

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eric Canty, #196262,

Appellant,

vs.

South Carolina of Probation, Parole and
Pardon Services,

Respondent.

Docket No. 23-ALJ-15-0026-AP

ORDER

RECEIVED

MAY 28 2024

SC Court of Appeals

BACKGROUND

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Eric Canty (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. In March of 1993, Appellant plead guilty to charges of armed robbery, burglary and murder. Appellant was first eligible for parole in 2013 and most recently appeared before the Parole Board on June 21, 2023.

In a Notice of Rejection issued that same day, the Board denied Appellant parole. Appellant submitted a written request for rehearing on July 5, 2023. On August 16, 2023, the South Carolina Department of Probation, Parole and Pardon Services (Department or PPS) issued a letter to Appellant stating that the Department had no process for rehearing/appeal of routine denial of parole, that the Parole Board's June 21, 2023 parole decision was final, and that Appellant's July 11, 2023 request for reconsideration of a June 21, 2023 parole denial was denied.

On September 1, 2023, Appellant filed¹ this appeal, alleging the Department utilized incorrect criteria in considering his parole eligibility. The Notice of Appeal only included the August 16, 2023 letter and indicates it is an appeal of the Department decision received on August 30, 2023. This matter was assigned to the undersigned on September 29, 2023.

¹ SCALC Rule 53 provides, in part, "[t]he date of filing is the date of delivery or the date of mailing as shown by the postmark or by the date stamp affixed by the mail room at the appellant's correctional institution." The envelope in which Appellant mailed his Notice of Appeal to the Court was stamped "Received Sep 01 2023 Mailroom ACI".



On November 7, 2023, PPS moved to dismiss Appellant's appeal for Appellant's failure to serve the Department with a Notice of Appeal as required by SCALC Rule 59. Appellant filed an opposition to the motion, and the motion was subsequently denied on November 29, 2023.

On January 8, 2024, the Department filed a motion to require Appellant to serve Respondent with the Respondent's Brief. Appellant subsequently filed a Certificate of Service indicating that the brief had been served. The Court later denied the motion as moot.

Appellant had originally filed his brief on November 13, 2023. The Department's brief was delayed by virtue of its motion practice but was ultimately filed on January 25, 2024. Appellant filed a reply brief on February 7, 2024.

ISSUE

The single issue on appeal, as stated by Appellant, is as follows: "Doe's (*sic*) the S.C. Parole Board render petitioner ineligible for parole by using the incorrect criteria in deciding whether to grant Petitioner parole?" (**App. Br. 5**).

JURISDICTION

The Court's jurisdiction to review parole decisions is limited. Section 1-23-600(D) of the South Carolina Code (Supp. 2023) specifically provides an administrative law judge shall not hear "an appeal involving the denial of parole to a potentially eligible inmate by the Department." However, our supreme court has explained that while a parole eligible inmate does not have a right of review after a decision denying parole, "an inmate has a right of review by the [ALC] after a *final* decision that he is *ineligible* for parole." *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 497-98, 661 S.E.2d 106, 111 (2008) (quoting *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443 n.4, 586 S.E.2d 124, 124 n.4 (2003)), *abrogated on other grounds by Allen*, 439 S.C. 164, 886 S.E.2d 671.

Moreover, even if the Parole Board's decision does not amount to a permanent denial of parole, the Court may still review whether the Parole Board followed the proper procedure in making its parole determination. *Id.* 377 S.C. at 499-500, 661 S.E.2d at 112; *see also Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009) ("[I]f 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.").

STANDARD OF REVIEW

In situations when an appellant challenges the Parole Board's decision on the grounds that there is a permanent denial of parole eligibility, the Administrative Procedures Act, S.C. Code Ann. §§ 1-23-300, *et seq.* (2005 & Supp. 2023), establishes the standard of review the Court must apply when reviewing an agency's decision. Specifically, section 1-23-380(5) provides the following:

The [C]ourt may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The [C]ourt may affirm the decision of the agency or remand the case for further proceedings. The [C]ourt may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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.

"When appealing an agency's decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced based on one of six statutory criteria listed above." *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 259-60, 659 S.E.2d 233, 235 (Ct. App. 2008); *see also Pressley v. Lancaster County*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001) ("The party challenging a governmental body's decision bears the burden of proving the decision is arbitrary."); *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996)

("The burden is on appellants to prove convincingly that the agency's decision is unsupported by the evidence.").

