board decisions. "An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections [including] ...

² COMPAS is the name of the validated actuarial risk and needs assessment tool developed as required in § 24-21-10(f).

an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.” S.C. Code Ann. §1-23-600(D).

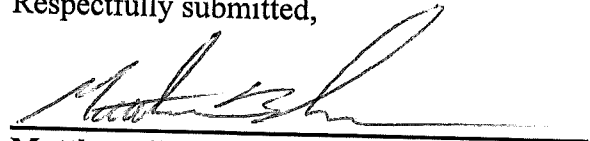
Appellant cites several cases in his Motion to Remand in support of his argument that the Parole Board should show “factual findings, credibility determinations and legal analysis” to support its decisions. McDonald v. S.C. Employment Security Commission, No. 2011-UP-158 (S.C. Ct. App. 2011). That may be required in most of the types of cases the ALC regularly hears, but appeals from the Parole Board are markedly different. As an executive branch court, the ALC has jurisdiction limited solely to that which is granted to it by statute. S.C. Dep’t of Consumer Affairs v. Foreclosure Specialists, Inc., 390 S.C. 182, 186-87, 700 S.E.2d 468, 470 (Ct. App. 2010). Not only has the General Assembly not granted jurisdiction over routine denials of parole, the Code *specifically prohibits* this Court from considering a routine denial of parole. S.C. Code §1-23-600(D).

The record shows that the Board was provided with the COMPAS risk assessment tool along with the criteria for parole consideration, the factual summary of the offense, and other information prepared either by the Department’s parole investigators and Appellant’s attorneys and supporters. The record should satisfy this Court that it followed the requirements of Cooper.

III. Conclusion

Respondent respectfully submits that this Court would err if it conducts any further analysis into the Board’s decision-making. The ALC is limited to reviewing if the Board considered the requisite criteria, but not *how* it considered that criteria.

Respectfully submitted,



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August 10, 2022

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Matthew Williams, 00215077)	Civil Action No. 21-ALJ-15-0023-AP
)	
Appellant,)	
)	
v.)	
	)	<u>APPELLANT’S MOTION TO</u>
South Carolina Department of Probation,	)	<u>REMAND</u>
Parole, and Pardon Services,)	
)	
Respondent.)	
)	
_____)	

Appellant Matthew Williams, by and through his undersigned counsel, hereby files this Motion to Remand. On June 21, 2022, Respondent served and filed a Supplemental Record on Appeal (the “Record”), which included Appellant’s risk assessment results, case summary, notes from the Parole Examiner, and the Memorandum Supporting Parole submitted to the Parole Board by counsel for Appellant. Respondent represented that the Record includes all documents considered by the Parole Board in rendering its decision, but the Record is devoid of any evidence that the Parole Board made findings of fact or gave weight to the underlying materials provided to them. Absent these critically important inputs from the Parole Board—weighing the underlying materials in the Record in favor of or against parole for Mr. Williams—this reviewing tribunal is left with a Record that does not support the Parole Board’s decision. Appellant respectfully requests that the Court remand this matter to the Parole Board for an actual consideration of the underlying basis for its decision.

I. The Record Does Not Include the Parole Board's Findings of Fact in Support of its Decision.

The Parole Board's decision-making and ultimate denial of Appellant's parole does not comport with the Parole Board's statutory duties, the APA, nor principles of due process. The legislature requires that the Department of Probation, Parole, and Pardon Services establish "a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions, including additional objective criteria that may be used in parole decisions." S.C. Code Ann. § 24-21-10(F)(1). The APA and its attendant jurisprudence requires judicial review "[i]n cases of alleged irregularities in procedure before the agency," and permits the ALC to remand "for action as the court considers appropriate." *Id.* § 1-23-380(4); *see also id.* § 1-23-380(5) (detailing when the ALC may "reverse or modify" the decision of an agency). Because reviewing courts only consider the record from the agency, "[t]he findings of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings." *Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986). Where the record is devoid of factual findings to support the conclusion reached by the agency, it cannot be properly reviewed "since the reasons underlying the decision are left to speculation." *Id.*

The Record indicates that Mr. Williams was favorably evaluated using the statutorily prescribed actuarial risk and needs assessment (or the "COMPAS Assessment"). Record at 4. By statute, the Parole Board is *required* to give weight to an inmate's actuarial risk and needs assessment evaluation. But the Parole Board *may* also use "additional objective criteria" to make its decisions. The Record does not show that at any point the Parole Board considered Mr.

Williams' COMPAS Assessment, which is the only statutorily mandated input that the Parole Board is obligated to consider in rendering its decision. While the Record contains a copy of Mr. Williams' COMPAS Assessment, we have no record of the Parole Board's use of this critical evaluation tool in its decision-making nor do we have any indication of how the COMPAS Assessment was weighed, if at all, against the other objective criteria used by the Parole Board.

Without the critical nexus between the required evaluation and Parole Board's decision, this Court is left to speculate whether the statutory evaluation was considered in the Parole Board's decision to deny Appellant parole.

II. Because There is no Substantial Evidence in the Record to Support the Parole Board's Decision, the Matter Should be Remanded so that the Board is in Compliance with the Statute.

