Exhibit A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles J. Madden, #00182326, Appellant, v. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No. 22-ALJ-15-0013-AP **ORDER OF REMAND**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on August 23, 2022, by Charles J. Madden, #00182326 (Appellant), an inmate in the custody of the South Carolina Department of Corrections. Following his most recent parole hearing on July 13, 2022, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified the Appellant that the Parole Board (Board) had determined that his parole should be denied. The Appellant challenges the Department's decision on several grounds,[1] all of which rest upon the argument that the Board's decision is supported in part by an inapplicable requirement unlawfully imposed on the Appellant.

After careful consideration of the briefs of the parties, the record, as well as the applicable law, the court finds that it cannot determine if the Board erred due to imprecise wording in its order denying parole. Therefore, the court is remanding the matter back to the Department for clarification.

BACKGROUND

The Appellant is serving a life sentence for a 1991 murder conviction. According to the Department, the Appellant killed his father during the commission of an armed robbery that was committed while he was out on bond for other offenses. The Appellant is 59 years old and has remained continuously incarcerated during the 31 years since his conviction. He became paroleable

[1] More specifically, the Appellant asserts, among other things, that: 1) the Board erred by basing its decision upon a clearly erroneous finding of fact; 2) the Board violated his due process rights by establishing a de facto permanent denial of parole eligibility; and 3) the Board's decision violates federal and state ex post facto clauses.

eligible in 2011 and had his most recent parole hearing on July 13, 2022. Following that hearing, the Board voted four to one to reject the Appellant's request for parole based on the following reasons: 1) the nature and seriousness of current offense; 2) indication of violence in this or previous offense; 3) the use of deadly weapon in this or previous offense; 4) the criminal record indicates poor community adjustment; and 5) the "Failure To Successfully Complete A Community Supervision Program." The latter finding of fact is at the heart of the Appellant's case.

Thereafter, on August 23, 2022, the Appellant filed a notice of appeal with this court.

On November 4, 2022, the Appellant filed a Motion to Supplement the Record on Appeal with additional documentation not included in the Record on Appeal (Record) submitted by the Department, which the court denied by order dated December 7, 2022.

ISSUES ON APPEAL

1. Did the Board err in basing its decision to deny the Appellant parole, in part, on his "Failure To Successfully Complete A Community Supervision Program"?
    a. Did the Board err in basing its decision on a clearly erroneous finding of fact?
    b. Did the Board violate the Appellant's due process rights by establishing a de facto permanent denial of parole eligibility?
    c. Did the Board's decision violate federal and state ex post facto clauses?

STANDARD OF REVIEW

The court's jurisdiction to review this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz* and *Furtick*. *See Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals); *see also 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). As explained by the *Al-Shabazz* court, "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 Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted).

Since parole is a privilege, not a right, the routine denial of parole does not constitute such a liberty interest. *See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 495-

96, 661 S.E.2d 106, 109-10 (2008). If, however, the Board "deviates from or renders its decision without consideration of the appropriate [statutory] criteria, . . . it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest." *Id.* at 499, 661 S.E.2d at 111. Thus, this court may review the Board's decisions only for violations of statutory procedure or procedural due process, not the Board's substantive decision to deny an appellant parole.

In reviewing such matters, the court sits in its appellate capacity. *See id.* at 497, 661 S.E.2d at 110 (citations omitted); *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754 (citation omitted). Under the Administrative Procedures Act, the court's review in appellate matters is confined to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2022). 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. 2022). Substantial rights of the appellant are prejudiced when the agency's findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

This matter centers around the propriety of the Board's finding that the Appellant "Fail[ed] To Successfully Complete A Community Supervision Program." Before the court can address that issue, however, it must determine what, specifically, the Board meant by "community supervision program."

