

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Ronald C. Albright, #211533,

Appellant,

vs.

South Carolina of Probation, Parole and
Pardon Services,

Respondent.

Docket No. 23-ALJ-15-0001-AP

**ORDER GRANTING MOTION TO
DISMISS**

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MAY 22 2023
SC Court of Appeals

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Ronald C. Albright (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC) pursuant to convictions for armed robbery and murder. Appellant was previously on parole and living in Florida. In 2017, a Florida parole agent reported to South Carolina that Appellant purportedly violated the terms of his parole—Appellant was charged with grand theft and absconded his supervision. Accordingly, South Carolina "retook the case and arranged for extradition."

The South Carolina Department of Probation, Parole and Pardon Services (the Department or PPPS) and Appellant take different views of what occurred next. The Department asserts the South Carolina Parole Board (the Board) revoked Appellant's parole in 2017, and Appellant signed the parole revocation order and received the offender copy on August 30, 2017. In contrast, Appellant contends that he recognizes his parole was revoked; however, he indicates he never received a final written order of revocation. Nevertheless, Appellant was subsequently reincarcerated in South Carolina and has been receiving parole hearings every two years, having been denied parole in 2018 and 2021.

Most recently, on March 2, 2023, the Board again denied Appellant's application for parole. The Board utilized its standard form in denying Appellant's application. Specifically, the Board stated it considered the following: (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." As to the findings of fact, the Board listed the following: (1) "Nature And Seriousness Of Current Offense"; (2) "Indication Of Violence In This Or Previous Offense"; (3) "Use Of Deadly Weapon In this Or Previous Offense"; and (4) "Failure to Successfully Complete A Community Supervision Program."

Appellant filed his present appeal with the Court on March 13, 2023. He filed several documents with the Court at that time, including (1) a prehearing motion for designation and/or transfer of case to cure want of jurisdiction; (2) an application for a contested case hearing; (3) a motion to compel: issuance of written final order of revocation; and (4) a prehearing motion to transfer custody of state inmate and waiver of transfer transportation fee. In his application for a contested case hearing, Appellant explains that he is seeking a contested case hearing before the Court to review the actions of his initial revocation from 2017. Appellant alleges many errors with the process of his parole being revoked and his transfer back to South Carolina, and he asserts that a remand to the Parole Board is not sufficient because he has concerns about having a fair and unbiased proceeding. Appellant asserts in his application for a contested case hearing and motion to compel that he has yet to receive an order of revocation. This matter was assigned to the undersigned on March 30, 2023.

On April 4, 2023, the Department filed a motion to dismiss for two reasons. First, the Department contends Appellant is attempting to appeal the 2017 decision in which the Parole Board revoked Appellant's parole. The Department asserts the appeal of this decision is untimely; the Department states its "case management system shows Appellant signed the parole revocation order and received the offender copy on August 30, 2017." The Department notes it does not have a copy of the signed revocation order immediately available for inclusion in its motion. Second, the Department argues section 24-21-680 of the South Carolina Code (2007) serves as a bar to any court that attempts to review a parole revocation.

On April 5, 2023, Appellant wrote to the undersigned, provided additional copies of the filings previously made in this matter, asked what he should do in this matter, and raised legal arguments. On April 10, 2023, the undersigned's law clerk wrote to Appellant and counsel for the Department. The clerk confirmed the documents that Appellant filed with the Court, noted the

Court is not permitted to provide legal advice, and stated the undersigned would consider this appeal in the normal course of appeals as required by law.

Also, on April 10, 2023, Appellant filed a response to the Department's motion to dismiss. According to Appellant, "all decisions (even those of the [Department]) are subject to review under the constitutional claims and statutory provisions." He asserts that this matter is reviewable and subsections (a), (e), and (f) of section 1-23-380(5) of the South Carolina Code (Supp. 2022) grant the Court jurisdiction. Next, Appellant argues the words "upon failure" in section 24-21-680 "presume that acts or violations actually happened" and that he should have been entitled to due process. Appellant additionally: (1) references the law surrounding the Interstate Commission for Adult Offender Supervision; (2) notes that in response to timeliness of his appeal, he was not represented by counsel; (3) acknowledges he signed a parole violation warrant and affidavit on August 30, 2017, but this is not a final order after a hearing; and (4) contends the Court has the discretion pursuant to Rule 6(b)(2), SCRCP, to hear a case that is claimed to be untimely.

