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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bernard Bagley, 175851,

Appellant,

vs.

South Carolina Department of Probation
Parole and Pardon Services,

Respondent.

Docket No: 23-ALJ-15-0021-AP

ORDER

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 June 21, 2023, 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. Appellant argues that the Board “abrogated” his parole eligibility, thus implicating a state-created liberty interest, and violating his due process rights. He further contends that his due process rights were denied because the Department did not present a report to the Board regarding his mental condition as required by section 24-21-610 of the South Carolina Code (2007).

The Supreme Court of South Carolina has spoken clearly concerning the jurisdiction of the Administrative Law Court in cases such as this.

We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure. Under that scenario, the ALC can summarily dismiss the inmate’s appeal.

Cooper v. S.C. Dept. of Probation Pardon and Parole Services, 377 S.C. 489, 66 S.E.2d 106 (2008).

The Cooper decision was underscored by Compton v. S.C. Dept. of Probation Pardon and Parole Services, 385 S.C. 476, 685 S.E.2d 175 (2009), as follows:

In Cooper, we held that if the Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate’s right to parole eligibility and infringes on a state-created liberty interest, warranting minimal due process protection. Because the Parole Board in Cooper neither

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offered an explanation nor indicated it had considered the statutory criteria or the criteria set forth in Form 1212, we had no other choice but to determine the order was defective and the decision was arbitrary and capricious. We emphasized that this result could be avoided in the future 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 complies with this procedure, the decision will constitute a routine denial of parole and the ALC will have limited authority to review the decision.

Moreover, subsection 1-23-600(D) of the South Carolina Code (Supp. 2023) provides, “[a]n 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. If that procedure was followed, any decision of the Board constitutes a routine denial of parole and will not be disturbed by this Court.

The Court has reviewed the record on appeal and in particular, the Notice of Rejection dated June 21, 2023, and concludes that the parole board followed proper procedure, considered the fifteen factors and section 24-21-640, mentioned above, thus resulting in a routine denial of parole. Because the Board’s decision is consistent with the requirements set out in Cooper and reiterated in Compton, the Court finds that the decision constitutes a routine denial of parole, and this Court has limited authority to review the decision. Moreover, the Board’s Notice of Election set forth that Appellant will be notified thirty days prior to his next parole hearing thus eluding that Appellant has not been permanently denied parole eligibility.

Accordingly, because this is a routine denial of parole, none of the issues raised by Appellant fall within this Court’s limited review authority.

ORDER

IT IS THEREFORE ORDERED that the Board’s determination that Appellant should be denied parole in this instance is **AFFIRMED**.

AND IT IS SO ORDERED.

Crystal M. Rookard

CRYSTAL M. ROOKARD
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned has in a date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the emergency Mail Service addressed to the parties.

This 28 day of December
By:  _____
Administrative Law Judge

December 28, 2023
Columbia, South Carolina

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