

Exhibit A
(Final Order)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles J. Madden, #00182326,

Docket No. 22-ALJ-15-0013-AP

Appellant,

v.

FINAL ORDER

South Carolina Department of Probation,
Parole and Pardon Services,

RECEIVED

APR 25 2023

Respondent.

SC Court of Appeals

STATEMENT OF THE CASE

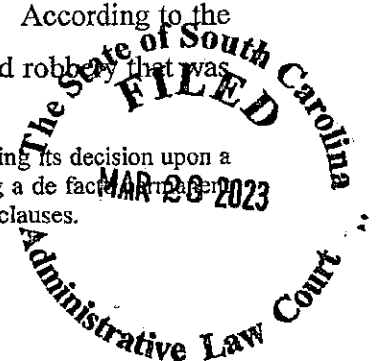
This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on August 23, 2022, by Charles J. Madden, #00182326 (Appellant), an inmate in the custody of the South Carolina Department of Corrections. Following his most recent parole hearing on 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. Specifically, that the Appellant was found to have not successfully completed a "community supervision program," which he alleges he is ineligible for and statutorily exempted from. On March 6, 2023, following an Order of Remand from this court, the Department filed an order from the Board clarifying what it meant by "a community supervision program."

After careful consideration of the briefs of the parties, the record, as well as the applicable law, the court finds no error in the Board's decision, as clarified by its order on remand. Accordingly, the Department's decision is affirmed.

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

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 standard for denial of parole eligibility; and 3) the Board's decision violates federal and state ex post facto clauses.



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 parole 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 issue.

On February 14, 2023, this court issued an order remanding this matter to the Department for clarification as to the meaning of the Board's use of the term "a community supervision program" upon finding that the term could be interpreted in two ways, one of which would ostensibly be improper. On March 6, 2023, the Department filed an order of clarification from the Board. In the order, the Board explained that:

Mr. Madden did not successfully complete a term of probation in 1982. It is the position of the Board that this was the basis for including reason #5 in the reasons for rejection in the case of Mr. Madden.

In this and all cases, the Board's position regarding reason for rejection #5 is that it includes any and all supervision programs, including but not limited to: probation, parole, community supervision, shock parole, supervised furlough, or any other program.²

Therefore, the Board was referring to a prior probation violation when it found that the Appellant "failed to successfully complete a community supervision program," rather than the statutory community supervision program that the Appellant is ineligible for.

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"?

² Though the court appreciates the clarification with regard to the Appellant, it notes that the Board's position statement in this case is not binding in any other matter. Likewise, this court's decision is not binding on another administrative law judge in another matter. See 73A C.J.S. *Public Administrative Law and Procedure* § 352 ("While one administrative law judge [ALJ] may look to another's decisions for guidance, administrative decisions are not binding on other administrative law judges . . ."). Therefore, absent the use of more precise verbiage with respect to reason #5, "a community supervision program," it is possible that this issue may again arise in future cases under similar circumstances.

- 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?
2. Did the Board properly consider the criteria set forth in *Cooper*³ in reaching its decision to deny the Appellant parole, thereby making it a routine denial of parole?⁴

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-

³ See *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008).

⁴ Though not raised by the Appellant, the court finds that, in light of the Board's clarification, this case hinges on the Board's compliance with *Cooper*.

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

As previously stated, parole is not a right, but a privilege. *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 104 (2008) (citing *Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 n.4 (2003)). The discretion to grant parole lies solely with the Board. *Id.* at 649, 659 S.E.2d at 104-05 (citing *State v. McKay*, 300 S.C. 113, 115, 386 S.E.2d 623, 623-24 (1989)). If, in denying parole, the Board follows proper procedure, then its decision will constitute a routine denial of parole and summary dismissal of the case would be appropriate. *See Cooper*, 377 S.C. 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, 479, 685 S.E.2d 175, 177 (2009). The proper procedure for the Board to follow includes considering the factors outlined in Section 24-21-640 of the South Carolina Code, as well as those listed in the Department's parole form. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; *Compton*, 385 S.C. at 479, 685 S.E.2d at 177; *see also* S.C. Code Ann. § 24-21-640 (Supp. 2022) (setting forth the statutory factors warranting parole). Additionally, the Board must utilize an actuarial risk and needs assessment tool, known as COMPAS, in making its parole determinations. *See* S.C. Code Ann. § 24-21-10(F) (Supp. 2022).

If the Board fails to follow proper procedure, giving due consideration to the specified factors, an appellant is denied his liberty interest in parole eligibility. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. If, however, the Board adheres to procedure and considers all the requisite factors, the appellant's liberty interest is protected, and the Board has the discretion to deny parole based on any of the factors found in Section 24-21-640 or its own criteria. *See id.* at 499, 661 S.E.2d at 111-12.

Here, the Appellant argues, generally speaking, that the Board's finding that he failed to successfully complete "a community supervision program" is an improper basis to reject his parole request because he is ineligible to participate in the statutory community supervision program. In

light of the Board's order of clarification, the court does not find support for the Appellant's argument that the Board held him to an inapplicable requirement. The Board explained that the reason for including that finding in the Appellant's case was related to an unsuccessful term of probation, another type of supervised community release program, rather than the statutory community supervision program for which he is ineligible. Thus, while awkwardly phrased, given the statutory program bearing the same name, the court does not find that the Board erred in this regard.

As such, the court turns to the Board's compliance with *Cooper*. The court commends the Appellant on his extensive rehabilitation efforts and lack of prison disciplinary history, however, the Board's substantive decision to deny him parole is outside of the limited scope of this court's review. *See Cooper*, 377 S.C. at 495-96, 661 S.E.2d at 109-10. This court may review the Board's decisions only to ensure that it has complied with the necessary procedures. *Id.* at 499, 661 S.E.2d at 111-12. In this case, the Board's order plainly reflects that it considered all appropriate factors—including those set forth in Section 24-21-640, the Department's own criteria for parole consideration, and an actuarial risk and needs assessment—before making its decision to deny the Appellant parole. Thus, as a routine denial of parole, the court's ability to further review this matter is limited:

[T]he [] Board may avoid [reversal of its parole determinations] if it clearly states in its order denying parole that it considered the factors outlined in [S]ection 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.


Cooper, 377 S.C. at 500, 661 S.E.2d at 112; *see Compton*, 385 S.C. at 479, 685 S.E.2d at 177. Consequently, because the record reflects that the Board routinely denied the Appellant parole after complying with the necessary procedure and considering the appropriate factors, the court may not interfere with the Department's determination.

ORDER

THEREFORE, for the foregoing reasons, the Department's decision to deny the Appellant parole is hereby **AFFIRMED**.

AND IT IS SO ORDERED.

March 23, 2023
Columbia, South Carolina



S. Phillip Lenski
S.C. 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 23 day of March 2023

Judicial Law Clerk