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.

FINAL BRIEF OF APPELLANT

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INTRODUCTION

In this appeal, a prisoner challenges an Administrative Law Judge's conclusion that she lacked jurisdiction to review a decision of the South Carolina Parole Board denying him parole despite her contemporaneous findings (1) that no indication in the parole record suggested that the Board carefully considered his record when reaching its decision and (2) that the Board apparently conceded that it did not discuss his case at his hearing. The Judge affirmed the Board's decision due to the Board's inclusion of a rote declaration reporting its purported compliance with statutory decision-making procedures in a letter denying the prisoner parole. This case thus presents a simple but significant question: Must the Board follow statutory decision-making procedures, or simply say that it did?

STATEMENT OF THE CASE

Appellant Matthew Williams was incarcerated in 1996 after being sentenced to life imprisonment with the possibility of parole. (*See* R. p. 100; R. p. 90.) He became parole eligible in 2013. (R. p. 90.) After four unsuccessful parole hearings, he attended a fifth parole hearing virtually on September 22, 2021. (R. p. 90) Assisted by counsel at that hearing, he explained his

intensive preparation for parole. (R. pp. 81–82.) His attorney then also reinforced points raised in her written memorandum submitted to the Board in advance of the hearing. (R. pp. 83–84; *see generally* R. pp. 97–106.) Williams was then dismissed from the virtual hearing room. (*See* R. p. 84.) Once Williams and his attorney left the virtual room, the following exchange occurred:

Chairman:	Voice votes please. Mr. [Panelist A]?
Mr. [Panelist A]:	Deny.
Chairman:	Ms. [Panelist B]?
Ms. [Panelist B]:	Deny.
Chairman:	Mr. [Panelist C]?
Mr. [Panelist C]:	Deny.
Chairman:	Dr. [Panelist D]?
Dr. [Panelist D]:	Deny.
Chairman:	Ms. [Panelist E]?
Ms. [Panelist E]:	Deny.
Chairman:	Mr. [Panelist F]?
Mr. [Panelist F]:	Deny.
Chairman:	I have deny. Mr. Matthew Williams will be denied parole today one, two and three. The vote is unanimous.

(R. pp. 84–85 (panelist names replaced with generic titles in brackets).)

The next day, on September 23, 2021, Williams's counsel received a letter (the "Rejection Letter") from the Department of Probation, Parole and Pardon Services (the "Department") confirming the Board's decision to deny Williams parole. (*See* R. p. 11.) This rejection letter stated the following:

> 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 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. [sic] The Parole Board had determined [sic] 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

(R. p. 11 (signature block omitted).)

Williams appealed the Board's decision to an Administrative Law Judge ("ALJ") on October 22, 2021. (R. p. 3.) The Board unsuccessfully moved to dismiss Williams's appeal, and Williams then moved the ALJ to remand the case for a new parole hearing on the ground that no evidence in the record suggested that the Board considered the information required by statute in its decision-making process. (R. p. 3.) The Board opposed remand, primarily on the ground that the Board "followed the requirements laid out in *Cooper v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008), 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." (R. p. 69 (original short citation expanded); *see* R. p. 6.)

On September 13, 2022, the ALJ issued a written order without a hearing denying Williams's motion for remand and affirming the Board's decision denying him parole. (*See* R. p. 9.) In her order, the ALJ found that no record evidence suggested that the Board "carefully considered" Williams's record and that the Board apparently conceded that it did not discuss Williams's case at his parole hearing:

> The Department acknowledges that the Board did not deliberate or consider the relevant factors as a body at any point, stating, 'The 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.' The Department does not claim that any Board member actually viewed or discussed the information contained in the record.

(R. p. 6 (original brackets, ellipses, and citation sentence omitted).)

> Here, the Department offers no evidence [that] the Board carefully considered the record of [Williams]. Instead, the Department appears to concede [that] the Board did not discuss [Williams]'s case at his parole hearing when it argues [that] verbal discussion of [Williams]'s record is unnecessary. Reasonable minds cannot conclude [that] the Board carefully considered [Williams]'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 [Williams]'s record.

(R. p. 8.)

Despite these findings, she concluded the following: "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." (R. p. 9.) In her view, the South Carolina Supreme Court's decision in *Compton v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 385 S.C. 476, 685 S.E.2d 175 (2009), "establishe[d] that the Board has unfettered discretion in making parole decisions so long as it includes the boilerplate language present" in the rejection letter denying Williams parole. (R. p. 9.)

Williams moved the ALJ for a rehearing; she denied that motion on October 13, 2022. (R. p. 1.) On November 10, 2022, Williams served and filed with this Court his Notice of Appeal of (1) the ALJ's September 13, 2022 order denying his motion to remand and affirming the Board's decision denying him parole and (2) the ALJ's October 13, 2022 order denying his motion for rehearing. Williams now respectfully asks this Court to reverse the ALJ's errant denial of his motion to remand and her affirmation of the Board's decision denying him parole.

