

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 26 2023

Appeal from the Administrative Law Court
The Honorable Robert L. Reibold, Administrative Law Judge
Docket Number 23-ALJ-15-0001-AP

SC Court of Appeals

Appellate Case No.: 2023-000847

RONALD C. ALBRIGHT, #211533, APPELLANT

v.

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

BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

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Parole and Pardon Services
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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the Agency depart from the requirements and mandatory language contained in the Interstate Compact regarding the parolee's 'retaking' and revocation of his parole status?
2. Did the Agency's departures from the ICAOS Compact (sic) violate parolee's due process rights?
3. Did the Agency's proceedings meet the minimum due process requirements of the 4th and 14th Amendments and the ICAOS compact?
4. Is the Agency's decision "capable of repetition, yet evading review" due to the Agency's failure or refusal to issue the written final revocation order and refusal to acknowledge the parolee's defenses?
5. Did the absence of counsel or the preliminary hearing justice's failure to inform parolee of his right to hire or have counsel present, violate parolee's due process rights?
6. Did the preliminary hearing administrator proceed arbitrarily and capriciously in the proceedings denying the parolee his due process rights?

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. The Administrative Law Court correctly determined it lacked the authority to hear an appeal from the revocation of parole per § 24-21-680 and § 1-23-600(D) and properly dismissed the appeal.

STATEMENT OF THE CASE

Appellant, Ronald Albright, is serving a life sentence for murder and a consecutive twenty-five years for armed robbery. Along with two codefendants, he robbed and beat to death a guest at a hotel in Myrtle Beach on or about October 9, 1992. Appellant initially became parole eligible in 2012 after service of twenty years.

Appellant previously received parole on May 27, 2015, and was released to parole supervision in Florida through the Interstate Compact for Adult Offender Supervision. Respondent Department of Probation, Parole and Pardon Services received a request for a retaking on March 7, 2017, after Appellant was arrested for grand theft and thereafter absconding supervision. Respondent returned Appellant to South Carolina, after which the Parole Board revoked his parole at a hearing on August 30, 2017.

Appellant has appeared before the Parole Board for consideration of parole three times after his revocation, his most recent being on March 2, 2023. The Board unanimously rejected Appellant's request for parole in a letter dated that same day. Appellant appealed to the Administrative Law Court, but instead of appealing his denial of parole, his arguments all went toward attacking the validity of his revocation in 2017, over five years before the current denial of parole.

Respondent replied with a motion to dismiss, arguing that Appellant was well outside his time to appeal the Board's revocation by filing in 2023 after a rejection of parole, and that S.C. Code § 24-21-680 did not allow for the appeal of revocations of parole. The ALC agreed with Respondent that it lacked authority to hear the matter and dismissed the appeal on May 2, 2023.

Appellant now brings this appeal, reiterating his arguments against the 2017 revocation of his parole and claiming that the Department did not follow the Interstate Compact rules and

that he should have been afforded counsel during his parole revocation proceeding.

In reply, Respondent will argue that the ALC properly dismissed the appeal because revocations of parole are not appealable by South Carolina law. This brief follows.

STANDARD OF REVIEW

In criminal cases the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. When reviewing a parole case, the ALC sits in an appellate capacity. *Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2004). Under the appellate standard of the Administrative Procedures Act, the ALC's review is limited to the record, absent irregularities in the procedure of the agency. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but 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). However, "an administrative law judge shall not hear... an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services." S.C. Code Ann. § 1-23-600(D). Also, "[the parole] board 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.

In an appeal from an ALC decision, the Administrative Procedures Act provides the standard of review. S.C. Code Ann. §1-23-610(B). This Court may only reverse the decision of the ALC if that 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 substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Id.

“The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact.” *Id.* In determining whether the ALC's decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached. *Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

ARGUMENT

- 1. The Administrative Law Court properly dismissed the appeal because S.C. Code 24-21-680 does not allow for an appeal of a revocation of parole.**

Appellant makes an exhaustive and lengthy appeal of his parole revocation, attacking the procedures by which Florida officials and the Respondent used to return him to South Carolina via the Interstate Compact on Adult Offender Supervision (ICAOS), and arguing the Parole Board violated his due process rights in its revocation procedures.