Substantial evidence should support an agency's decision and allow for a reasonable review of the agency's decision-making. Courts are more prone to uphold agency decisions when the agency's findings, determinations of credibility, and analyses are "manifest" and sufficient to support the agency's decision. *McDonald v. S.C. Employment Sec. Comm'n*, No. 2011-UP-158, 2011 WL 11733645, at *2 (S.C. Ct. App. Apr. 13, 2011) ("[T]he Commission's factual findings, credibility determinations, and legal analysis clearly reflected it..." considered its decision.). See also *Heater of Seabrook, Inc. v. Pub. Serv. Comm'n of S.C.*, 332 S.C. 20, 27, 503 S.E.2d 739, 742 (1998) (ruling that the PSC order was not sufficient and holding agencies are "afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. However, the writing of orders without sufficient detail or analysis, coupled with this standard of review, can make their decisions as a practical matter unassailable on appeal."); *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 338 S.C. 92, 96, 525 S.E.2d 863, 865 (1999) (reversing and remanding

because it was “impossible for [the] Court to review the basis of the orders ‘since the reasons underlying the decision are left to speculation.’”).

Respondents have previously argued that the Parole Board’s denial of Appellant’s parole by voice vote and the subsequent notice of denial suffices as a “routine denial” under the strictures of *Cooper*. *Cooper v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008). However, the substantial evidence standard is not alleviated, even in cases where a petitioner is afforded minimal due process. Nothing in the Record shows that the actuarial risk and needs assessment evaluation required by statute to be “use[d] when making parole decisions” was considered by the Parole Board or given any weight along with or against the objective criteria. The transcript of the Parole Hearing shows that the deliberation by the Parole Board consisted exclusively of the Parole Board members saying “deny” and the Chairman declaring Mr. Williams’ denial and reciting “one, two and three.”¹ (See **Exhibit A** of Appellant’s Motion to Supplement the Record on Appeal and Motion to Conduct Discovery, reattached). In the entire Record, the only findings of fact made by the Parole Board were those numbers recited by the Chairman. Thus, it is clear the Parole Board did not consider Mr. Williams’ COMPAS Assessment.

To add injury, the Record indicates that the Parole Board is given a Criteria for Parole Consideration form, which is a tool “provided to assist the Board in their review and consideration of the established Criteria for Parole.” Record at 9. There is no indication that any members of the Parole Board completed this form, weighed the criteria, or took notes of their findings.

Clearly, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann. § 1-23-380. However, from the

¹ These numbers presumably represent the Parole Board’s “findings of fact,” which include 1) the nature and seriousness of current offense, 2) indication of violence in this or previous offense, and 3) use of deadly weapon in this or previous offense.

Record, it is impossible to ascertain what, if any, weight was given to all of the evidence before the Parole Board, particularly Appellant's COMPAS Assessment. The voice votes pronouncing each of the Parole Board members' denial, coupled with the Chairman's recitation of the numerals are the only effects from the Parole Board resembling findings of fact. Without more, namely the Parole Board's evaluation of Mr. Williams' COMPAS Assessment, substantial evidence does not support the Parole Board's decision to deny Mr. Williams parole.

III. Conclusion

The one thing this Court can be sure of is that the Parole Board received Mr. Williams' COMPAS Assessment, but this Court and all affected parties are left to speculate the weight of this important input as it relates to the Parole Board's decision. The Parole Board's denial of parole by a voice vote and the subsequent notice of denial sent to Mr. Williams were rote declarations that did not suffice as findings of fact. This matter must be remanded for proceedings consistent with the spirit of the Parole Board's statutory charge.

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July 29, 2022

EXHIBIT A

Case No. 47 – Matthew Williams

Female: Case No. 47 – Matthew Williams. Mr. Williams is represented today by Attorney, and attorney please state your name again. I do apologize. I want to make sure I get it right.

Ms. Hansotia: No problem. It's Shirene Hansotia.

Female: Hansotia. Ms. Hansotia thank you so much for joining us and Mr. Williams can you hear us?

Mr. Williams: Yes, ma'am.

Female: Thank you both for joining. You're before the Board. Chairman.

Chairman: Thank you. I am going to try, is Ms. Hansotia, is that correct?

Ms. Hansotia: Yes, sir. Thank you.

Chairman: No, thank you and good morning Mr. Williams. Ms. Hansotia would you like to begin?

Ms. Hansotia: Um, thank you sir. I believe that Mr. Williams will like to begin and I will follow.

Chairman: That will be perfect. Good morning Mr. Williams. Please tell the Board what you've been able to do in preparation for parole, sir.

Mr. Williams: (inaudible) I've been preparing for parole almost my entire incarceration. I, obtained my GED in 1995, graduating as a class valedictorian. I've been clean and sober since June 5th 1996. I established a strong work ethic and a long work history learning a number of multiple job skills to include janitorial and custodial experience, clerical skills, computer literacy, grounds and building maintenance. I've earned two separate (inaudible), one in manufacturing as an IPC specialist. The other in the bottle trade as a master hair care specialist. I've developed my artistic talent and positive skills into an additional marketable asset. I have also cultivated a lot of positive character traits such as creativity, dependability, responsibility and reliable (inaudible).

Chairman: Okay.

Mr. Williams: I've also (inaudible) a complete parole plan.

Chairman: Sounds like you've been doing a lot of good things. Please tell me Mr. Williams if you're granted parole where do you plan on living? Do you have any family out there to help you?

Mr. Williams: I do have family. My uncle is in Pennsylvania. I also have an accountability partner in Summerville, South Carolina who is almost like a brother to me. He has offered his support.