STANDARD OF REVIEW

"In reviewing a final decision of the ALJ," the Court of Appeals "review[s] alleged errors committed by the ALJ" pursuant to the Administrative Procedures Act ("APA"). *See Al-Shabazz v. State*, 338 S.C. 354, 379, 527 S.E.2d 742, 755 (2000). The APA "establishes the standard of review and the court's authority in reviewing the ALJ's decision." *Id.*

Under the APA, the Court of Appeals may "remand [a] case for further proceedings" or "may reverse of modify [an ALJ's] decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantive evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

S.C. Code Ann. § 1-23-610(B); *see also id.* § 1-23-380(5).

The court's review of the ALJ's "order must be confined to the record," and "[t]he court may not substitute its judgment" for the ALJ's judgment "as to the weight of the evidence on questions of fact." *Id.* § 1-23-610(B). The ALJ's statutory interpretations, however, are "question[s] of law subject to de novo review." *Barton v. S.C. Dep't of Probation Parole & Pardon Servs.*, 404 S.C. 395, 414, 745 S.E.2d 110, 120 (2013) (reversing ALJ's acceptance of statutory interpretation proffered by Department).

"In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for

action as the court considers appropriate." S.C. Code Ann. § 1-23-380(4). "[A] reviewing court has the duty to examine the procedural methods employed at an administrative hearing to ensure that a fair and impartial procedure was used." *Ross v. MUSC*, 317 S.C. 377, 380, 453 S.E.2d 880, 883 (1994) (quoting 2 AM. JUR. 2D *Administrative Law* § 611).

ARGUMENT

I. The ALJ Prejudiced Williams's Substantive Rights by Finding that She Lacked Jurisdiction to Review the Board's Decision Denying Him Parole Despite Her Finding that No Record Evidence Indicated the Board's Careful Consideration of His Record and that the Board Apparently Conceded that It Did Not Discuss His Case at His Parole Hearing.

The ALJ prejudiced Williams's substantive rights by finding that she lacked jurisdiction to review the Board's decision denying him parole, despite her finding that no record evidence indicated the Board's careful consideration of his record and her finding that the Board apparently conceded that it did not discuss his case at his parole hearing. (*See* R. pp. 6, 8.) Under South Carolina law, she had jurisdiction to review the Board's decision for deviations from statutory decision-making procedures, and these findings authorized her to remand the case. Her conclusion to the contrary and her affirmation of the Board's decision despite these findings were error.

The Board maintains that its decision here was a "routine denial of parole" and that, as such, its decision was unreviewable by the ALJ. (R. p. 6.) The parties, however, dispute (1) the constitutive elements of a "routine denial of parole" under *Cooper v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008); (2) whether the Board's decision denying Williams parole was "routine"; and (3) the jurisdictional effect of a determination that Williams's denial was "routine." Specifically, Williams contends that his denial was not "routine" because a denial of parole is only "routine" when the Board first follows statutory decision-making procedures and then sufficiently explains its decision in a rejection letter. (*See* R. pp. 77–78; R.

pp. 6–7.) The Board, conversely, contends that Williams' denial was "routine" because a denial of parole is "routine" solely by virtue of a sufficient explanation in a rejection letter. (*See* R. pp. 69–70; R. p. 6.) The ALJ did not expressly deem the Board's decision "routine," but seemingly concluded as much. (*See* R. p. 9.)

As detailed below, whether the Board's decision constituted a "routine denial of parole" or not, the ALJ had jurisdiction to review the Board's compliance with statutory decision-making procedures when reaching its decision and to remand the case for rehearing when she found no evidence supporting the Board's procedural compliance. Williams thus asks this Court to reverse the ALJ's decision concluding otherwise and to remand the case for a rehearing compliant with statutory decision-making procedures.

A. If the Board's Denial of Parole to Williams Was "Routine," the ALJ Had Jurisdiction to Assess the Board's Adherence to Required Decision-Making Procedures in Reaching its Decision.

Assuming *arguendo* that the Board's decision denying Williams parole was a "routine denial of parole" (as the Board maintains), the ALJ erred in concluding that she lacked jurisdiction to review it and to remand the case based on her findings after review. Under South Carolina Supreme Court precedent, the ALJ has jurisdiction over routine parole denials to review the Board's adherence to statutorily-required decision-making procedures.

