

THE STATE OF SOUTH CAROLINA
IN THE COURT of APPEALS

APPEAL FROM the ADMINISTRATIVE LAW COURT

Robert L. Reibold, Administrative Law Judge
Appellate Case No. 2023-001203

RECEIVED

Michael Moore, #219515

APPELLATE,

SEP 19 2023

SC Court of Appeals

V.

South Carolina Department of
Probation, Parole and Pardon
Services

RESPONDENT.

BRIEF of APPELLANT

Michael Moore # 219515
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Kelsey v. S.C Department of Probation, Parole, and Pardon Services, 2023 WL 5598698 (2023)

Furtick v. S.C Department of Probation, Parole, and Pardon Services, 352 S.C. 594, 576 S2d. 146 (2004)

Sullivan v. S.C Department of Probation, Parole, and Pardon Services, 355 S.C 437,586 SE2d 124 (2003)

Jackson v. Bi-Lo Stores Inc. .313S.C272,277 SE2d. 168,171 (2003)

Hill v. S.C Department of Health and Env't Control, 389 S.C 1.9-10,698 S.E2d 612,617 (2010)

Risher v. S.C Department of Health and Env't Control, 393 SC 198,204S.E2d. 428,431 (2011)

STATUTES

S.C Code Law § 1-23-380 (2008)

S.C Code Law § 1-23-600 (2019)

S.C Code Law § 1-23-610 (2008)

S.C Code Law § 24-21-640 (2010)

S.C Code Law § 24-21-10 (2012)

STATEMENT OF THE ISSUES ON APPEAL

1. Did the ALC err in dismissing the Appeal because the Board claims to have properly considered the criteria set forth in COOPER in reaching its decision of a routine denial of Parole?
2. Did the ALC err in concluding that the Appellant argument in reply brief raises new argument?

STATEMENT OF THE CASE

This case is before the South Carolina Court of Appeals pursuant to the appeal of Michael Moore of the order of Administrative law Judge Robert I. Reibold dated June 21, 2023 affirming the final decision of the respondents parole board.

On March 29, 1995, a South Carolina Court convicted Appellant (herein after Moore) of murder and sentenced him to life imprisonment with the possibility of parole. At the time, someone serving a sentence of life for murder was required to serve at least twenty years imprisonment before being parole eligible.

Moore's first appearance before the board was April 9, 2014. Since that time, Moore has appeared before the board four times with the most current review being held March 2, 2023. Following Moore's appearance, the board voted unanimously to deny Moore's parole based on the nature and seriousness of his offence, use of a deadly weapon and indication of violence. Moore filed a notice of Appeal before the Administrative Law Court. In his appeal Moore alleged the board abused its discretion in denying his parole a fifth time using the same grounds for denial as his previous denials. The Honorable Robert L. Reibold dismissed the appeal determining that the ALC has no authority to review or reverse a routine denial of parole to an otherwise parole eligible inmate.

Moore now appeals Judge Reibold's decision, arguing that the ALC erred when it failed to address or rule upon the claim that the Parole Board abused its discretion when there was evidence that Moore met the criteria for parole consideration and that his argument in his reply brief did not raise a new issue and was properly before the court. This appeal follows.

STANDARD OF REVIEW

In criminal cases, the appellant court sits to review errors of law only and is bound by the trial courts factual findings unless they are clearly erroneous. When reviewing a case involving the permanent denial of parole, the ALC sits in an appellant capacity. FURTICK v. S.C DEPT of PROBATION, PAROLE and PARDON SERVICES, 352 S.C 594.576 S.E 2d 146(2004) .

Under Appellant standards of the Administrative Procedures Act, the ALCs review is limited to the record, absent irregularities in the procedure of the agency. S.C Code Law§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 question of fact, but may modify or reverse the decision of the agency when substantial rights of the Appellant have been prejudiced. S.C Code Law§1-23-380(5). Furthermore, the ALC may not hear an appeal involving the denial of parole to an otherwise parole eligible inmate. S.C Code Law§1-23-600(D) .

