STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Docket Number 22-ALJ-15-0013-AP

Appellate Case No.: 2023-000693

CHARLES MADDEN, #182326,.....APPELLANT

v.

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

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the Administrative Law Court erred in failing to apply the statutory meaning of "community supervision program" to the facts before it and instead deferring to Respondent's interpretation of that term.

2. Whether the Administrative Law Court's finding is supported by substantial evidence contained in the Record on Appeal.

3. Whether the Administrative Law Court erred in considering, and basing, its Final Order upon, facts which were not contained in the Record on Appeal.

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the Administrative Law Court correctly relied upon the Parole Board's definition of "community supervision program" when it is solely the Board's decision to grant or deny parole and provide its own reasons for doing so.

2. Whether the Administrative Law Court correctly determined that this was a routine denial of parole and thus properly dismissed the appeal.

STATEMENT OF THE CASE

Appellant, Charles Madden, is serving a life sentence for murder after satisfying sentences for assault and battery of a high and aggravated nature and burglary third degree. He killed his father during the commission of an armed robbery that was committed while he was out on bond for other offenses. Appellant initially became parole eligible in 2011 after service of twenty years for the instant offense.

Appellant initiated the appeals process after failing to be granted parole at the conclusion of his sixth parole hearing on July 13, 2022. The following day, the Board issued its notice of rejection informing Appellant of its decision. Included in this rejection letter was the Board's findings of fact as reasons for rejection, which were nature and seriousness of the current offense, indication of violence in this or previous offense, use of a deadly weapon in this or previous offense, criminal record indicates poor community adjustment, and failure to complete a community supervision program. (R.p.3).

Appellant appealed to the Administrative Law Court, arguing that "a community supervision program" had only one possible definition, which was *the* community supervision program pursuant to S.C. Code § 24-21-560, and therefore the Board violated his due process rights. Respondent replied that the Board used "a community supervision program" in the generic sense, encompassing all forms of supervision within the community. On February 14, 2023, the Honorable S. Phillip Lenski, Administrative Law Judge, remanded the matter to the Parole Board for clarification "with sufficient particularity what it meant by 'community supervision program.' (R. p.11-15).

The Parole Board complied on March 6, 2023, submitting an order of clarification in which 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.
>
> (R.p.17).

The ALC issued the Final Order, determining that in light of the clarification of the phrase "community supervision program," the Board did not err and that the denial of parole constituted a routine denial of parole. Consequently, the ALC affirmed the Board's denial.

Appellant now brings this appeal, arguing that the ALC erred in relying on the Board's use of the phrase "community supervision program," that its order upholding the Board's denial of parole was not supported by substantial evidence, and that it erred in relying on facts outside the record.

Respondent will argue that the ALC correctly deferred to the Board's own decision-making authority and its remand for clarification, while unnecessary, was the appropriate response. Furthermore, Respondent will argue that the ALC had no other choice but to uphold the denial of parole once it became evident that the Board was not defining "community supervision program" in such a restrictive way. 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).

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).

ARGUMENTS

1. **The phrase "community supervision program" is not solely a term of art that refers to the supervision program defined in S.C. Code 24-21-560.**

Despite the minimal due process rights afforded inmates in parole hearings and the obvious plain-language meaning of the phrase "community supervision program," Appellant applies a hyper-technical definition to the phrase in an obvious bid to circumvent the Parole Board and demand parole by manufacturing a due process issue that plainly does not exist.

Appellant insists that the phrase "community supervision program" only refers to the period of supervision required of prisoners who are convicted of "no parole offenses" per S.C. Code Ann. § 24-13-100 that begins upon the release from incarceration. S.C. Code Ann. § 24-21-560. This program and its specific name came into being via operation of legislation in 1995, five years after he was originally convicted and sentenced. *See* 1995 S.C. Laws Act 83 (H.B. 3096).

Prior to this, "community supervision program" and "community supervision" have been generic phrases that have been in use for years and are defined as any type of program in which an offender lives in the community at large but is still supervised by the State.[1] This phrase regularly incorporated probation, parole, supervised furlough, and, after 1996, the Community Supervision Program (CSP)[2].

Contrary to Appellant's position that "community supervision program" only ever refers to CSP throughout the entire Code, the phrase is in use in several statutes that are clearly meant generically rather than CSP. The phrase is distinguished from CSP in the electronic monitoring statute S.C. Code § 23-3-540. "(C) A person who is required to register... and who violates a term

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[1] Notably, this phrase was used prior to the enactment of § 24-21-560. See S.C. Code § 24-21-520(1) (Supp. 1993) (effective date August 31, 1994; repealed June 29, 1995). See also S.C. Code § 24-22-120 (Supp. 1992).