The ALJ has "limited authority to review" a routine denial of parole "to determine whether the Board followed proper procedure" in reaching its decision. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112. After all, an inmate has "a right to require the Board to adhere to statutory requirements in rendering a decision." *Id.* at 499, 661 S.E.2d at 112. In *Cooper* itself, the South Carolina Supreme Court acknowledged that the availability of ALJ review risks "an overabundance of appeals from denials of parole." *Id.* But, in resolving this concern, the Court

did not foreclose ALJ review—quite the contrary. *See id.* at 500, 661 S.E.2d at 112. The Court instead instructed the Board to "issue[] orders that are sufficiently detailed *for the AL[J] to conduct appellate review*, limited to the Board's adherence to [S.C. Code Ann. § 24-21-640], of decisions denying parole."[1] *Id.* (emphasis added); *see also id.* ("If the Board complies with this procedure, the decision will constitute a routine denial of parole *and the AL[J] would have limited authority to review the decision to determine whether the Board followed proper procedure*." (emphasis added)). Certainly, the Board's failure to issue "sufficiently detailed" rejection letters may itself be grounds for challenge (even if, in fact, the Board followed obligatory procedures in reaching its decision).[2] Nevertheless, the ALJ has jurisdiction to review a Board's decision-making process for statutory compliance *even when* its rejection letters are sufficiently detailed. *See id.*

[1] Section 1-23-600(D) of the South Carolina Code limits the ALJ's review of "appeal[s] involving the denial of parole," but not when those denials "*also* implicate[] a state-created liberty or property interest." *Cf. Howard v. S.C. Dep't of Correcs.*, 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012) (addressing prisoner's challenge to provision of S.C. Code Ann. § 1-23-600(D) adopted in 2008 that prohibits ALJ from hearing inmates' appeals "involving the loss of the opportunity to earn sentence-related credits"; highlighting concession by the Department of Corrections that "a literal reading" of this prohibition "would not be permissible"; and holding that, even under that prohibition, "a matter is reviewable by the AL[J] where an inmate's appeal *also* implicates a state-created liberty or property interest"), *applied in Spigner v. S.C. Dep't of Probation, Parole & Pardon Servs.*, No. 2015-UP-204, 2015 WL 1681270, at *1 (S.C. Ct. App. Apr. 15, 2015) (per curiam); *Bagley v. S.C. Dep't of Probation, Parole & Pardon Servs.*, No. 2014-UP-326, 2014 WL 4217379, at *1 (S.C. Ct. App. Aug. 27, 2014) (per curiam).

[2] Such a failure may force the ALJ to "conclude that the Parole Board's decision was arbitrary and capricious"—even if, in fact, the Board's decision was not. *See Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; *see also Compton*, 385 S.C. at 479, 685 S.E.2d at 177 ("Because the Parole Board in *Cooper* neither offered an explanation nor indicated it had considered the statutory criteria . . . , we had no other choice but to determine the order was defective and the decision was arbitrary and capricious."). This rule makes sense: The Board's failure to show its work prevents "meaningful review by the ALJ." *See Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757. Other agencies are subject to the same rule. *See Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) ("The findings of fact 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.").

Here, assuming *arguendo* that the Board's decision denying Williams was a "routine denial of parole," the ALJ had jurisdiction "to determine whether the Board followed proper procedure" in reaching its decision. *See id.* The ALJ effectively undertook this review, finding that no record evidence indicated the Board's careful consideration of Williams's record in its decision-making process and that the Board apparently conceded that it did not discuss his case at his parole hearing. (*See* R. pp. 6, 8.) As she implied, this evidence sat uncomfortably with the South Carolina Code's prescriptions for the Board's decision-making procedures when determining parole:

> The [B]oard 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: [1] that the prisoner has shown a disposition to reform; [2] that in the future he will probably obey the law and lead a correct life; [3] that by his conduct he has merited a lessening of the rigors of his imprisonment; [4] that the interest of society will not be impaired thereby; and [5] that suitable employment has been secured for him.

(R. p. 5 (quoting S.C. Code Ann. § 24-21-640); *see* R. p. 6, 8–9.) The South Carolina Code further requires the Board to "use in making [its] parole decisions" a "validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior." *Id.* § 24-21-10(F)(1). Finally, as the ALJ acknowledged, the Code also requires the Board to "establish written, specific criteria for the granting of parole . . . . This criteria must reflect all of the aspects of [section 24-21-640] and include a review of a prisoner's disciplinary and other records." (R. p. 5 (quoting S.C. Code Ann. § 24-21-640).) The Board has established sixteen "written, specific criteria" embodied in its Form 1212, entitled "Criteria for Parole Consideration." (*See* R. p. 96.)

