

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 23-ALJ-15-0019-AP

Appellate Case No.: 2024-000050

RICHARD COLEMAN, #186795,.....APPELLANT

v.

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

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the ALC erred when it summarily dismissed Appellant's appeal for failure to follow the Rules of Procedure for the Administrative Law Court when Appellant did not include the final decision of the Parole Board.
2. Whether the ALC was constrained to dismiss the appeal because it was a routine denial of parole even if Appellant had perfected his appeal.

STATEMENT OF THE CASE

On August 7, 1991, Appellant unlawfully entered the home of the victim during the daylight hours and stole a .22 caliber pistol. Later that day, Appellant returned and asked the victim if he could have some aspirin. The victim, the wife of Appellant's cousin, allowed him to enter the residence. While the victim was looking for the aspirin, Appellant shot her three times in the back with the handgun he stole earlier. After shooting her, Appellant forcibly sexually assaulted the victim, then shot the victim two more times causing her death.

Appellant was later caught, arrested, and charged with the offenses of murder, burglary in the first degree, burglary in the second degree, grand larceny and criminal sexual conduct in the first degree. At the time he committed these offenses, Appellant had a prior criminal history despite being only fifteen years of age. The case was waived up from Family Court to the court of General Sessions.

On April 20, 1992, Appellant appeared before the Honorable Paul E. Short for each of these offenses. Upon the conclusion of this appearance, Appellant was sentenced to a term of incarceration for the remainder of his natural life for the offenses of murder and burglary first, thirty years for criminal sexual conduct first, fifteen years for grand larceny, and ten years for burglary second. Pursuant to South Carolina law existing at the time these offenses were committed, eligibility for parole began upon the service of twenty years.

On September 12, 2012, Appellant made his initial appearance before the Parole Board, which denied parole. Since this initial appearance the Appellant has appeared five times, each resulting in a denial of parole. The Appellant's most recent appearance occurred on April 26, 2023. Parole was denied due to: the nature and seriousness of the current offense; an indication of violence in this or a previous offense; and the use of a deadly weapon in this or a previous offense.

Upon being notified of his denial of parole, Appellant requested a reconsideration on May 22, 2023. In his letter, he stated that his representation has been blocked from attending the hearing, thus violating his due process rights. Unfortunately, it was not until the filing of his appeal with the Administrative Law Court (ALC) that Respondent was made aware that it had not replied to the reconsideration request. This was rectified by the mailing of a letter denying reconsideration on August 16, 2023. R.*.

In his appeal to the ALC, Appellant argued that the Board failed to take his age at the time he committed his offense into consideration prior to the denial of parole, which was also based on fixed factors and denied him a meaningful opportunity for parole. He also raised a claim that the Parole Board prevented his counsel from being present at the hearing. Notably, his Notice of Appeal with the ALC did not include the final decision from the Parole Board and was untimely filed.

The Honorable S. Phillip Lenski, administrative law judge, dismissed the appeal because Appellant failed to perfect his appeal by not including a copy of the final decision and not filing the appeal in a timely fashion. Appellant now brings this appeal, arguing that the ALC judge was in error and that he had filed his notice of appeal along with a copy of the final decision.

In response, Respondent will argue that the ALC was correct in its determination that Appellant failed to follow the Rules of Procedure in filing his Notice of Appeal and that the ALC was constrained to dismiss the appeal because it was a routine denial of parole. Respondent's 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 Env'tl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

ARGUMENTS

1. The ALC properly dismissed the appeal.

Appellant claims that the ALC erred when it dismissed his appeal. As a creation of statute, the ALC only has the authority given to it by the General Assembly and it must follow the Rules of Procedure, as must the appellants appearing before it.

As noted by the ALC, SCALC Rule 59 requires that the notice of appeal must be filed within thirty days of the receipt of the decision. In this case, the final decision was dated April 26, 2023. Appellant did not file his Notice of Appeal until June 1, 2023.

The ALC does not have the authority to extend the time in which an appellant may file his notice of appeal. *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985). This is a firm jurisdictional limit imposed upon the ALC. Therefore, the ALC did not err and the dismissal of the appeal should be upheld.

2. The ALC does not have the authority to hear a routine denial of parole.

Even if this Court determines that the time frame in which to file an appeal should have been expanded to accommodate Appellant's Notice of Appeal, the ALC still lacks the authority to review 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*, 352 S.C. at 598, 576 S.E.2d at 149. In *Furtick*, the Supreme Court extended *Al-Shabazz*¹ to parole eligibility decisions while emphasizing the difference between a final decision of parole eligibility and the routine granting or denial of parole by the Parole Board of parole-eligible inmates.

“Parole is a privilege, not a right.” *Cooper v. S.C. Dep’t of Probation, Parole and Pardon Services*, 377 S.C. 489, 496, 661 S.E.2d 106, 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.” S.C. Code § 24-21-640. “Undoubtedly, the Parole Board is the sole authority with respect to decisions regarding the grant or denial of parole.” *Cooper*, 377 S.C. at 499, 661 S.E.2d at 11.

So constrained, the ALC can only review the Board’s procedures and not its decision-making authority. The Board, being the sole body empowered to grant or deny parole, elected to deny parole to Appellant after carefully considering the required factors. The Board clearly stated that it did so in the letter of rejection to Appellant. R.* The ALC would thus be required to dismiss the appeal per the instructions of 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 complies

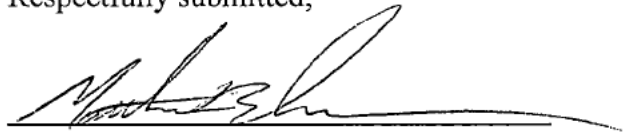
¹ *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000).

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.

CONCLUSION

The ALC, and appellants before it, are constrained to follow its rules regarding the timely filing as well as perfecting of appeals. Appellant did not timely file the appeal, nor did he include a copy of the final agency decision. Furthermore, The ALC therefore has limited authority to hear the appeal, and only to review whether the Board followed proper procedure. Appellant appealed a routine denial of parole. Because the record clearly shows the Board followed the procedure outlined in *Cooper*, the ALC properly dismissed the appeal. The ALC’s decision should therefore be upheld.

Respectfully submitted,



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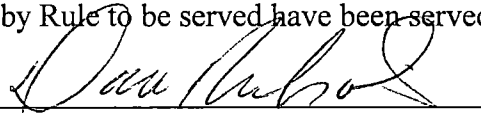
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within *Initial Brief of Respondent and Designation of Matter* dated March 20, 2024, on Appellant the 20th day of March, 2024, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Richard Coleman, #186795
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

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



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March 20, 2024

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

Re: Richard Coleman v. SCDPPPS
2024-000050

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter dated March 20, 2024, along with proof of service in the above referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan", written over a horizontal line.

Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures

cc: Richard Coleman, #186795

State of South Carolina

Department of Probation, Parole, and Pardon Services

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