On April 19, 2023, Appellant filed a motion for disposition of certain misdemeanors and felonies. Appellant sought certain documents to be included in the record on appeal. On April 21, 2023, Appellant filed a petition for equitable tolling; Appellant reasserts that he has yet to receive a final written order of revocation.

DISCUSSION

Presently, there are several motions pending before the Court. The Court begins by addressing the Department's motion to dismiss because the issues raised in the Department's motion are jurisdictional and potentially dispositive of the appeal. First, the Department contends Appellant is attempting to appeal from a 2017 decision in which the Parole Board revoked Appellant's parole. It asserts the appeal of this decision is untimely because its "case management system shows Appellant signed the parole revocation order and received the offender copy on August 30, 2017." Second, the Department argues section 24-21-680 serves as a bar to any court for having jurisdiction to determine whether parole has been violated.

In response, Appellant asserts that the Court has jurisdiction. Specifically, he argues that subsections (a), (e), and (f) of section 1-23-380(5) of the South Carolina Code grant the Court jurisdiction to review this matter. Next, Appellant argues the words "upon failure" in section 24-21-680 "presume that acts or violations actually happened" and that he should have been

entitled to due process. Appellant additionally: (1) references the law surrounding the Interstate Commission for Adult Offender Supervision; (2) notes that in response to timeliness of his appeal, he was not represented by counsel; (3) acknowledges he signed a parole violation warrant and affidavit on August 30, 2017, but this is not a final order after a hearing; and (4) contends the Court has the discretion pursuant to Rule 6(b)(2), SCRCR, to hear a case that is claimed to be untimely.

After careful consideration of the law and the submissions of the parties, the Court dismisses this matter without prejudice for the reasons stated below.

I. Timeliness of Appeal

The Department contends and a thorough review of Appellant's submissions confirms that Appellant does not challenge the 2023 denial of parole; rather, Appellant is seeking review of the 2017 decision that revoked his parole. The Court, however, has no authority to undertake such a review. An inmate challenging a parole determination has thirty days from the *receipt* of a final written order to appeal that decision to the ALC. *See* SCALC Rule 59 ("The notice of appeal from the final decision to be heard by the [ALC] shall be filed with the Court and a copy served on each party, including the agency, within thirty (30) days of receipt of the decision from which the appeal is taken."); *see also Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000) ("The inmate must file and serve a notice of appeal upon specified parties within thirty days of receipt of written notice of Department[of Corrections's] final decision."); *Turner v. S.C. Dep't of Prob., Parole & Pardon Servs.*, Op. No. 2017-000992, 2018 WL 2058142, at *1 (S.C. Ct. App. filed May 2, 2018) (affirming the dismissal of an inmate's appeal from the Parole Board when the inmate received the Parole Board's decision and did not appeal for over sixteen months). If, as the Department contends, Appellant signed the parole revocation order and received the offender copy on August 30, 2017, then Appellant had to have appealed the 2017 revocation no later than 30 days thereafter. This appeal was filed more than five years after that date, making any challenge to the 2017 revocation of Appellant's parole in this proceeding untimely.

Appellant disputes the Department's factual assertions regarding the status of the written order revoking his parole. According to Appellant's filings in this case, he asserts that he has never received a final written order revoking his parole from the Parole Board. Certainly, no party has submitted a copy of any 2017 final written order revoking parole to this Court. If Appellant's assertions regarding receipt of such an order are correct, then the time to appeal the 2017

revocation of parole may not have begun to run, *see, e.g.*, SCALC Rule 59, and in the absence of a final order, no appeal of the revocation has been commenced. In any event, the Court cannot conduct any review without a copy of the Parole Board's order.

The Court need not resolve the conflict between the positions taken by the Department and the Appellant regarding issuance and receipt of the final written order of revocation because, under either scenario, dismissal would be appropriate.

The Court now turns to Appellant's specific arguments regarding the Court's jurisdiction to entertain the appeal. Appellant contends that subsections (a), (e), and (f) of section 1-23-380(5) provide the Court with jurisdiction. The Court disagrees. The subsections of section 1-23-380(5) to which Appellant refers are not grants of jurisdiction but are instead part of the standard of review in appellate matters.