Considering these statutory requirements in the case at bar, however, the ALJ found no indication in the record suggesting that the Board carefully considered Williams's record in compliance with the statutory decision-making procedures. (*See* R. pp. 6, 8.) As noted above, the

Board's Rejection Letter identifies the following bases as "findings of fact": (1) "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."[3] (R. p. 11.) The Rejection Letter further declares that, after "careful consideration" of the "the characteristics" of Williams's offenses and record, the Form 1212 factors, the section 24-21-640 factors, and the section 24-21-10(F)(1) "actuarial risk and needs assessment factors," the Board denied Williams parole.[4] (*See* R. p. 11; *see also* R. p. 6.)

Assessing the record, however, the ALJ observed the following—in stark contrast to the Rejection Letter's rote recitation:

> The Department acknowledges that the Board did not deliberate or consider the relevant factors as a body at any point, stating, 'The 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.' The Department does not claim that any Board member actually viewed or discussed the information contained in the record.

(R. p. 6 (original brackets, ellipses, and citation sentence omitted).)

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

[3] This precise set of bases for denial are found in both the *Cooper* and *Compton* decisions. *See Cooper*, 377 S.C. at 492–93, 661 S.E.2d at 108 ("[T]he Parole Board rejected Cooper's parole for the following reasons: (1) the nature and seriousness of the current offense; (2) an indication of violence in this or a previous offense; and (3) the use of a deadly weapon in this or a previous offense."); *Compton*, 385 S.C. at 478, 685 S.E.2d at 176 ("The Parole Board denied respondent parole due to: (1) the nature and seriousness of the current offense; (2) an indication of violence in this or a previous offense; and (3) the use of a deadly weapon in this or a previous offense.").

[4] After repeating the Board's explanatory language, the ALJ noted the following: "In fact, the Department has evidently created a form order which recites these words in every decision denying parole." (R. p. 6.)

> **Court finds no indication in the record that the Board carefully considered [Williams]'s record.**

(R. p. 8 (emphasis added).)

Yet, apparently believing her review to be extra-jurisdictional and without import, the ALJ failed to act consistent with her findings:

> We turn next to the issue of whether, despite all that, our Supreme Court's ruling in *Compton v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 385 S.C. 476, 685 S.E.2d 175 (2009), is determinative of the outcome here. . . . 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. . . . I will adopt the Department's interpretation in reliance on *Compton*[.] . . . 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.

(*See* R. pp. 8–9 (emphasis altered and original short citation enlarged).) The ALJ thus apparently concluded either that she lacked jurisdiction to review the Board's decision-making procedure for statutory compliance (and thus her actual review thereof was extra-jurisdictional and meaningless) or that she had jurisdiction to *conduct* such a review but lacked jurisdiction to *remand* the case for rehearing based on the findings of her review. (*See* R. pp. 8–9.) Either way, the ALJ erred.

As detailed above, the ALJ had jurisdiction to review the Board's decision-making procedure for compliance with its statutory obligations. *See Cooper*, 377 S.C. at 500, 661 S.E.2d at 112 (stating that, when a decision "constitute[s] a routine denial of parole," the ALJ has "limited authority to review the decision to determine whether the Board followed proper procedure"); *see also id.* (describing process whereby "the Parole Board [will] issue[] orders that are sufficiently detailed *for the AL[J] to conduct appellate review*, limited to the Board's adherence to section 24-21-640, of decisions denying parole." (emphasis added)). She also had jurisdiction to remand the

case for rehearing consistent with the findings of her review. *See id.* Because the ALJ had jurisdiction both to review the Board's decision and to remand the case consistent with her findings, her conclusion otherwise was error. This Court should reverse her decision and, based on the ALJ's findings, require remand of this case to the Board for a new hearing to be conducted in compliance with the statutory decision-making procedures.

B. If the Board's Denial of Parole to Williams Was Not "Routine," the ALJ Had Jurisdiction to Assess the Board's Adherence to Required Decision-Making Procedures in Reaching Its Decision.

As noted above, the parties dispute the constitutive elements of a "routine denial of parole" and thus whether the Board's decision denying Williams parole was "routine." Williams maintains that his denial was not "routine" because, as detailed above, (1) no indication in the record suggests that the Board carefully considered Williams's record in compliance with its obligation to do so under section 24-21-640 of the South Carolina Code; and (2) the Board apparently conceded that it did not discuss his case at his parole hearing. Assuming the Board's decision denying Williams parole was not "routine," the ALJ had jurisdiction to assess the Board's compliance with required decision-making procedures in reaching its decision.

The ALJ has jurisdiction to review a denial of parole by the Board when the Board "deviates from or renders its decision without consideration of the appropriate criteria." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111 (holding that ALJ had jurisdiction to review whether the Board failed "to consider the requisite statutory criteria in rendering its decision" to deny parole). When the Board "fails to consider and apply the statutorily-created parole criteria, it has the effect of rendering an inmate parole ineligible, which under *Furtick v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003), warrants review by the AL[J]." *Id.* at 502 (original short citation expanded); *see also Compton*, 385 S.C. at 479, 685 S.E.2d at 177 ("In

Cooper, we held that[,] if the Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate's right to parole eligibility and infringes on a state-created liberty interest, warranting minimal due process protection.").