In an appeal from an ALC decision, the Administrative Procedures Act provides the standard of review. S.C Code Law§ 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

(f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

“This court may not substitute its judgment for the judgment of the ALC as to the weight of the evidence on questions of facts” Id. In determining whether the ALCs 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 Dept. of Health and Env't Control, 389 S.C.1, 9-10.698 S.E2d. 612,617 2010

ARGUMENTS

1. The ALC did err in dismissing the appeal because the board claims to have properly considered the criteria set forth in COOPER in reaching its decision of a routine denial of parole.

Moore avers that the ALC did not address the issue he raised on appeal, that the board abused its discretion when it denied parole for the fifth time, in a rote fashion, using the same reason it did in the previous denials. Moore also alleges that he satisfied the criteria of parole consideration of S.C Code Law §24-21-640.

The respondents would submit the ALC properly dismissed the appeal because it determined that the procedure followed by the board in evaluating Moore's request for parole, and the criteria considered by the board were proper and conformed with the South Carolina Supreme Courts holding in COOPER v S.C DEPT of Probation, Parole and Pardon Services, 377 S.C 489, 661 S.E 106 (2008).

The notice of rejection letters from the board shows nothing more than the assumption that it reviewed the facts of Moore's case before deciding that the denial was routine. The ALC ignored the fact there is no evidence in the record showing facts to substantiate the board's decision. On page three of the final order, the reviewing standard of the ALC identified the correct governing statute and precedent that applies, S.C Code Law §1-23-380(5), but on pages 6&7 of the order substituted its judgment for the board stating in relevant part:

“The (C)ourt is cognizant that the denial letters mere recitation that the parole board considered all appropriate factors is not conclusive evidence that all such factors were in fact considered...the varied votes of the board over time indicates that the board has in fact considered the facts in Appellants case.”

Footnote 4 Final order Id.

Moore argues that there is no evidence in the records: rejection letters or otherwise that can substantiate this inference, finding and conclusion by the ALC. The ALC substituted the board's decision with its own judgment as well as inferred that the proof in this was the reason for denial of parole that varied over time to substantiate that the board was reviewing the record and not just ministerially denying parole.

In the recent ruling of Buchanan v. S.C Dept. of Probation, Parole and Pardon Services, 2023 WL5597908, opinion No. 6021, filed August 30, 2023, the Court of Appeals reluctantly affirmed the ALC findings that the Parole Board followed proper when it denied Buchanan parole for the eighteenth time because the board's order of denial stated the board had considered “the factors outlined in (S)ections 24-21-640” and “the factors published in Department Form 1212” to support their position. See Risher v S.C Dept. of Health and Env't Control, 393 S.C 198, 204 S.E 2d 428, 431 (2011) (“A decision of the ALC should be upheld...if it is supported by substantial evidence in the record”): Cooper 377 S.C at 500, 661 S.E2d at 112 (“providing the procedure for denying parole that it considered the factors outlined in §24-21-640 and the fifteen factors published in form 1212”): Compton, 355 S.C at 479, 685 S.E2d at 177, (affirming a denial of Parole because the parole board's order complied with Cooper requirements).

Although Moore, who was not a juvenile at the time of his offense, he raises similar questions as Buchanan with respect to the perfunctory manner in which his request for parole was denied. Moore is similarly situated with Buchanan, Cooper, and Compton as to the technical eligibility

for parole, the continuing denial at parole based on the same factors all unchangeable and related to their offenses which gives no guidance about what can be done to improve any chances for a successful parole review.

Under the current system in South Carolina it appears no passage of time (here 26 years) or showing of rehabilitation (here his rehabilitation) can change his fate before the board. The public policy behind Cooper, Compton and Buchanan, to restore hope to “offenders” for some life outside of prison is thwarted by the boards continued reliance on factors existing at the time of the conviction with little or no apparent consideration of subsequent rehabilitation efforts. The prospect of parole, including meaningful parole hearings, incentivizes good conduct while in prison and encourages participation in rehabilitative programs that reduces recidivism rates. As is Moore’s case, he too 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.

The record should also indicate that his co-defendant has already been released on parole for the same offense. It appears to be no dispute—none that Moore has been an exemplary inmate and demonstrated remorse, rehabilitation and a low risk for recidivism.