Chairman: Is that where, where do you plan on living?

Mr. Williams: If paroled I plan on going to Summerville, South Carolina. I've got a place for transitional housing. A place called Home of Home where I will live at the maximum of 30 days. I have about \$2500 in my savings right now and that time period will actually depend on how long SCDC takes to get that money to me. I also have a job lined up with Low Country Property Management also in Summerville, South Carolina making \$13 an hour.

Chairman: Okay. What will you be doing there?

Mr. Williams: Uh property management, um taking care of work orders. Any, basically anything that needs to be done to the property I'll be taking care of.

Chairman: Okay. All right. Now you told me about drug issues you had. Do you feel the need if you're granted parole to continue any type of drug treatment program?

Mr. Williams: Sir, I've been, my drug of choice was alcohol. I've been clean and sober since June 5th, 1996. I wasn't able to go through AA or NA here in SCDC simply because while I had the time, not to discourage anything that has to do with SCDC but those programs were meeting places to do illicit activity.

Chairman: Okay.

Mr. Williams: I tried to steer clear from those but they find accountability part it doesn't help me and if I were to get out, yeah, I do plan on getting counseling through the Veteran's Administration.

Chairman: Okay. Mr. Williams, uh, is there anything else that you want to make sure that this Board knows today?

Mr. Williams: Uh, I'd like the Board to know that no matter what happens I am truly sorry for what happened 28 years ago. The poor choice I made, my actions, my inactions, having resulted in the loss of somebody's life. There's no words that can express how truly sorry I am for that. And even though I wasn't the primary (inaudible) in this horrible act, I do claim responsibility for my poor choices.

Chairman: Okay. Thank you Mr. Williams. Let's hear from your attorney. Ms. Hansotia, we did receive your packet. Thank you very much for presenting that to us in a timely manner so that we could review it. So thank you very much. And if you'd like to make any statements you may do so at this time, ma'am.

Ms. Hansotia:

Thank you and I will try my best to be succinct. I don't want to spend too much of your time but it is truly and honor for me to be here before you today in front of you particularly because this gentleman is someone that I have known for many years and truly believe in. And so I am, really want to stress several things to you succinctly that I hope that you will hear today. He uh, I want to just briefly talk about the offense. As he mentioned he was the least culpable person involved and yet he has spent almost 30 years feeling deep remorse that he had not reached out for help that night. He did attempt to save the victim, got her out of cuffs in the car that evening. He was not aware of the events that happened before hand but as soon as he did that she bumped the back of the seat and the gentlemen who has since been put to death pointed a gun at her and shot her. In these horrible events that night but I think it's important for the Board to know that he was trying to release her and did not participate in the violence or other activities that happened that night. What he feels remorse about is not reaching out to the police for help. And he does feel true remorse. I think you've read about his background and the difficulties he encountered. Hopefully you've been able to see that in the memo. A very horrific childhood but in spite of growing up in severe abuse and neglect and in an unloved environment what shaped him and scared him were really internal scares in that he lacked self esteem and he was a shy young man seeking love. And he actually had no violent bone in his body to this day. He, as he mentioned struggled with alcohol abuse but has been sober for 25 years and it's only out of sheer grit that he's managed to do the things that he's done. Along with the help of many people along the way that he has cultivated and made a family where he had none growing up. And there are truly many people that care and love him particularly at Allendale. People like myself that are volunteers there who truly believe in him and will help him should he be granted parole today. I want to point out a couple of things that are extremely important to know. He talked about his work record. He's one of the few people that has worked the entire time that he's been in prison which almost 29 years. A very rare feat. And he's distinguished himself both in his work and his prison industry as well as getting his master hair care specialist certificate and then creating programs for other men to learn those same skills. He still teaches the hair care program today along with teaching the advanced artist program and ceramics program. He's a leader in all those areas and was recently chosen as well as a co-facilitator of the pet program at Allendale which I am sure you all have heard about. It's a life changing program that allows some of these men to have the first unconditional love from an animal that they've ever received in their life. Extremely important to know that he actually was able to save the life of a corrections officer at one point. He's modest and has maybe never brought this up before but, although it might be in your file.

Chairman:

Yes it is. We, it's in the packet that you sent us.

Ms. Hansotia: Okay. Then you're aware that you know, that I believe shows that he got over this residence and actually chose action and save the person's life at the risk of great danger to himself and I think that it's clear that they owe, they expressed great gratitude for that and believed that that officer could have been at least seriously injured if not killed that day if not for his help. He lives and leads in a character dorm in Allendale. He's a leader in every way as I said about the programs and I just in closing want to say that, given his background, being abused, neglected and abandoned, it's truly out of his own grit and determination and the fact that he is made of compassion and love and feeling that he has emerged from this, not violent but compassionate and kind to others and willing to teach them in the programs that he's developed and created. He has people that care about him. He has a lot of skills. He has a solid re-entry program with a guaranteed job, a place to live and people that will help him including myself and many other volunteers as well as his employer and his family member, his uncle. If this Board really believes in redemption I can not think of a better person for this opportunity than Mr. Williams. He truly, I believe, after almost three decades in prison deserves a chance to emerge and feel the taste of freedom and share his immense artistic and other gifts with the world on the outside of the prison gates. I hope that you give him that opportunity.