Applying that Supreme Court precedent, this Court itself confirmed the basis of ALJ review sought here in an unpublished 2016 opinion. *See Tinsley v. S.C. Dep't of Probation, Parole & Pardon Servs.*, No. 2015-000196, 2016 WL 1367046 (S.C. Ct. App. Apr. 6, 2016) (per curiam). In *Tinsley*, a prisoner sought ALJ review of a Board decision denying him parole. *Id.* at *1. The prisoner did not simply challenge the sufficiency of the Board's recitation of reasons in his rejection letter: He claimed instead that the Board "deviated from the statutory criteria" *in reaching* its decision. *Id.* Specifically, he claimed that the Board improperly "considered information that was expunged from his criminal record in making its decision." *Id.* The Board's deviation from its statutory decision-making procedure, he argued, gave the ALJ jurisdiction to review the decision. *See id.* The ALJ rejected his argument, finding that it "did not have jurisdiction" to review his claim. *Id.*

On appeal, this Court reversed the ALJ's decision. *Id.* Quoting *Cooper*, the Court of Appeals confirmed that, "if a Parole Board deviates from or renders its decision without consideration of the appropriate criteria, . . . it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest." *Id.* (original brackets omitted) (quoting *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111). This Court rejected the ALJ's conclusion and held that the ALJ "has jurisdiction to review whether the Parole Board deviated from the statutory criteria for parole by using allegedly expunged records." *Id.* It remanded the case for the ALJ to exercise its "limited authority to review the decision to determine whether the Parole

Board followed proper procedure" by "hold[ing] an evidentiary hearing to determine if the Parole Board [wa]s using false information to deny [the inmate] parole." *See id.* (original brackets omitted) (quoting *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112).

Two other unpublished opinions of this Court apply the same Supreme Court precedent and acknowledge the same rule. *See Spigner v. S.C. Dep't of Probation, Parole & Pardon Servs.*, No. 2015-UP-204, 2015 WL 1681270, at *1 (S.C. Ct. App. Apr. 15, 2015) (per curiam) (addressing, *inter alia*, prisoner's claim that ALJ erred by "failing to find the parole board violated [S.C. Code Ann. § 24-21-10(F)(1)] because it failed to use COMPAS, the risk assessment tool adopted by the [Department], in reaching his parole decision"; reversing the ALJ's failure "to make this finding"; remanding case "to the parole board for a new parole hearing"; and ordering parole board "to evaluate [the prisoner]'s risk using the Department's assessment tool and [to] consider the results of the evaluation in reaching its decision regarding [his] parole"); *Bagley v. S.C. Dep't of Probation, Parole & Pardon Servs.*, No. 2014-UP-326, 2014 WL 4217379, at *1 (S.C. Ct. App. Aug. 27, 2014) (per curiam) (similar).

Insightfully, in both *Spigner* and *Bagley*, this Court rejected the same argument offered by the Board here:

> The Department argues that[,] under section 1-23-600(D) of the South Carolina Code . . . , the AL[J] did not have jurisdiction to hear [the prisoner]'s appeal. *See* [S.C. Code Ann.] § 1-23-600(D) ("An administrative law judge shall not hear an appeal involving the denial of parole to a potentially eligible inmate by the Department."). We disagree. *See Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012) ("A matter is reviewable by the AL[J] where an inmate's appeal *also* implicates a state-created liberty or property interest."); *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112 (holding an inmate has the right to require the parole board to adhere to statutory requirements in rendering a decision, and failure by the board to consider the requisite statutory criteria constitutes an infringement of a state-created liberty interest and warrants minimal due process procedures).

Spigner, 2015 WL 1681270, at *1 n.3 (original brackets and ellipses omitted); *see also Bagley*, 2014 WL 4217379, at *1 n.3. Accordingly, under Supreme Court precedent as recognized by this Court in *Tinsley*, the ALJ has jurisdiction to review a denial of parole by the Board when the Board "deviates from or renders its decision without consideration of the appropriate criteria." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111.

Here, the ALJ found that no indication in the record suggested that the Board carefully considered Williams's record and that the Board apparently conceded that it did not discuss his case at his parole hearing. (*See* R. pp. 6, 8.) Despite these findings, as detailed above on pages 9 to 12, the ALJ apparently concluded either that she lacked jurisdiction to review the Board's decision-making procedure for statutory compliance (and thus her actual review thereof was extra-jurisdictional and meaningless) or that she had jurisdiction to *conduct* such a review but lacked jurisdiction to *remand* the case for rehearing based on the findings of her review. (*See* R. pp. 8–9.) She deemed herself without jurisdiction because she "believe[d] that *Compton* establishes that the Board has unfettered discretion in making parole decisions so long as it includes the boilerplate language" included in the Rejection Letter here. (R. p. 9 (original emphasis altered).)

In reaching that conclusion, the ALJ erred by misapplying South Carolina Supreme Court precedents and section 24-21-640 of the South Carolina Code. Neither *Cooper* nor *Compton* strip an ALJ of jurisdiction to review a Board decision when the Board has deviated from statutory decision-making procedures in reaching that decision. To the contrary, *Cooper* expressly held that "the apparent failure by the Parole Board to consider the requisite statutory criteria in rendering its decision constitutes an infringement of a state-created liberty interest and, thus, warrants minimal due process procedures"; in such circumstances, an appeal is "appropriate for disposition under the APA and should . . . [be] reviewed by the AL[J]." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112.

The Supreme Court later confirmed this holding in *Compton*. *See Compton*, 385 S.C. at 479, 685 S.E.2d at 177 ("In *Cooper*, we held that[,] if the Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate's right to parole eligibility and infringes on a state-created liberty interest, warranting minimal due process protection."). And in *Tinsley*, this Court itself reversed an ALJ's decision that it lacked jurisdiction to hear an analogous appeal and instead held, under *Cooper*, that the ALJ "has jurisdiction to review whether the Parole Board deviated from the statutory criteria for parole by using allegedly expunged records." *See Tinsley*, 2016 WL 1367046, at *1.

The ALJ anchored her misapplication of law in the Board's strained reading of *Compton*. (*See* R. p. 9.) The Board contended that, under *Compton*, it "is required only to make a rote declaration that it considered all the relevant factors to shield [itself] from all review of whether it did, in fact, carefully consider the factors required by law." (R. pp. 8–9.) The ALJ found it "difficult to reconcile the substantive rights recognized in *Cooper* with the [Board]'s interpretation of *Compton*." (R. p. 8 (original emphasis altered).) She then adopted the Board's minimalistic interpretation of its statutory obligations under *Cooper*—despite *Cooper*'s own admonition that, "[b]ecause the statute is penal in nature," it must be "strictly [construed] in favor of the [prisoner] 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 ALJ erred when she misapprehended *Compton* and misapplied it to Williams's appeal. In *Compton*, an ALJ ruled that a Board notice denying parole was insufficient because it "included appropriate language indicating [that the Board] complied with [the Form 1212] factors and section 24-21-640" but "failed to include any 'findings of fact and conclusions of law, separately stated'"—elements which the ALJ thought necessary under *Cooper* and the APA. *Compton*, 385

S.C. at 479, 685 S.E.2d at 177 (quoting *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112 (quoting S.C. Code Ann. § 1-23-350 (2005))). The Supreme Court reversed the ALJ's decision and clarified the formal requirements of a notice of rejection: The Court confirmed the necessity of a clear statement of compliance with procedural obligations but rejected any requirement that the Board separately state findings of fact and conclusions of law.[5] *Id.*

Compton in no way upset *Cooper*'s holding that that "the apparent failure by the Parole Board to consider the requisite statutory criteria in rendering its decision constitutes an infringement of a state-created liberty interest and, thus, warrants minimal due process procedures." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112. In such circumstances—even after *Compton*—an appeal is "appropriate for disposition under the APA and should . . . [be] reviewed by the AL[J]." *Id.* Indeed, this Court decided *Tinsley* long after the *Compton* decision, and its *Tinsley* decision confirmed that the ALJ "has jurisdiction to review whether the Parole Board deviated from the statutory criteria for parole." *See Tinsley*, 2016 WL 1367046, at *1.

Accordingly, the ALJ misapplied South Carolina Supreme Court precedents and Section 24-21-640 of the South Carolina Code by concluding that she lacked jurisdiction despite contemporaneously finding that "no indication in the record [suggested] that the Board carefully considered [Williams]'s record" and despite finding that the Board apparently conceded that it did not discuss his case at his parole hearing. (R. pp. 6, 8.) Under settled precedent, she had jurisdiction to review Williams's appeal, because her findings reveal that the Board "deviate[d]

[5] In doing so, the *Compton* court seemingly reasoned that either (1) the Board's recitation of compliance with the Form 1212 factors and section 24-21-640 itself constitutes the "findings of fact and conclusions of law" requirement under the APA; or (2) that the APA's requirement of "findings of fact and conclusions of law" does not apply in full force to the Board's notices of denial—a possibility compatible with *Al-Shabazz*'s refusal to apply the APA to parole denials wholesale, *see Al-Shabazz*, 338 S.C. at 374–76, 527 S.E.2d at 752–53.

from or render[ed] its decision without consideration of the appropriate criteria." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111; *see also Compton*, 385 S.C. at 479, 685 S.E.2d at 177; *Tinsley*, 2016 WL 1367046, at *1; *Spigner*, 2015 WL 1681270, at *1 n.3; *Bagley*, 2014 WL 4217379, at *1 n.3.