[2] For clarity, Respondent will use the acronym CSP to refer to the community supervision program required for those serving no parole offenses pursuant to S.C. Code 24-21-560.

of probation, parole, community supervision, *or a community supervision program* must be ordered..." (emphasis added). See also "(D) A person who is required to register... and who violates a term of probation, parole, community supervision, *or a community supervision program*, may be ordered by the court..." (emphasis added).

In another context, S.C. Code § 24-21-280(A) outlines the duties and powers of a probation agent over individuals "released on probation, parole, or community supervision under his supervision" do not mention reentry supervision (S.C. Code § 24-21-32) or supervised furlough (S.C. Code § 24-13-710 and § 24-13-720), but individuals on either form of supervision are still clearly under the authority of the agent. Similarly, "community supervision" is used in the generic sense in S.C. Code § 24-3-40(B)(1) and (3) when the Code speaks to when and how inmates' wages are distributed upon their release from incarceration. The phrase "community supervision program" is obviously used in a generic context because inmates are released to a variety of supervision programs depending on their sentence, such as parole, probation, CSP, or supervised reentry.

Lastly, it should be noted how regularly the Code cites to § 24-21-560 whenever it refers to CSP. "[A] community supervision program as set forth in Section 24-21-560" is used in § 24-21-30(A). Section 24-13-150 states that certain inmates are not eligible "for early release, discharge, or community supervision as provided in Section 24-21-560," and § 24-13-210 (E) states, "a person is required to complete a community supervision program pursuant to Section 24-21-560," while (F) states, "... prerelease or community supervision program as provided in Section 24-21-560."[3]

Quite simply, if the phrase "community supervision program" had only one singular

[3] See also: § 24-13-230(C) and § 24-21-32.

meaning as Appellant insists, then the General Assembly would have no need to refer to § 24-21-560 each time it needs to make sure the actual program referenced therein was implicated. In fact, because the plain language of the phrase "community supervision program" could refer to any number of the myriad forms of supervision within the community that have developed over the years, it is clearly incumbent on the Legislature to refer to § 24-21-560 whenever a statute affects or is affected by CSP.

Because there are multiple references to a "community supervision program" that do not clearly refer to CSP, Appellant is incorrect in his insistence that there is only one interpretation that can be made regarding its use by the Parole Board in its rejection letter. Appellant's argument is therefore without merit.

2. The Administrative Law Court did not err when it remanded the matter back to the Parole Board for further clarification.

Appellant argues that the ALC should have made its own determination that the Parole Board meant CSP in its parole rejection letter. Respondent submits that the ALC would have been correct if it had summarily dismissed the appeal, and certainly did not err when it remanded the question to the Parole Board for clarification.

As an initial matter, the ALC is extremely limited in its jurisdiction over appeals from the Parole Board. The ALC does not have jurisdiction to hear an appeal of a routine denial of parole. "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 § 1-23-600(D). Only when the Department determines an inmate is permanently ineligible for parole does the ALC have full jurisdiction to review that decision. *Furtick v. S.C. Dep't of Corr.*, 374 S.C. 334, 339, 649 S.E.2d 35, 38 (2007). In *Furtick*, the Supreme Court extended *Al-*

Shabazz[4] to parole eligibility decisions while emphasizing the difference between a final decision and a temporary granting or denial of parole by the Parole Board.

"Parole is a privilege, not a right. *Cooper*, 377 S.C. at 496, 661 S.E.2d at 110 (citing *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443 n. 4, 586 S.E.2d 124, 127 n. 4 (2003)). "[N]o such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him." § 24-21-640. "Undoubtedly, the Parole Board is the sole authority with respect to decisions regarding the grant or denial of parole." *Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008).

In this case, Appellant has attempted to convert a routine denial of parole into a due process issue by deliberately misreading and misconstruing language in the Parole Board's letter of rejection. He makes the strained argument that the Board is requiring him to have completed a term of CSP despite the unambiguous language indicating that the Board was not satisfied to grant him parole based on the seriousness of Appellant's crime and the circumstances surrounding it, his poor criminal history and his failure to successfully complete a supervision program. The ALC would have been perfectly within its authority to see through Appellant's efforts to cloud the waters and dismiss his appeal – as required by the Supreme Court in *Compton v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 385 S.C. 476, 684 S.E.2d 175 (2009). "We emphasized that ... 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

[4] *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000).

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.*, 385 S.C. at 479, 684 S.E.2d at 177.