Chairman: Thank you very much ma'am and thank you Mr. Williams for appearing today. If ya'll will exit the room, we'll get an answer for you later today. Thank you ma'am. Thank you sir.

Female: One moment as our room clears. And the room is clear.

Chairman: Voice votes please. Mr. Boyd?

Mr. Boyd: Deny.

Chairman: Ms. Frederick?

Ms. Frederick: Deny.

Chairman: Mr. Gibbs?

Mr. Gibbs: Deny.

Chairman: Dr. Randolph?

Dr. Randolph: Deny.

Chairman: Ms. Taylor?

Ms. Taylor: Deny.

Chairman: Mr. Wideman?

Mr. Wideman: Deny.

Chairman: I have deny. Mr. Matthew Williams will be denied parole today one, two and three. The vote is unanimous.

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 21-ALJ-15-0023

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Matthew Williams, #215077.....APPELLANT

v.

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

AMENDED BRIEF OF RESPONDENT AND MOTION TO DISMISS

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ATTORNEY FOR RESPONDENT

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 2. The Parole Board did not violate Appellant’s right to due process because it stated the basis for denying him parole in compliance with all statutory and case law.4

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STATEMENT OF THE ISSUES ON APPEAL

1. Did the Parole Board violate the Administrative Procedures Act and abuse its discretion in denying parole to Mr. Williams without substantial evidence to support its decision?
2. Did the parole Board violate Mr. Williams' right to due process when it failed to state the basis for its denial of parole to Mr. Williams on the record?

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 passersby 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. It is unclear from the record whether he engaged in the direct appeal process.

Appellant became parole eligible in January 2013 and has had five parole hearings with his most recent on September 22, 2021. He filed this appeal on October 22, 2021. In his appeal, Appellant alleges 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.

Respondent argues that existing statutory and case law defeats all of Appellant's arguments, primarily because the hearing and the decision rendered at that hearing abide by all requirements imposed upon the Parole Board.

Respondent's brief follows.

ARGUMENT

1. The Parole Board comported with all applicable statutory and case law in denying parole to Mr. Williams, and this decision is supported by the record.

The Administrative Law Court's (ALC's) jurisdiction to hear final decisions of the Department is derived not only from the Administrative Procedures Act (particularly S.C. Code Ann. §1-23-800), but also from the decisions of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) and Furtick v. S.C. Dept. of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002). In Al-Shabazz, the Supreme Court created a new avenue by which inmates could seek review of some final decisions of a State Agency in "non-collateral" matters related to a conviction or sentence, i.e., matters in which an inmate does not challenge the validity of a conviction or sentence. The Court held that inmates could appeal those final Agency decisions to the ALC and ultimately to the circuit court pursuant to the Administrative Procedures Act. Al-Shabazz at 376, 527 S.E.2d at 754.

In Al-Shabazz, the Court recognized that "these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." 338 S.C. at 369, 527 S.E.2d at 750. When an inmate alleges that the Department erroneously determined that he was not eligible for parole, the provisions of Furtick are invoked

because it involves a final appealable decision regarding sentence, sentence-related credits, or custody status. The Court held that, in order to determine whether an inmate's claim against the Department is entitled to review by the ALC under the procedures set forth in Al-Shabazz, it is first necessary to determine whether the inmate has a liberty interest in gaining access to the parole board. 352 S.C. at 598, 576 S.E.2d at 149. The Court determined that the "*permanent denial of parole eligibility*" by the Department "implicates a liberty interest sufficient to require at least minimal due process." Id. (emphasis in original).

Appellant argues that, because he was not provided with every element the Board used to make its decision, such decision is not supported by the record and his right to due process was violated. For this proposition, he cites that the Board Chairman announced the reasons for denial as "one, two, three," and that the results of his risk assessment required by §24-21-10(F)(1) of the S.C. Code of Laws were not provided. Appellant is correct that the numbers referred to at the hearing correspond to the numbers of the grounds for denial listed in his letter of rejection. The numbers are a shorthand for the chairman to provide information to the hearing support staff in order to expedite hearings.

Regarding the provision of the risk assessment evaluation, there are multiple reasons why this information is not provided to inmates. Initially, because parole hearings are not trials and inmates are not afforded full due process, they are not entitled to review every piece of evidence used in the Board's consideration. Further, the statute requires the development and use of a risk assessment and does not specify that this information is for anything other than internal use. Provision of this information to inmates could have negative consequences long-term. Lastly, §24-21-290 prevents the sharing of any information provided to probation agents. This section has been interpreted to mean that information regarding probation and parole is confidential.

2. The Parole Board did not violate Appellant's right to due process because it stated the basis for denying him parole in compliance with all statutory and case law.

In arguing that his due process was violated due to the Board's alleged failure to state their bases for denial, Appellant makes many assumptions about how the process works. As with all decision-making processes, there are many steps, not all of which are seen by each party. In making determinations regarding parole, the members of the Board are provided with documentation that includes the risk assessment, disciplinary records, information about the crime(s), comments from victims and law enforcement, and other information. This is provided in advance of the hearing so the members of the Board can review it at their own pace. The fact that these are not discussed on the record does not mean they were not reviewed or considered.