II. The South Carolina Constitution's Due Process Guarantees, Particularly Its Assurance of Judicial Review, Applied to Williams and Required the ALJ to Review the Board's Decision-Making Processes in Denying Him Parole.

Article I, Section 22 of the South Carolina Constitution requires that the ALJ have jurisdiction to review the Board's decision-making process for statutory and constitutional compliance when reaching parole denial decisions. In failing to exercise such jurisdiction here, the ALJ deprived Williams of his constitutional right to judicial review.[6] Indeed, whether the Board's rote recitation of compliance with section 24-21-640 of the South Carolina Code constitutes a "routine denial of parole" or not, the Board's position that its decision is not subject to review misapprehends the law and disregards our state's Constitution. Thus, the ALJ's conclusion that it lacked the ability to meaningfully decide Williams's case runs afoul of constitutional principles.

The South Carolina Constitution entitles its citizens to due process. S.C. Const. art. I, § 3. It further provides,

[6] Williams detailed his due process argument about the Board's statutorily deviant decision-making process to the ALJ in his opposition briefing to the Board's renewed motion to dismiss. (*See* R. pp. 18–20 (explaining legislative history of S.C. Const. art. I, § 22)). The ALJ's Order of September 13, 2022, however, did not address Williams's due process concerns. (*See generally* R. pp. 3–9.) In compliance with *Travelscape, LLC v. S.C. Dep't of Rev.*, 391 S.C. 89, 108–10, 705 S.E.2d 28, 38–39 (2011), Williams then moved under Rule 59(e) for rehearing and restated his precise constitutional issue. (*See* R. p. 13 ("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."). Nevertheless, the ALJ's order denying rehearing also left this issue unaddressed. (*See generally* R. p. 1.)

> No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; . . . nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

S.C. Const. art. I, § 22. Prisoners are entitled to review of a parole decision when the Board deviates from its statutorily-required decision-making procedures. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 11 (finding a "state-created liberty interest" when a parole process "deviate[s] from" a "consideration of the appropriate criteria."). In South Carolina, the Board seemingly exercises near unfettered authority to decide whether an inmate is deserving of parole. (*See* R. p. 9.) However, the Parole Board's power is not absolute—it is subject to review by an Administrative Law Judge and the judicial branch. *See Cooper*, 377 S.C. at 500, 661 S.E.2d at 112 (addressing appeal from ALJ decision affirming a parole denial and confirming that inmates have right to procedural due process at parole hearings and holding that, when the Board deviates from constitutional standards, judicial review is proper); *see also Howard*, 399 S.C. at 636, 733 S.E.2d at 221 (affirming that ALJ must "consider whether the appeal implicates a state-created liberty or property interest").

While the due process protections afforded to citizens under the federal constitution do not apply equally to prisoners, the Constitution of South Carolina affords an "additional guarantee of important due process rights." *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 444, 511 S.E.2d 48, 54 (1998) ("Section 22 is an additional guarantee of important due process rights, enacted in 1970 as legislators and judges noticed the increasing prevalence and influence of administrative agencies in daily life."). Indeed, South Carolina's Constitution goes a step beyond federal procedural due process protections by explicitly guaranteeing to every citizen the right to judicial review of agency decisions. *See* S.C. Const. art. I, § 22; *State v. Forrester*,

343 S.C. 637, 644, 541 S.E.2d 837, 840 (2001) (observing that provisions of our constitution may be construed in "such a way as to provide greater protection than the federal Constitution."). In *McIntyre v. Securities Commissioner of South Carolina,* the Court of Appeals fully explained the purpose of Article I, 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." 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." The language it drafted "as a safeguard for the protection of liberty and property of citizens" was adopted and ratified in 1970 as our current Article I, section 22.

425 S.C. 439, 446, 823 S.E.2d 193, 196 (Ct. App. 2018) (citation sentences, clauses, and accompanying punctuation omitted).