However, the ALC instead chose to remand the matter back to the Parole Board for clarification over the phrase, "community supervision program." This was in no way an error, despite Appellant's insistence. He cites to *Kiawah Dev. Partners, II v. South Carolina Dept. of Health and Environmental Control*, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014), and the two-step process regarding interpretation of statutes and regulations administered by state agencies. "First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation." *Id.*, citing *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 581 S.E.2d 836 (2003).

Appellant's reliance on *Kiawah* is woefully inaccurate. The language at issue is the interpretation of the Parole Board's letter of rejection, not a statute or regulation. Therefore, even the first prong of the two steps falls short. Just because the Board happens to use a phrase in its letter that mirrors something in statute does not make it a matter of statutory interpretation. The Board's letter is just that, a letter, fulfilling the requirements of *Cooper* and providing "reasons for the Board's action denying parole." *Greenholtz v. Inmates of Nebraska Penal and Corr. Complex*, 442 U.S. 1, 6, 99 S.Ct. 2100, 2103 (1979).

Despite *Kiawah* not being relevant to the case because it does not involve the interpretation of a statute or a regulation, the ALC still was within its authority to remand the matter for clarification on what the Board meant by the phrase "community supervision program." This was an appropriate action to clarify the issue Appellant raised. See, e.g., *Charlotte-Mecklenburg Hosp. Authority v. South Carolina Dept. of Health and Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010).

Appellant's arguments that the ALC erred by "deferring to Respondent's 'intended meaning' of the term 'community supervision program'"[5] are insufficient for two plainly obvious reasons. The first one, as discussed, is that the ALC was not interpreting a statute or regulation – it was attempting to ascertain the meaning of a phrase in a letter from the Parole Board. Therefore, the appropriate action was to remand the matter for clarification.

Second, Appellant argues that it was inappropriate to defer to "a litigant in this matter"[6] and that Respondent acted purely in self-interest when the Parole Board clarified the phrase to be inclusive of all forms of supervision within the community. This, of course, fails because it is completely reasonable to draw such an inference from the phrase and the context in which it was used. The Parole Board is a body independent from Respondent Department of Probation, Parole and Pardon Services. The Parole Board members are appointed by the governor[7] and do not draw a salary.[8]

Consider that the Board members have no role to play with individuals released to CSP. Inmates serving "no parole sentences" by definition are not considered for parole, so they do not appear before the Board. Their release from incarceration to supervision under the terms of CSP operate independently from the Parole Board. Consequently, to maintain that the only possible interpretation of the phrase "a community supervision program," when used by the Board, means CSP pursuant to § 24-21-560 is a massive leap of logic. Clearly, the ALC did not take that leap, and took the reasonable step of asking the Board to clarify itself. This Court should therefore uphold the ALC's decision.

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[5] Brief of Appellant at p. 11
[6] *Id.*
[7] S.C. Code Ann. § 24-21-10(B).
[8] S.C. Code Ann. § 24-21-12.

3. The Administrative Law Court's order was clearly supported by evidence and should be upheld.

Appellant argues that the ALC's order upholding the Board's decision denying parole should be reversed because it was not supported by substantial evidence. In making this argument, he relies on his incorrect assertion that there is only one way to interpret the phrase "community supervision program" (addressed in Part 1), that the ALC improperly requested the Board to clarify its statement (addressed in Part 2), and that any information about his prior criminal history and his resultant failure to complete probation in 1983 (R.p.151) due to his arrest and conviction for the offense for which he is serving now should not have been considered by the ALC.

Of course, the phrase "community supervision program" does not exclusively refer to CSP. The ALC appropriately remanded the matter to the Board for clarification. Thus, Appellant's argument that there was insufficient evidence for the ALC to uphold the Board's decision fails on those initial grounds. However, in case this Court chooses to review his third point as a standalone issue, Respondent will address Appellant's assertion that the ALC should not have considered the evidence regarding his 1982 conviction for housebreaking and his failure to complete probation.

Initially, Respondent submits that it does not matter that the Record on Appeal did not include evidence of Appellant's prior criminal history – it only matters that the evidence was before the Board. *Cooper*, *Compton*, and §1-23-600(D) greatly limits the ALC's authority over the decision-making of the Board. Notably, in an appeal from a Board's decision, the only issues reviewable by the ALC are whether the Board considered the statutorily-mandated parole criteria, actuarial risk-needs assessment tool, and the factors outlined in §23-21-640. *Cooper* at 500, 661 S.E.2d at 112. The ALC cannot consider the weight of the evidence before the Board, so the Department is not required to provide more than the letter of rejection. *Id.* See also *Compton*.

