

correct his file – one of the subjects of this current appeal. Furthermore, any determination that the April 24, 2024 parole hearing moots this appeal would unfairly penalize the Appellant by delaying consideration of the issues in his 2023 parole hearing. On May 13, 2024, the court denied the Department’s Motion to Dismiss. On May 14, 2024, the Department filed the Respondent’s brief. On June 6, 2024, the Appellant filed his Reply Brief.

BACKGROUND

In July 1994, the Appellant who was sixteen years old at the time, was staying with his friend in Martinez, Georgia. On July 11, 1994, the Appellant, seventeen-year-old Geoffrey Payne, and seventeen-year-old Jamie Lynn Lee (Defendants) who were alone in the house decided to manufacture homemade pipe bombs. They constructed a number of bombs, two of which they detonated in the backyard. Later that evening, the Appellant, the Defendants and others gathered at the house for a party. The Defendants left the party to go to a Texaco station where they encountered the victim, who had severely cut her foot. The Defendants offered to take her to the house to clean and bandage her foot and the victim accepted. After the Defendants bandaged her foot, all three went back to the house where the party was going on. Defendant Payne attempted to have sexual intercourse with the victim, but she refused his advances. Frustrated, Payne instructed Lee to crush up a tablet of Ecstasy and Payne poured the powder into a mixture of tea and water. Payne gave the drink to the victim but did not tell her that the drink was laced with Ecstasy.

Around 3:30 a.m. the Appellant and the Defendants offered to take the victim home. They got into Lee’s car which Lee was driving. The Appellant was in the front passenger seat, and Payne and the victim were in the backseat. Lee eventually drove across the Georgia border into South Carolina. According to Lee, the music was loud in the car and soon after entering South Carolina he noticed his tachometer go from 4200 to 6000 r.p.m. