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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

MAR 02 2023

SC Court of Appeals

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

Appellate Case No. 2022-001585

MATTHEW WILLIAMS, #215077..... APPELLANT

v.

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

SUPPLEMENTAL RECORD ON APPEAL

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ATTORNEYS FOR APPELLANT

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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.

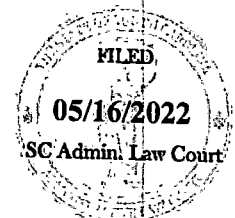
Docket No. 21-ALJ-15-0023-AP

ORDER
DENYING MOTION TO DISMISS
AND
ORDER TO
SUPPLEMENT RECORD

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Matthew Williams (Appellant), who is 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 DPPPS) to deny his parole. Appellant filed a notice of appeal with the ALC on October 22, 2021, and the appeal was assigned to me on October 26, 2021.

On February 2, 2022, Respondent filed an Amended Brief and Motion to Dismiss. Appellant filed a response in opposition to the Motion to Dismiss on February 17, 2022. In its motion 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). In Compton, the South Carolina Supreme Court held

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. Because the Parole Board in Cooper neither offered an explanation nor indicated it had considered the statutory criteria set forth in Form 1212, we had no other choice but to determine the order was defective and the decision was arbitrary and capricious. We emphasized that this result could be avoided in the future if the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212, and that **if the Parole Board complies with this procedure**, the decision will constitute a routine denial of parole and the ALC will have limited authority to review the decision.



Id, at 479, 685 at 177 (emphasis added). Respondent argues that because its decision denying parole recites that the factors outlined in Section 24-21-640 (Supp. 2021) and Form 1212 were considered, this appeal must be deemed a routine denial of parole and dismissed. This argument misapprehends the nature of the issue raised by Appellant in this case. Here, Appellant has raised the issue of whether the Board actually complied with the procedure as recited in its order. As the Supreme Court made clear in Compton, a decision only qualifies as a routine denial of parole if the Board complied with the procedure. Id. It is the role of this Court on appeal to evaluate whether a state-created liberty interest has been infringed by an agency when that question is squarely raised. Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs., 352 S.C. 594, 596, 576 S.E.2d 146, 147 (2003).

The issues raised by Appellant here are not an appeal of the denial of parole as argued by Respondent, but rather whether the Board infringed upon his due process rights in a matter involving a state-created liberty interest by failing to follow its stated procedure in conducting the parole hearing. Therefore, Respondent's Motion to Dismiss is denied.

I turn next to Appellant's Motion to Supplement the Record on Appeal and Motion to Conduct Discovery, filed January 31, 2022. Respondent filed a return in opposition to the motion on February 3, 2022, and Appellant filed a Reply on February 15, 2022.

Appellant seeks to supplement the record with:

1. Documents received by DPPPS prior to Appellant's parole hearing;
2. A transcript of Appellant's parole hearing;
3. An audio recording of the parole hearing; and
4. All non-privileged evidence received or considered by the Board.

Respondent opposes the motion to supplement the record on two grounds. First, Respondent argues the language of SCALC Rule 61 provides that the record on appeal in appeals from decisions of the Probation, Pardon and Parole Board (Parole Board) need only contain a copy of the agency decision and any decision following a motion for reconsideration. While it is true that the ALC rules only require DPPPS to file the agency decision rather than a full record of the proceedings before the agency, where a Motion to Supplement the Record is made and the relevance of additional matter is shown, it is appropriate for the Court to order that the record be supplemented with additional matter that was presented to the lower tribunal. See, Rule 210, SCACR. This is such a case. Therefore, Appellant's Motion to Supplement the Record is granted.

Second, Respondent cites Furtick in support of its argument that the minimal due process afforded an inmate concerning parole decisions means that Appellant "is not entitled to mold the parole review process and any review thereof to his liking." Our Supreme Court has made clear that, while limited, an inmate has a constitutionally protected state-created liberty interest in having the Parole Board consider the appropriate statutory criteria along with criteria established by the Parole Board. Cooper v. South Carolina Dep't. of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008); Compton at 479. Here, Appellant has averred that the relevant criteria were not considered by the Parole Board. That challenge falls squarely within the limited protection afforded an inmate in hearings before the Parole Board. Therefore, Appellant's Motion to Supplement the Record is granted.

The final motion pending before me at this time is Appellant's Motion to Conduct Discovery. Appellant argues the process and procedure used by the Board in this parole hearing violates the law and that discovery is needed to examine the procedural methods employed at the agency that would not be reflected in the record. Respondent objects to discovery on the ground that an Inmate is not entitled to the full protections of the Constitution.

The procedure for presenting additional evidence not considered before the agency in an appeal before the ALC is established by statute:

(3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

(4) The review must be conducted by the court and must be confined to the record. 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(3)-(4) (Supp. 2021). It is important to emphasize that the matter pending here is an appeal of the agency decision. This Court is charged with reviewing the agency action in consideration of the record before the agency. Thus, there is no role for discovery in these matters. However, the statute does provide for a process in circumstances where irregularities in procedure before the agency can be shown and for presenting evidence outside the record. Therefore,

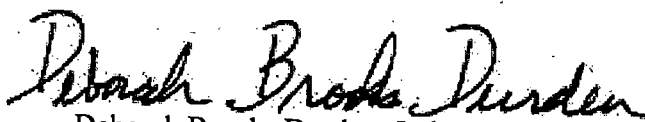
IT IS ORDERED that Respondent's Motion to Dismiss is **DENIED**.

IT IS ALSO ORDERED that Appellant's Motion to Supplement the Record on Appeal is **GRANTED**. Respondent shall supplement the record with all documents considered by the Board in rendering its decision in this case, including, but not limited to, the risk assessment results, the full case summary, notes from the pre-hearing interview, and any recommendations or summaries created by the parole agent. The additional documents for the record must be filed by June 30, 2022.

IT IS ALSO ORDERED that Appellant's Motion for Discovery is **DENIED**.

IT IS FURTHER ORDERED that Appellant shall have until July 29, 2022 to file any supplemental brief. Respondent shall have until August 31, 2022 to submit a supplemental brief. Any reply brief must be filed within ten days from the date Respondent's brief is filed.

AND IT IS SO ORDERED.



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

May 16, 2022
Columbia, South Carolina

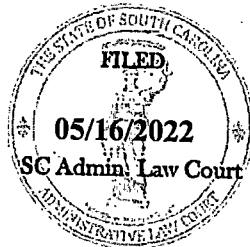
CERTIFICATE OF SERVICE

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

May 16, 2022
Columbia, South Carolina



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Matthew Williams, 00215077

Appellant,

v.

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

Respondent.

Civil Action No. 21-ALJ-15-0023-AP

RESPONSE IN OPPOSITION OF
RESPONDENT'S MOTION TO
DISMISS

Comes Now, Appellant Matthew Williams, by and through the undersigned, hereby files his Response to Respondent South Carolina Department of Probation, Parole, and Pardon Services' Motion to Dismiss. On February 2, 2022, Respondent filed a Motion to Dismiss styled as Respondent's Amended Brief and Motion to Dismiss. Appellant requests that the Court deny Respondent's Motion to Dismiss.

I. Respondent's Motion to Dismiss should be denied, as Appellant has submitted facts sufficient to constitute a cognizable cause of action.

In this case, Appellant has alleged facts and claims that form a cognizable cause of action over which this Court has subject matter jurisdiction. A complaint is subject to dismissal when it "fails to state facts sufficient to constitute a cause of action." Rule 12(b)(6), SCRPC. Respondent asserts that because Appellant is challenging a routine denial of parole—the Parole Board's procedures and its decision not to grant him parole—a liberty interest is not implicated and thus this case is unreviewable by the ALC. Put correctly, Appellant is alleging that the Board's decision to deny parole is not supported by substantial evidence and is challenging the Board's process in reaching the denial. This Court has the authority to make those determinations of whether constitutional due process was afforded to Appellant. Similarly, this Court is to decide if the APA

was violated through its review of the evidence. *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 498, 661 S.E.2d 106, 111 (2008) (“[A] sufficient liberty interest may be implicated to trigger due process requirements even though the [Board's] decision did not constitute a permanent denial of parole eligibility.”).

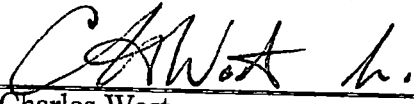
The current record establishes issues of fact and law to be decided by this Court. Appellant has maintained that the “one, two, three” voice call during Appellant’s Parole Hearing does not constitute evidence that proper procedures were followed by the Parole Board. Respondent has represented that the numbers called out at the Hearing correspond to the grounds for denial listed in Appellant’s Notice of Rejection. **Exhibit A**. According to Respondent, the numbers are “shorthand for the chairman to provide information to the hearing support staff in order to expedite hearings.” (See Brief of Respondent at 3.) The numbers called out by the chairman likely represent the findings of fact in the Notice of Rejection: the nature and seriousness of current offense, indication of violence in this or previous offense, and use of deadly weapon in this or previous offense. It is within the jurisdiction of this Court to review the evidence to determine whether the Board’s decision-making was arbitrary, capricious, or violative of due process. Respondent’s Notice of Rejection indicated that the Parole Board “carefully” considered the characteristics of Appellant’s current offense and prison disciplinary record, but no such documents were included in the Record that refer to the offense for which parole was denied or his prison disciplinary record. Respondent contends the numbers called out during the Parole Board Hearing are the findings of fact upon which the Parole Board based its decision, but there is nothing in the Record that references Appellant’s conviction.

Currently, without the supplementation of the record, or a mode of discovery, the record contains little information to support the factors listed in the Notice of Rejection and the Parole Board’s denial of parole. Nothing in the record says anything of the nature and seriousness of

Appellant's offense, his risk to the community, attitude toward authority, nor his adjustment in prison. The only evidence in the record regarding Mr. William's attitude toward authority, and his attitude as it relates to his offense was his testimony before the Board regarding his work in prison towards parole and his remorsefulness for his role in the offense. **Exhibit B.** at 1 and 2.

Based on these facts, the Record on Appeal fails to support the Parole Board's decision to deny Mr. Williams parole and the Parole Board's denial of parole was not justified by substantial evidence. Further, Appellant has clearly alleged a cognizable cause of action in the filings before this Court. Respondent's Motion to Dismiss should be denied.

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EXHIBIT A

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

HENRY McMASTER
Governor



JERRY B. ADGER
Director

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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

9/22/2021

EXHIBIT B

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 an 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:

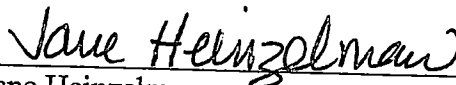
Mr. Wideman?

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Matthew Williams, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified below to the following address(es):

Pleadings: **RESPONSE IN OPPOSITION OF RESPONDENT'S MOTION TO DISMISS**

Counsel Served: **Via Hand Delivery**
Deputy Director of Legal Services
South Carolina Department of Probation, Parole, and Pardon Services
293 Greystone Blvd., Ste. 100 (29210)
P.O. Box 207
Columbia, SC 29202



Jane Heinzelman
Senior Administrative Assistant

February 17, 2022

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 02 2023

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

SC Court of Appeals

Appellate Case No. 2022-001585

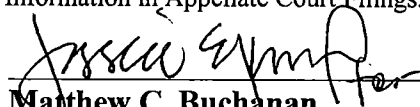
MATTHEW WILLIAMS, #215077..... APPELLANT

v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Supplemental Record on Appeal complies with the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."


Matthew C. Buchanan
General Counsel

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Probation, Parole and Pardon Services
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February 27, 2023