Moore is aware of the deep concerns this court has towards arguments that it appears inmates who offend are not given meaningful review regarding court parole and is sympathetic to our cause. If this reviewing court rests on the same possibility of drawing two inconsistent conclusions from the evidence to support a finding that is clearly erroneous and maybe characterized by an abuse of discretion or exercise of that discretion due to unsubstantiated evidence that reasonable minds could or would reach the same conclusion that the parole panel continues to improperly do thereby making it something other than a routine denial undermines the (due process) that invokes this court’s authority to revisit the provisions outlined in Cooper and Compton respectively, not the legislature.

While it is good policy for the Legislature to review and/or revise the parole system to assure the outlined factors are considered with evidence based checks and balances written records readily available for public and judicial inspection, the operating framework set by statutory interpretations and Supreme Court’s precedents on procedure employment by state agencies is a role for the courts and the courts only.

Furthermore, to go contrary to this reasonable mind set would be to imply that the boards discretion is absolute, a position no other state agency can attest to have without a check and balance of accountability in discretionary decisions by an agency. See S.C Code Law §24-21-640 (“ No such prisoner may be paroled until it appears to the satisfaction of the board”); also Sullivan Dept. of Corrections, 355 S.C 737-586-S.E2d 124, 127 (2003) (“ an inmate does not have a right to parole, only parole consideration”).

2. Did the ALC error in Concluding that the Appellant argument in reply brief raises new argument.

The categorizing of Moore's argument in his reply as a new argument is erroneous and/or a conclusion characterized by an abuse of discretion because the fact finders determination was not persuaded by the challenged statutory interpretations of the boards rationale of compliance of §24-21-640, Departments Form 1212 and Cooper and Compton.

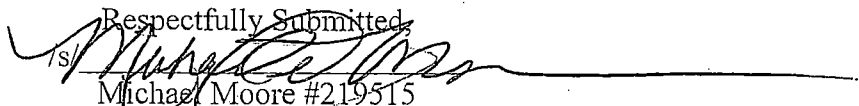
Moore avers that nothing in his reply brief alluded to any new argument that was not raised initially making the Jackson v Bi-Lo Stores, Inc. 313 S.C272,277,437 S.E2d. 11.8,171 (ct. app.1993) in applicable. In reply brief page 2, Ln. 24-30 merely expounded on Moore's position on the boards statutory interpretations of §24-21-640,24,21-10 by citing Kelsey v S.C Dept. of Probation, Parole, and Pardon Services,2023 WL 5598698, August 30,2023.

Moreover, it becomes clearer that the questions raised by Moore is similar to Kelsey, Buchanan, Cooper and Compton respectively. Hence, there is nothing in the record to substantiate or support the ALC's discretion or exercise of that discretion to uphold the boards decision.

CONCLUSION

The ALC did err in dismissing the Appeal because the board claimed to have properly considered the criteria set forth in Cooper and Compton in reaching its decision of a routine denial of parole, and concluded the argument in reply brief was a new argument.

Based on the above reasons, Moore respectfully requests this court to reverse the final order denying him parole and allow for full briefing on all of the issues presented to this court and/or oral arguments on the merits on his claims.

Respectfully Submitted,
/s/ 
Michael Moore #219515
Pro-se Litigant

STATE OF SOUTH CAROLINA
In The Court of Appeals

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Robert L. Reibold, Administrative Law Judge
Appellant Case No. 2023-001203

Michael Moore, #219515.....APPELLANT

V.


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

CERTIFICATE OF SERVICE

I, Michael Moore, certify that I have served the Initial *Brief* of Appellant and the Designation of Matter in the above captioned Appeal to the Respondent's by placing the same in the U.S Mail, postage pre-paid and addressed as follows.

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SEP 19 2023

SC Court of Appeals

RE: Michael Moore, #215919 V. SCDPPPS
Appellate Case No. 2023-001203

Dear Honorable Clerk:

Enclosed, please find the **INITIAL BRIEF of APPELLATE** and the **DESIGNATION of MATTER** in the above referenced case, for filing in your office and with the Clerk.

By copy of this letter and **PROOF of SERVICE**, I have served a copy to the Respondents and the Administrative Law Court.

Sincerely,
/s/


Michael Moore

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