Appellant repeatedly cites Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs., 377 S.C. 489, 661 S.E.2d 106 (2008), primarily for the proposition that denials of parole must outline the criteria listed in §24-21-640 and a failure to do so "infringes a state-created liberty interest." 377 S.C. at 499, 661 S.E.2d at 112. However, in order to understand the practical import of Cooper, it must be read in conjunction with Compton v. S.C. Dep't of Prob., Parole & Pardon Servs., 385 S.C. 476, 685 S.E.2d 175 (2009), which addresses the frequent misinterpretations of Cooper. In Compton, the Supreme Court held that the intention of its Cooper opinion was to ensure that inmates received an explanation of why they were denied parole as well as proof it had considered the statutory criteria and the fifteen criteria set forth in Form 1212. These steps ensure inmates receive the "warrant[ed] minimal due process protection" surrounding a state-created liberty interest. Id., 385 S.C. at 479, 685 S.E.2d at 177. "[I]f 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." Id.

In the case at bar, the written record shows that the Board considered all necessary factors as contemplated in Cooper and Compton. ROA, p.1. “Careful consideration” can and does occur by each board member as evidenced by their unique votes. Should they disagree with the reasons for rejection presented by the Chairman, they could ask for changes. As noted above, the numbers to which Appellant takes offense are merely shorthand and correspond with the findings of fact listed in the notice of rejection. Importantly, there is no requirement in statute or case law that the results of a risk assessment pursuant to §24-21-10(F)(1) must be provided to an inmate at any point in time. See Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S. 1, 15, 99 S. Ct. 2100, 2108 (1979) (“[W]e find nothing in the due process concepts as they have thus far evolved that requires the Parole Board to specify the particular “evidence” in the inmate’s file or at his interview on which it rests the discretionary determination that an inmate is not ready for conditional release.”) Quite simply, “[t]o require the parole authority to provide a summary of the evidence would tend to convert the process into an adversary proceeding and to equate the Board’s parole-release determination with a guilt determination.” Id.

Here, Appellant’s appeal does not involve a determination by the Department that he is permanently ineligible for parole. Instead, Appellant is challenging the Board’s procedures and its decision not to grant him parole at his regularly scheduled parole hearing – a routine denial of parole. The Supreme Court addressed this very issue in Furtick, where the Court noted “[a]lthough this provision creates a liberty interest in parole eligibility, it **does not** create a liberty interest in parole.” 352 S.C. at 598, 576 S.E.2d at 149 n.4 (emphasis added). Since no liberty interest is implicated when a potentially eligible inmate is denied parole by the Board, an inmate has no right to appeal the denial of parole to the ALC (under Furtick or any other rationale), but instead must await their next parole hearing. Id. Therefore, pursuant to the Supreme Court’s decision in Furtick,


the Board's decision is not appealable to the ALC. Similarly, as considered above, if the Board complies with procedure in stating that it considered the factors in §24-21-640 and the criteria in Form 1212, this is a routine denial of parole and no other issues have been raised to consider it reviewable by the ALC. Therefore, "the ALC can summarily dismiss the inmate's appeal." Cooper, 377 S.C. at 500, 661 S.E.23 at 112.

Even if this court finds the issue raised is appealable under Furtick, Respondent submits the Board acted in full compliance with South Carolina law. Appellant was heard by the full Parole Board and the panel members voted unanimously to reject Appellant for parole. ROA, p.1. The reasons for rejection cited by the Board are valid reasons and comply with §24-21-640 of the S.C. Code of Laws, the criteria of Form 1212, and the cases of Cooper v. SCDPPPS, 377 S.C. 489, 661 S.E.2d 106 (2008) and Compton v. SCDPPPS, 385 S.C. 476, 685 S.E.2d 175 (2009). All of the foregoing factors prevent this court from reviewing the instant appeal and require its dismissal.

CONCLUSION

Based on the foregoing arguments, Respondent respectfully requests the Appellant's arguments be dismissed and the final decision of the Board be affirmed.

Respectfully submitted,



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Columbia, South Carolina
February 2, 2022



South Carolina Department of Probation, Parole and Pardon Services

Criteria for Parole Consideration

BBB 04

Inmate Name WILLIAMS, MATTHEW	SCDC# 00215077
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SC Board of Probation, Parole and Pardon Services P.O. Box 207 Columbia, SC 29202

Criteria for Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. The files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some errors or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the Community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow his/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate
15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.
16. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that the inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate fail to complete any one of these conditions or disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges. If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections. *FORM 1212 DELIVERED TO ACE BY PE KITRELL*

I certify that the above material has been explained to me, and I have received a copy. *On 5-3-2021*

Inmate's Signature: ***No signature required due to COVID-19 Pandemic***	Date:	Witness Signature: <i>[Signature]</i>	Date: <i>5-3-21</i>
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Memorandum Supporting Parole for Matthew Williams

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OFFENSE

It is crucial that the Parole Board understand that Mr. Williams was the least culpable by far of the three co-defendants involved. He chose to testify against his co-defendants even though he understood that would put him at extreme risk for retaliation once in prison. His testimony was integral in convicting the two primary offenders involved in this case. He continues to feel haunted by what happened to the victim, and telling the truth at trial was one way he could demonstrate his regret early on.