The above authorities reveal that Article I, Section 22 of the South Carolina Constitution requires the ALJ to review the Board's decision-making process for statutory and constitutional compliance when reaching parole denial decisions. As detailed above on pages 7 to 18, the Board's contention that either S.C. Code Ann. § 1-23-600(D) or the *Cooper* and *Compton* decisions command otherwise is erroneous. The limitations drawn there are narrowly applicable to circumstances where there the Board in fact followed the correct procedures. In the present case, however, the underlying record is at odds with the Board's decision. What's more, Williams clearly petitioned the ALJ alleging that the Board did not follow statutory provisions. Williams also petitioned for review based on his belief that there is no rational relationship between the

reasons listed in the notice of rejection and the facts presented to the Board—the basis of his due process claims.

As previously explained, Williams has a liberty interest in ensuring that the Board considers his parole within the appropriate legal parameters, and the ALJ's decision to limit its inquiry to one piece of evidence—the Board's rote recitation of procedural compliance in its Rejection Letter—eviscerated Williams' right to judicial review.[7] Though the ALJ did not *summarily* dismiss Williams's petition due to lack of jurisdiction, the limitations which the ALJ put upon her own jurisdiction deprived Williams of the opportunity for meaningful judicial review.

The ALJ is empowered to remand this case back to the Board for "careful consideration" as contemplated by the South Carolina Code. *See* S.C. Code Ann. § 24-21-640; *id.* § 1-23-610(B). The Board's position and the ALJ's ultimate decision has rendered toothless Williams's and similarly situated prisoners' constitutional guarantee of judicial review of the Board's decision-making. *See* S.C. Const. art. I, § 22; *see also id.* § 3. After all, the Department is, as relevant here, an agency. "Agency" means "each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases." S.C. Code Ann. § 1-23-310(2). The ALJ, while a division of the executive branch, is the

[7] In discharging its constitutional duties, the Administrative Law Court is empowered to review the record that an agency considered, but in appeals from the Board, Rule 61 of the Rules of Procedure for the Administrative Law Court limits the immediate record on appeal to the notice of rejection. Here, the ALJ granted Williams's Motion to Supplement the Record (*see* R. p. 3); thus, the ALJ was able to evaluate the underlying evidence that the Board members were to carefully consider in reaching their decision. In cases where the underlying evidence and the notice of rejection are at odds, a deliberation or notes from the Board on the record may provide insight to the reviewing tribunal. For example, the transcript of Williams's parole hearing reveals that the Board members went straight to a voice vote without deliberation or findings. (*See* R. pp. 84–85; R. pp. 19–20). The Chairman declared Mr. Williams's denial and recited "one, two and three." (*See* R. pp. 84–85; R. pp. 19–20). The fact that the Board did not designate grounds for their decision before the Chairman ratified the denial of parole strongly suggests that the Board made no findings of fact.

traditional due process backstop by which persons can challenge agency decisions. The South Carolina Supreme Court has fully detailed the ALJ's vital role in upholding the constitutional guarantee:

> [T]he General Assembly established the ALC, creating the functional separation contemplated by Article 1, Section 22, and the general separation of powers principle. Randolph R. Lowell, *The Contested Case Before the ALC*, *in* South Carolina Administrative Practice and Procedure 148 (Randolph R. Lowell ed. 2008) (explaining that central panels of ALC's "provide a more efficient and professional forum for the resolution of administrative disputes").

Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control, 411 S.C. 16, 54, 766 S.E.2d 707, 728 (2014) (original short citation enlarged).

This traditional orientation (through which the ALJ has jurisdiction to review agency decisions) ensures that persons affected by agency decisions are afforded the opportunity for constitutionally guaranteed judicial review. By reducing the ALJ's role to one where it simply rubberstamps the Board's decision based on rote recitations in the agency's notice of rejection, the Board and the ALJ ignore the vital importance of this administrative tribunal in discharging the state's obligation to provide judicial review.

The Board has a statutory obligation to carefully consider prisoners' records, and prisoners like Williams have a constitutional right to a fair and legally adequate process. Here, the Board insists that a rote recitation of procedural compliance in a form letter constitutes adequate and conclusive evidence that it sufficiently followed statutory requirements and did not deprive Williams of his substantive rights. The Board's position elevates form over substance and is untenable. Without anything in the record to support the Board's decision, the ALJ cannot rubberstamp that decision without violating Williams's constitutional right to review under Article I, Section 22 of the South Carolina Constitution.

CONCLUSION

For the reasons stated above, this Court should reverse the decision of the ALJ and remand the case for a rehearing compliant with the Board's statutory decision-making procedures.

Respectfully submitted,

March 14, 2022

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In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah B. Durden, Administrative Law Judge

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Appellate Case No. 2022-001585

Matthew Williams, #215077, Appellant,

v.

South Carolina Department of
Probation, Parole and Pardon Services Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that the Final Brief of Appellant filed March 14, 2023 complies with Rule 211(b) of the South Carolina Appellate Court Rules.

March 14, 2023

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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:	Final Brief of Appellant
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March 14, 2022

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