The ALC, however, determined that it lacked the ability to hear the appeal, and dismissed the matter. Respondent respectfully submits that the ALC was correct, following the clear language of § 24-21-680. “The board shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed.”

South Carolina law does in fact allow a means by which a parole revocation can be

challenged. The Uniform Post-Conviction Procedure Act allows for inmates to file a PCR action in the Court of Common Pleas if they wish to challenge a parole revocation. See S.C. Code 17-27-20(A)(5): “Any person who has been convicted of, or sentenced for, a crime and who claims: ... (5) That his sentence has expired, his probation, *parole* or conditional release unlawfully revoked” may institute a PCR proceeding. *Id.* (emphasis added).

Respondent respectfully submits that this matter can be resolved solely on jurisdictional grounds and that there is no need to review the merits of Appellant’s arguments regarding the revocation of his parole. Quite simply, he attempted to appeal in the ALC contrary to law, when he should have instituted PCR proceedings in the circuit court. The ALC was correct in its determination that it did not have the jurisdiction to review the substance of Appellant’s claims, and therefore it did not err when it granted Respondent’s motion to dismiss. This Court should also decline to entertain Appellant’s arguments and rule that the ALC was not the proper court in which to raise his claims.

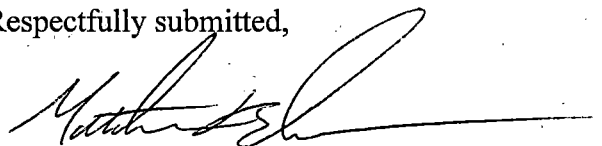
Respondent further argues that arguments on the merits of Appellant’s claims would be unnecessary as the jurisdictional matter is dispositive. Were this Court so inclined to entertain the merits of Appellant’s arguments, Respondent would request leave to fully address the claims made in the appeal, or remand to the ALC in the first instance.

CONCLUSION

Appellant is appealing the revocation of his parole contrary to South Carolina law, which does not allow for appeals of revocations. Furthermore, his attempt to pursue such an appeal is an improper attempt to bootstrap an invalid challenge to an otherwise tenuous appeal of a routine denial of parole. The ALC correctly determined that it lacked jurisdiction to hear the matter and

dismissed the case pursuant to § 24-21-680 and § 1-23-600(D). South Carolina law does allow for the review of parole revocations through the PCR process, but that does not take place in the ALC. Because the law is clear and wholly dispositive, this Court should uphold the ALC's determination without exploring Appellant's lengthy appeal. If this Court is not so inclined, Respondent respectfully requests this Court grant it leave to fully address the claims made in his appeal by remanding the matter to the ALC for briefing and consideration.

Respectfully submitted,



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Columbia, South Carolina
June 20, 2023

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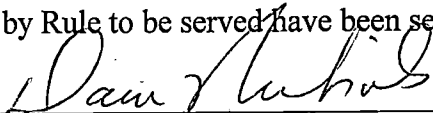
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within
Initial Brief of Respondent, Designation of Matter, and Motion to Strike on Appellant this 20th
day of June, 2023, by depositing a copy of the same in the United States mail, postage prepaid,
addressed to:

Ronald Albright, #211533
Lieber Correctional Institution
PO Box 205
Ridgeville, S.C. 29472

I further certify that all parties required by Rule to be served have been served.



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SC Court of Appeals

June 20, 2023

The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: **Ronald Albright, #211533 v. SCDPPPS**
23-000847

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent, Designation of Matter and Motion to Strike Appellant's Designation of Matter dated June 20, 2023, along with proof of service in the above referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "Mathew C. Buchanan".

Mathew C. Buchanan
General Counsel

MCB:dn

Enclosures

cc: Ronald Albright, #211533

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

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