Mr. Williams was very young at the time. The severe parental neglect and abuse inflicted upon him and his sister, explained in further detail in this memo, left him without any self-esteem or belief in himself. His incredibly difficult childhood led him to suffer from extreme anxiety and depression. He began drinking to ease his difficulty with social interactions. On that awful day, he was drinking heavily and taking pain medication for a recently broken collarbone. He was unaware of many of the horrific actions that preceded the co-defendants bringing Ms. McLaughlin to their car, blindfolded and handcuffed. Upon seeing her being placed in the back seat floor of the vehicle, Mr. Williams attempted to free her. He was able to release her from the cuffs placed on her by Joseph Gardner; but struggling with his injured collarbone, he was unsuccessful in lifting her up from the back seat floor. Her movement alarmed Gardner, who turned around and shot her multiple times before pointing the gun at Mr. Williams.

Mr. Williams knows that none of these things absolve him of responsibility for his actions that day. He is riddled with remorse and wishes he could go back and change what occurred.

The offense for which Mr. Williams pled guilty received a great deal of media attention at the time. The sensationalism surrounding any crime can make the task of understanding the truth much more difficult, and that was the case in this instance. Mr. Williams childhood was a nightmare that no child should ever endure. Experiencing severe trauma throughout childhood impacts an individual's growth and development and causes other psychological damage that can last a lifetime if unaddressed. The trauma inflicted on Mr. Williams, among other things, led to his difficulty with communication as well as with standing up to more dominating personalities.

Mr. Williams acknowledges being present that day, and continues to feel deep sadness and remorse for associating with the co-defendants, and for not calling for help. He understands that by not attempting to stop the others, and failing to contact law enforcement, he appeared complicit in their actions even though he did not attack or rape Melissa McLauchlin.

REDEMPTION

It is critically important to understand the environment in which Mr. Williams grew up. He was born to a Black father and a caucasian mother, in a time when interracial couples were not widely accepted in the South. He never saw his parents together as a couple and was discouraged from speaking or being heard as a child. Both parents abandoned him and his sister at birth.

He lived with his aunt until age 8, where he suffered from horrendous physical and psychological abuse, as well as neglect. After one last time of being burned on his head with a cigar for failing to obey his aunt, the unrelenting cycle of abuse became too much for him to bear. He took his sister and ran away to seek safety in his grandparents' home. He found refuge there for a few years.

Eventually, his uncle, who remains his fierce advocate still today, forced Mr. Williams' mother to take her children into her custody. Nonetheless, his mother never exhibited any desire to be his parent. Her focus was on her new romantic partner, a woman; and she expressed only visceral anger and disgust with her biological son and daughter. Mr. Williams and his sister were repeatedly told to stay quiet; and to keep their feelings to themselves. They were made to feel at fault for their existence, and served as a constant reminder of their white mother's prior connection to their black father.

This abuse and disdain caused immeasurable harm to Mr. Williams. He constantly sought his mother's approval, and tried to show his mother he was worthy of love. His efforts were never rewarded. His mother was a "keeper of secrets," according to Mr. Williams. One of her secrets was having interracial children, and another was her having a female partner. Both of these things were not accepted in society in the 1970's and 1980's. Her failure to provide a

loving home was exacerbated by her insistence on secrecy. "Children are not to be seen or heard," was a common mantra heard by the children at home.

His horrific childhood left him confused about race, and without a foundation of familial love and support. He was pushed away by almost everyone that was supposed to love and care for him, with the exception of his sister. His bond with her was his closest; and her death two years ago hit him harder than any of the many tragedies he has suffered in his life.

Into this void, Mr. Williams joined the Navy at the young age of 17. Initially, he was thriving as a boatswain. He performed maintenance work and security watches. He traveled throughout the Eastern seaboard and to the Caribbean. But eventually his drinking became a problem and he was "other than honorably discharged."

He met one of the co-defendants, Matthew Mack, through the Navy. Mack lived with another co-defendant, Joseph Gardner. After the Navy, Mr. Williams found himself homeless. Mack offered Mr. Williams a place to live with himself and Gardner, and he accepted. He fell into old habits, and began drinking excessively and partying. But unlike the other two, Mr. Williams never used drugs and was not involved in any violence towards Melissa McLaughlin or anyone else.

Mr. William's transformation continued inside prison. He struggled in the first few years as a young man facing a life sentence. He was also consumed by regret and compassion for the woman whose family had lost their daughter. A final, painful phone call with his mother on her birthday clarified that he needed to let go of any hope that the people who were his birth parents would ever fulfill a parental or loving role in his life.

From that point onwards, he summoned the strength to change from within himself; remaining clean and sober from June 5, 1996 up through today. He reflected on his past actions, and determined that he made bad decisions when he drank. He continues to work with accountability partners, some of whom live outside prison and can continue helping him stay sober once released.

At the same time, Mr. Williams began transforming himself in other ways. It is often in a single moment that a choice must be made that can define us for the rest of our lives. Mr. Williams worked as a custodian in the medical unit at Evans prison. One day while he was

cleaning, he heard a commotion and went to check it out. What he saw was extremely disturbing. He witnessed Correctional Officer Crouch on the ground being pummeled relentlessly by a fellow incarcerated person. A short distance away, he saw several other officers pounding on a locked door, trying to get inside to help Officer Crouch. From another direction Mr. Williams noticed a nurse coming to the officer's aid, only to see her be sprayed with mace by the incarcerated man. In an instant, Mr. Williams made a decision to save Officer Crouch. He used his strength to subdue the aggressor and save Officer Crouch's life. He took a side and did the right thing, demonstrating that he had learned from his past by not remaining on the sidelines when people were committing wrongdoing. Aaron Joyner, former SCDC officer in charge of security at Evans, recognized Williams' heroism and expressed his deep appreciation for his saving the life of a fellow officer. (see supplementary documents)

We tried to reach Officer Crouch or Aaron Joyner prior to this hearing, but were not successful. We have included a copy of Mr. Joyner's response to Mr. William's request for help in moving to Allendale to access programming. It is clear from Mr. Joyner's written comments that he saw Williams' actions as heroic. Mr. Joyner's statement that Officer Crouch was rescued from possible severe injury or death by Williams' quick thinking and actions is a testament to Mr. Williams' character and empathy for others. Taking a stand to protect a prison guard against fellow incarcerated men, much like testifying against his co-defendants, once again put him in the crosshairs and endangered his own personal safety. But on both occasions, Mr. Williams chose to do the right thing and has never regretted those choices.

