

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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Bernard Bagley, #175851,

Docket No. 22-ALJ-15-0022-AP

OCT 30 2023

SC Court of Appeals

Appellant,

v.

ORDER

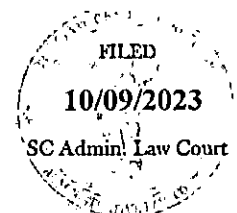
South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

This case is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Bernard Bagley (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On November 30, 2022, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) had rejected him for parole. Appellant challenges the Board's denial of parole on the grounds that the Board failed to consider any medical evidence as to his mental condition or a psychological evaluation in this application for medical parole.

On February 28, 2023, this Court issued an order denying the Department's Motion to Dismiss pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2022). The statute provides, "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." Thus, this Court's authority to review a decision of the Board is limited to determining if the Board followed the proper procedure and considered the relevant factors. Compton v. S.C. Dept. of Probation, Pardon and Parole Services, 385 S.C. 476, 685 S.E.2d 175 (2009). If proper procedure was followed, any decision of the Board constitutes a routine denial of parole and will not be disturbed by this Court. Having received the briefs of both parties, this matter is now ripe for the Court to determine whether the proper procedure was followed by the Board in this matter.

S.C. Code Ann § 24-21-715 is the statute providing for medical parole. Therefore, it is the foremost authority to consult to determine the proper procedure for a decision granting or denying such parole. Section 715 provides in relevant part:



(B) Notwithstanding another provision of law, only the full parole board, upon a petition filed by the Director of the Department of Corrections, may order the release of an inmate who is terminally ill, geriatric, permanently incapacitated, or any combination of these conditions.

(C) The parole order issued by the parole board pursuant to this section must include findings of fact that substantiate a legal and medical conclusion that the inmate is terminally ill, geriatric, permanently incapacitated, or a combination of these conditions, and does not pose a threat to society or himself. It also must contain the requirements for the inmate's supervision and conditions for his participation and removal.

S.C. Code Ann. § 24-21-715 (Supp. 2022).

In short, the statute requires that a petition for medical parole must be initiated by the Director of the Department of Corrections. In this case, that was done by a ~~letter~~ from Director Bryan Stirling. Once initiated, the full parole board must rule on the request. The Board must make its decision, including findings of fact as to:

1. Whether the inmate is terminally ill, geriatric, permanently incapacitated, or some combination of these conditions, and
2. Whether the inmate does or does not pose a threat to society or himself.

If the findings as to those issues indicate that the inmate is a proper candidate for medical parole, and the Board's decision is to grant parole, the order must include conditions for parole and requirements for the inmate's supervision.

On its face, the Board's decision does not contain a statement of the findings of fact related to Appellant's medical condition, nor what threat the inmate poses to himself or society as required by the statute. The findings ("Nature and Seriousness of Current Offense, Indication of Violence in This or Previous Offense, Use of Deadly Weapon in This or Previous Offense") appear to be related to a determination of whether to grant parole pursuant to S.C. Code Ann. 24-21-640 rather than a determination of medical parole pursuant to 24-21-715. Therefore, the decision denying parole must be reversed and remanded to the Board to reconsider the application for medical parole based upon the relevant statute.

ORDER

IT IS THEREFORE ORDERED that the November 30, 2022 decision of the Board denying medical parole is **REVERSED**.

IT IS FURTHER ORDERED that this matter is **REMANDED** to the Board to make a determination as to whether to grant medical parole to Appellant based upon the procedure and

factors set forth in S.C. Code Ann. 24-21-715. Should Appellant desire review of the Department's decision on remand, he will be required to file a separate notice of appeal from that determination.

AND IT IS SO ORDERED.

A handwritten signature in black ink that reads "Deborah Brooks Durden". The signature is written in a cursive style with a large initial 'D'.

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

October 9, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

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