Appellant also argues that the words "upon failure" in section 24-21-680 "presume that acts or violations actually happened" and that he should have been entitled to due process. Section 24-21-680 provides that:

Upon failure of any prisoner released on parole under the provisions of this chapter to do or refrain from doing any of the things set forth and required to be done by and under the terms of his parole, the parole agent must issue a warrant or citation charging the violation of parole, and a final determination must be made by the [B]oard as to whether the prisoner's parole should be revoked and whether he should be required to serve any part of the remaining unserved sentence. But such prisoner must be eligible to parole thereafter when and if the [B]oard thinks such parole would be proper. The [B]oard shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed; provided, that any person arrested for violation of terms of parole may be released on bond, for good cause shown, pending final determination of the violation by the Probation, Parole and Pardon Board. No bond shall be granted except by the presiding or resident judge of the circuit wherein the prisoner is arrested, or, if there be no judge within such circuit, by the judge, presiding or resident, in an adjacent circuit, and the judge granting the bond shall determine the amount thereof.

The Court does not dispute Appellant's concern that section 24-21-680 requires certain process be afforded in cases involving parole violations, *see Russell v. Cooper*, 263 S.C. 526, 530, 211 S.E.2d 655, 657 (1975), but this concern relates either to the merits of an appeal of the revocation order or Appellant's contention that he has not received an order. Section 24-21-680

does not speak to or mention any authority on the part of this Court to entertain an appeal of the 2017 parole revocation.

Finally, Appellant cites to Rule 6(b)(2), SCRCP. This rule states in relevant part that:

When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the time may be extended by written agreement of counsel for an additional period not exceeding the original time provided in these rules, or the court for cause shown may at any time in its discretion . . . (2) upon motion made after the expiration of the specified period, for good cause shown, permit the act to be done.

Appellant's precise argument with respect to this rule is unclear. The Court assumes that Appellant is relying upon the rule to suggest that, even if his appeal of the 2017 parole revocation is untimely, the Court has discretion to extend the deadline for an appeal and allow the matter to proceed.

Appellant's reliance upon this rule is mistaken. Rule 6(b)(2), SCRCP, is part of the South Carolina Rules of Civil Procedure, and has no application in an appeal before the Court. Additionally, Appellant's argument is belied by the final sentence of the rule, which provides that "[t]he time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order." *Id.* Thus, even if the rule applied here, it could not be used to extend the time for an appeal.

II. S.C. Code § 24-21-680

The Department also argues more generally that the Court lacks jurisdiction to hear an appeal regarding the 2017 parole revocation. The Court's jurisdiction in these matters is a creature of statute. Section 1-23-600(D) prohibits the Court from hearing "an appeal involving the denial of parole to a potentially eligible inmate by the Department." Additionally, section 24-21-680 provides the following: "The [B]oard shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed . . ." S.C. Code Ann. § 24-21-680. As these statutes indicate, its jurisdiction over parole-related matters is extremely narrow. The Court agrees with the Department that, even if the 2017 parole revocation had been properly appealed to the Court, it would lack jurisdiction to entertain any substantive review of the revocation order.¹

¹ The Court does have jurisdiction to review "the method and procedure employed by the Parole Board in reaching its decision," the Court must hear those matters. *See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 502, 661 S.E.2d 106, 113 (2008); *id.* at 499, 661

ORDER

IT IS THEREFORE ORDERED that this matter is **DISMISSED WITHOUT PREJUDICE.**²

AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

May 2, 2023
Columbia, South Carolina

S.E.2d at 112 ("[T]he 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. Therefore, we hold, [the appellant's] appeal was appropriate for disposition under the APA and should have been reviewed by the ALC.); *see also Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 478, 685 S.E.2d 175, 176 (2009).

² Based on the Court's resolution of this matter, the outstanding motions filed by Appellant are now moot and the Court need not rule on such motions. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues on appeal when decision of a prior issue is dispositive). For the benefit of Appellant, the Court notes that it is not the proper forum in which to seek an order requiring the Parole Board to issue a written order.