Mr. Williams continues to distinguish himself in other ways as well. He has accomplished a rare feat by remaining employed for his entire time in prison. His work included being the most valued employee in the Prison Industry program at Evans, where he worked with Midcon Cables for approximately 15 years. He assisted Midcon CEO Chuck Wheeler in developing and engineering a new molding process for the company, as well as working in several other areas of the prison industry program while at Evans.

As an attorney and board member of the Character Restoration Initiative at Allendale prison, I have known Mr. Williams for several years. Prior to the pandemic, I traveled to Allendale prison at least monthly and was able to observe him and speak with others about his

character at length. Former warden John Pate implemented a “character-based” curriculum at Allendale prison approximately ten years ago, whereby incarcerated men interested in taking programs and improving themselves must sign a social contract and agree to abide by behavioral terms while holding others accountable for the same. Mr. Williams was drawn to this concept and has flourished at Allendale.

Mr. Williams has demonstrated his superior leadership skills as well as his ability to work as a team. He was chosen as an incarcerated leader and member of the Character Restoration Initiative Executive Volunteer Board at ACI, a group of individuals who have demonstrated exceptional integrity, character, and leadership abilities. He works diligently alongside ACI volunteers to troubleshoot ways to resolve issues, and develop meaningful programs for fellow inmates.

Mr. Williams lives in Bamberg unit, home to graduates and leaders of the character program at Allendale. Here he teaches other men about character, and helps them live a life of integrity. He has a natural curiosity about many subjects, and a desire to continue learning throughout his life.

While he is a natural, low-key leader of others, Mr. Williams is also the quintessential team player. When he commits to a task, others know with certainty he will complete it, quietly and without fanfare. He is not concerned with credit, and performs many chores behind the scenes without prompting or recognition.

Mr. Williams also sought out and completed countless programs while in prison in an effort to improve his skills, experience and knowledge. In particular, he has developed a deep well of talent in the arts with the assistance of Elizabeth Ringus and Delane Marynowski, leaders of the Ceramics and Advanced Artists programs at Allendale prison. Elizabeth owns her own business and art gallery, and is a master potter with more than 47 years of experience in the ceramics industry and as an instructor. She has taught the Jeremiah 18 Prison Pottery Program at ACI since 2014. The program requires apprentices to meet the high standards of the Character Restoration Initiative (CRI) in order to participate. She teaches all aspects of ceramics, including history, sociology, chemistry and artistry. She chose Mr. Williams as her studio assistant to help facilitating the course, and he has served in that role for the past 3.5 years.

Since the COVID-19 pandemic closed prisons to volunteers, he has served as the lead instructor for the program, teaching multiple ceramics classes at a time and continuing to earn the respect and admiration of SCDC staff, volunteers and his peers.

Ms. Marynowski created the Advanced Artists program at Allendale prison after retiring from her career as a school teacher for 31 years. She witnessed Mr. Williams overcome his natural shy manner to teach and lead other students in pottery and the arts. As a result, Ms. Marynowski featured several of his pottery pieces in a Galley Show at Art League of Hilton Head in 2019. This opportunity allowed the local art community to see Mr. William's artwork; and his talent was recognized by many. His artistic talent, combined with his integrity and leadership, led the Art League of Hilton Head to earmark a scholarship for him upon his release from prison. This will enable Mr. Williams to show and sell his artistic work at the League for a year at no cost to himself. Ms. Marynowski has also graciously offered to serve as a liaison between Mr. Williams and the art community in finding other galleries to showcase his work; thus providing him with a solid second income while establishing himself as an artist.

Mr. Williams has also transformed personally, from an extremely reserved young man when he entered prison, to a much more confident and determined man. He is seen by volunteers, staff and peers as a strong and compassionate leader today. He earned his Master Hair Care Specialist by logging more than 1500 hours in instruction and hair care experience and passing the state exam in 2013. He has also worked more than 1600 hours as a barber for both staff and incarcerated people. He parlayed his extensive experience as a Master Barber into creating a course for other incarcerated men to learn the same skills. He also continues to help Ms. Ringus teach ceramics to others, serving as the top instructor of the program during the pandemic and leading multiple classes during the year.