The Appellant asserts that "community supervision program" is a statutorily defined term with statutorily defined parameters. He contends that the governing statutes are prospective in nature and were enacted years after his sentencing and conviction, so the provisions mandating participation in a community supervision program are, therefore, inapplicable to him. The Appellant further maintains that, even if they were applicable, inmates with life sentences are, by statute, specifically exempted from participation in the statutory community supervision program. Therefore, the Appellant argues that the Board erred in relying on his failure to complete a community supervision program to support its decision to deny him parole.

The Department does not dispute that the Appellant is ineligible for the statutory community supervision program or that it would be in error to hold his lack of participation therein against him. Rather, the Department argues that the phrase "community supervision program" is generic terminology that is broadly defined as any type of program in which an offender lives in the community at large but is still supervised by the state, such as probation. In this case, the Appellant had his probation revoked in 1983 for a offense that occurred in 1982. Thus, the Department argues that the Board did not err in finding that the Appellant failed to successfully complete a community supervision program because he failed to comply with the terms of his probation. As set forth below, the court is unable to determine from the Board's order what the community supervision plan was that he failed to complete.

Contrary to the parties' assertions, the meaning of the phrase "community supervision program" is not well established. It is not expressly or exclusively defined by statute, as the Appellant suggests, nor could the court find any official definition supporting the broad interpretation advanced by the Department. In South Carolina statutes and case law, the phrase appears to be overwhelmingly used in reference to the statutory community supervision program. *See, e.g.*, S.C. Code Ann. § 24-21-560 (2007 & Supp. 2022); *State v. McGrier*, 378 S.C. 320, 322, 663 S.E.2d 15, 16 (2008). However, on its face, it could also be interpreted more broadly as referring to any program involving supervised release into the community, particularly with the use of the article "a" preceding it, as in the Board's finding of fact.[2] Thus, the phrase "a community supervision program" is open to more than one reasonable interpretation.

In this case, the Record is devoid of evidence indicating what interpretation the Board intended. While the Department maintains that the Board was referencing a probation revocation from a prior offense, this court's review is confined to the Record and there is nothing in the Record regarding a prior probation revocation, or tying it to the Board's findings of fact. Moreover, given that the phrase in this state is most typically used in relation to the statutory community supervision program, the use of the phrase to refer to probation would be curious under the facts of this case. In any event, the court is unable to determine from the Record what the Board meant by "community supervision program."

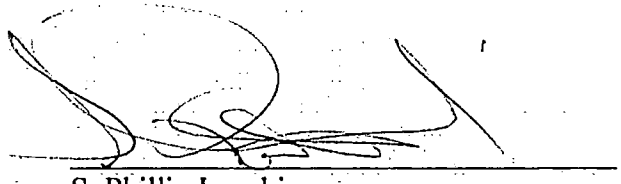
[2] Notably, however, the court was unable to find any instances of "community supervision program" being used synonymously with probation in South Carolina statutes or case law.

Critically, because the Board's finding would be erroneous under one interpretation of "community supervision program" but potentially permissible under the other, the court is unable to reach the merits of the Appellant's arguments without further elucidation from the Board. This matter must, therefore, be remanded to the Department for clarification on what specific community supervision program the Board found that the Appellant failed to successfully complete. In its order, the Board must use language that makes it clear whether it was referring to the statutory community supervision program, probation, or something else.[3]

ORDER

THEREFORE, for the foregoing reasons, this matter is hereby **REMANDED** to the Department. On remand, the Board must issue a new order clarifying with sufficient particularity what it meant by "community supervision program."[4]

AND IT IS SO ORDERED.



February 14, 2023
Columbia, South Carolina

S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above-entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 14th day of February, 2023
By: _____
Staff Counsel

[3] The Department argued in its brief that, if any relief is warranted, it should be limited to the issuance of a new notice of rejection "using more general language like 'a supervisory program' instead of 'a community supervision program.'" Though the court declines to provide specific language for the Board to use, it notes that "a supervisory program" would arguably still encompass the statutory community supervision program at the heart of the Appellant's argument.

[4] If, on remand, the Board decides to withdraw that finding from its order, it may, in the interest of judicial economy, reweigh the remaining factors to determine if that alters its decision regarding the Appellant's parole.