DISCUSSION

Appellant argues that: (1) the Parole Board's decision makes him permanently ineligible for parole, and (2) the Board used the incorrect criteria in determining his eligibility for parole. Specifically, Appellant asserts that the Parole Board failed to use or consider an actuarial risk assessment tool required by S.C. Code Ann. Section 24-12-10(F)(i). According to Appellant, the Board's failure to use the actuarial risk and needs assessment tool when it denied him parole was a violation of the due process of law.

The Department argues in response that the Board properly utilized the required parole criteria, and that, as a result, the Board's decision is an unreviewable routine denial of parole.

In reply, Appellant contends that the Board's decision is reviewable because, while the Board's decision recites that it considered the actuarial risk assessment, it did not, at least according to Appellant, actually do so. Appellant argues that no such risk assessment exists because he was never given a test or subjected to any sort of assessment or interview.

For the reasons set forth herein, the Court agrees with the Department.

I. Permanent Denial of Eligibility for Parole

The Court has authority to review a determination by the Parole Board that an inmate is permanently ineligible for parole. *Cooper*, 377 S.C. at 497-98, 661 S.E.2d at 111. Appellant argues that this authority allows the Court to consider this appeal. Upon review, however, the Court determines that the Parole Board did not rule that Appellant is permanently ineligible for parole. Appellant has appeared before the Parole Board on many occasions, and the most recent denial letter specifically provides that Appellant "will be notified 30 days prior to [his] *next scheduled parole consideration date*." (R. at p. 1) (emphasis added). This statement indicates that the Board intends to continue to review Appellant's eligibility for parole.

II. The Parole Board's Procedure

The Court's conclusion that the Parole Board's decision does not constitute a permanent denial of parole eligibility does not end the inquiry. The Court may still review whether Appellant received the *process* to which he was entitled from the Parole Board at his parole hearing. *See Cooper*, 377 S.C. at 497-99, 661 S.E.2d at 111. 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. *Compton*, 385 S.C. at 479, 685 S.E.2d at 177. This inquiry, however, is limited:

[I]f 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.

Id. If, therefore, the Parole Board's denial letter itself states that the Parole Board considered all of the necessary factors, then the Court's review ends.

The June 21, 2023 notice of rejection letter in this case states the following:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in [s]ection 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to [s]ection 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board concludes that parole must be denied.

Appellant contends that the Board failed to consider the actuarial risk and needs assessment factors required by section 24-21-10 (F) (1) of the South Carolina Code. However, the language of the denial letter specifically indicates that the Parole Board considered the actuarial risk assessment.² Accordingly, the Court is constrained to conclude Appellant received the process to which he was entitled and that the Parole Board's action constitutes a routine denial of parole.³

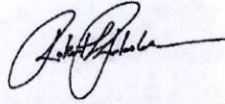
Therefore, the Court dismisses this appeal.

² The Court rejects Appellant's argument that the risk assessment could not have been considered because it did not exist. Appellant's argument is based upon the premise that the statute requires some sort of individualized interview or clinical assessment of the Appellant. This construction of the statute is incorrect. The assessment is instead based upon actuarial factors such as an inmate's educational background, employment history, and age at time of conviction. Gathering information about these factors does not require the type of personal interview or review discussed by Appellant.

³ The Court is cognizant that the denial letter's mere recitation that the Parole Board considered the risk assessment is not conclusive evidence that it was in fact considered; however, our supreme court's instructions in *Compton* are clear. The Court may not look beyond the wording of the denial letter. See *Compton*, 385 S.C. at 479, 685 S.E.2d at 177.

ORDER

IT IS THEREFORE ORDERED that this appeal is **DISMISSED WITH PREJUDICE.**
AND IT IS SO ORDERED.

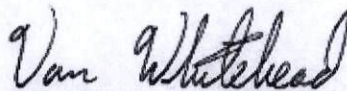


The Honorable Robert L. Reibold
Administrative Law Judge

February 26, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Van Whitehead, hereby certify that I have on 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).



Van Whitehead
Judicial Law Clerk

February 26, 2024
Columbia, South Carolina

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MAY 28 2024

SC. Court of Appeals

Application to proceed without payment
of cost and Affidavit in support thereof.

I Eric Canty hereby Apply for Leave to Proceed
in this action without prepayment of fee and cost
or security thereof. In support of my Application
I declare under the penalty of perjury the following
facts are true:

- 1 I am the Applicant in this action and I believe
I am entitled to redress
- 2 BECAUSE of my poverty I am unable to pay the
cost of said proceeding or give security thereof.

Sworn or Affirmed to and subscribed to Eric Canty

before me this 3/10/24 day of

March

2024

Osney benedee
Notary Public

My Commission Expires 9/19/32