The ALC's own rules require the Department supply only a copy of the agency decision

and the decision following a motion for reconsideration, if applicable. SCALC Rule 61. This rule comports with the extreme limitations on the ALC's jurisdiction over appeals of routine denials of parole. §1-23-600(D). "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."

However, Appellant seeks to weaponize this Rule by then stating that the ALC cannot consider anything outside of what it requires. It bears repeating again that the ALC cannot hear routine denials of parole, and furthermore no inmate has a right to parole.

It's worth noting that Appellant did not appeal his denial of parole by saying that he had never failed to successfully complete a community supervision program – only that he did not, and could not have, completed CSP. Had Appellant never been on a form of supervision before his current offense, an appeal over that ground as being a reason for denial would have merit. Indeed, it would likely never have reached the ALC, because Respondent's own reconsideration process would have provided for the Board to review its denial in light of that fact.

Instead, the basis for Appellant's appeal is over a hyper-technical definition of a phrase in the Board's letter of rejection – which is in the record. Because the Board's reasons for rejection were at issue, it was appropriate for Respondent to raise Appellant's criminal history by citing to the indictment number of his housebreaking conviction to show that he was in fact on a form of supervision that was not completed successfully.

Subsequently, the ALC remanded the matter to the Board with instructions to "clarify[] with sufficient particularity what it meant by 'community supervision program.'" R*. p. 5. In response, the Board referred to Appellant's probationary sentence from 1982.

Appellant argues that there are no facts in the Record on Appeal supporting the Board's findings. Respondent submits that the Board's decision-making is not reviewable by the ALC, so the facts do not need to be in the record. The ALC, per its own rules, only requires "a copy of the agency decision, and where applicable, the decision following a motion for reconsideration." SCALC Rule 61. It should only matter to the ALC that Appellant's prior supervision history exists, because it must defer to the Board's decision-making. The Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. § 1-23-380(5).

Appellant's argument fails to consider the fact that the ALC does not have the jurisdiction to even hear a routine denial of parole, much less consider the weight of the evidence that the Board used when it denied parole in a routine hearing. He opportunistically makes the argument that because there was no evidence to indicate that he ever violated supervision in the record, this Court should reverse the ALC and order the Board release him to parole. If this argument has any merit, then all appeals from routine denials wherein Respondent follows Rule 61 would have insufficient evidence and also warrant an order from this Court for parole.

Obviously, this is absurd. Only the Parole Board has the authority to grant parole, so Appellant's repeated demand that this Court require the ALC to issue an order requiring the Board grant parole is a request for relief that cannot be granted. Furthermore, the ALC is *required* to dismiss appeals from parole-eligible inmates when the Department follows the procedures outlined in *Cooper*. *Compton* at 479, 684 S.E.2d at 177. Rule 61 is designed to allow for the Department to provide evidence that *Cooper* was followed, because to go further than that is beyond the ALC's jurisdiction.

Appellant is correct in noting that *Cooper* is one of the main cases that outlines the

requirements the Board must follow when rendering its decisions. *See Cooper, supra.* However, that has also been modified by other case law, notably *Compton. Compton at* 479, 685 S.E.2d at 177, "the Parole Board clearly stated in its notice of rejection that it considered the statutory criteria and the criteria set forth in Form 1212, which is sufficient under *Cooper*." (R.p.28). To state that *Cooper* held a failure to adhere to statutory requirements creates a *de facto* permanent denial of parole eligibility is inaccurate. The actual quote is, "Parole is a privilege and Cooper has no right to be paroled; however, Cooper does have a right to require the Board to adhere to statutory requirements in rendering a decision." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112.

Because the Board followed the procedures outlined in *Cooper* and *Compton*, this Court should therefore affirm the ALC's ruling.

CONCLUSION

Appellant's entire premise of his appeal is that there is only one interpretation of "community supervision program" and that the Board could only have meant CSP when it used his failure to complete probation as one of five grounds for denial of parole. However, "community supervision program" is used in various contexts within the South Carolina Code of Laws. Furthermore, the Board also rejected him due to the nature and seriousness of his crime, his use of a deadly weapon and violence during the commission of that crime, and his prior criminal record, all of which are valid reasons for denial of parole. Appellant then grossly overreaches with a demand that this Court order his release to parole. While the ALC could have correctly dismissed the appeal without a remand, the ALC certainly did not err by remanding the matter for additional clarification by the Board. Once the Board provided a sufficient – and reasonable – statement

clarifying its reasoning, the ALC properly determined the parole denial to be routine and therefore correctly affirmed the Board's decision.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent filed July 25, 2023, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 25th day of July, 2023.

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