Mr. Williams has also been heavily involved with the pet program at Allendale prison since 2015. His calm, intelligent and compassionate manner distinguished him from others and led to him recently being chosen as the co-facilitator of the MeowMate/MuttMate animal program at Allendale prison. Being a leader of the animal program requires Mr. Williams to manage other men in their care for rescued dogs, assisting with training, scheduling and oversight. In addition, he aids external volunteer program directors with ordering pet food and

other supplies, and ensures that their directives are enacted. He has housed, groomed and trained at least 30 dogs since he began participating in the animal program in 2015. Even though it is often difficult to say goodbye to the pets for whom he grows most attached, he understands the larger goal is to save pets from facing euthanasia; and allow them to be adopted into loving homes. Mr. Williams expressed gratitude for his ability to lead and work with the pet program over the years, as it has provided himself and many others with the first experience of unconditional love in their lifetimes. He continues to be an integral part in ensuring this program remains available to the men at ACI.

PLANS FOR REENTRY INTO SOCIETY

Mr. Williams was deprived of the love and compassion of family for his entire life. In lieu of that void, he has created a remarkable support system to bolster him when he needs it. He has accountability partners to ensure he remains clean and sober. He has an uncle he loves that remains in his life and supportive of his release. And he has the support and love of many volunteers that have met him during his time at Allendale Correctional Institution who are willing to support and help him upon release. He has effectively created a loving family where none existed; one that cares for him and will continue to support him.

Mr. Williams has an offer in writing to work for Corwin Melette as a maintenance coordinator in the Summerville area. Mr. Melette hopes that Mr. Williams will be able to begin work as soon as possible. Mr. Melette has also provided a letter of support for Mr. Williams' release. (see supplemental documents). Mr. Williams has a place to live in Home of Hope Shelter in Summerville. (see supplemental documents)

Ms. Marynowski and Ms. Ringus are strong supporters of Mr Williams' release, and have provided letters supporting their reasoning in detail. Ms. Marynowski has also procured a scholarship for Mr. Williams to use once released from prison to sell his pottery and art at the Art League of Hilton Head free of charge for one year. She also promises to assist him in connecting with other well-known artists in the state and assisting him in finding other galleries to showcase and sell his artwork. This will provide Mr. Williams with a strong second source of income and allow him to pursue a more full-time profession in the arts.

Mr. Williams also enjoys the loving support of his uncle, Joseph Cary. Mr. Cary regularly visited him every year at Christmas, making the lengthy trek from Pennsylvania to Allendale to see his beloved nephew. Mr. Cary has provided a written offer of room and board, living with him in his home in Pennsylvania. Mr. Williams greatly appreciates his uncle's love and kindness, but plans to take the job offer in Summerville that has been offered to him.

Finally, there is a strong group of retirees that have dedicated their lives to volunteering at Allendale prison; teaching the men a variety of programs from Jump Start to beekeeping, animal grooming, landscaping, ceramics and much more. This group, referred to as Character Restoration Initiative (CRI), has gotten to know Matthew Williams very well over the past several years. There are countless individuals who are volunteers who wish to see him granted parole after observing his diligent and compassionate efforts at teaching other men barbering and artistic skills. CRI has plentiful clothing to provide for him if he should be granted parole, and is dedicated to assisting him in other ways as well upon reentry into society. Many volunteers view themselves as his "family" already, and wish to ensure he is successful in his future endeavors.

SUMMARY

In summary, Matthew Williams came into this world as a child without parents, searching in vain for the love that is owed to every child. He suffered deplorable abuse and neglect as a child but has endured. During his almost three-decade long incarceration in SCDC, he has gone through a frequently painful but ultimately successful transformation of himself from a neglected and abused child without belief in himself, to a confident, compassionate leader of others who constantly gives back to his community.

He has cultivated an extremely strong support network comprised of people who are not blood relations but who love him nonetheless. Mr. Williams has developed enduring relationships with the men and women in his network through his involvement with prison programs and his leadership roles at ACI. Members of his network are dedicated to providing him with employment, housing, and other assistance. He has remained employed during his entire period of incarceration, working with distinction in prison industry and acquiring a

Master Hair Care Specialist certificate. He saved a corrections officer's life while working at Evans prison. He created a program in barbering and hair care to share his expertise and teach his peers. He also helps Ms. Ringus in leading the ceramics program so he can give back to others for the help and love he has been shown.

Given the many obstacles Mr. Williams has overcome, combined with the fact that he was much less culpable than his co-defendants but nonetheless has taken full responsibility for his actions, we strongly encourage you to grant Matthew Williams parole at his hearing on September 22, 2021.

RECEIVED

Mar 14 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah B. Durden, Administrative Law Judge

Case No. 21-ALJ-15-0023-AP

Appellate Case No. 2022-001585

Matthew Williams, #215077,

Appellant,

v.

South Carolina Department of
Probation, Parole and Pardon Services

Respondent.

CERTIFICATE OF COUNSEL FOR THE RECORD ON APPEAL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material, and certifies that all material included is relevant to this appeal.

February 22, 2023

s/ Charles West

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Mar 14 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah B. Durden, Administrative Law Judge

Case No. 21-ALJ-15-0023-AP

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Matthew Williams, #215077,

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South Carolina Department of
Probation, Parole and Pardon Services

Respondent.

PROOF OF SERVICE

I, the undersigned Paralegal of the law offices of Nelson Mullins Riley & Scarborough, LLP, attorneys for Appellant Matthew Williams, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified by emailing a copy of the same to the following lawyer(s) at his or her primary e-mail address listed in the Attorney Information System:

Document: Record on Appeal

Counsel Served: Matthew C. Buchanan, General Counsel
South Carolina Department of Probation,
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February 22, 2022

s/ Kelli S. Eargle
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Paralegal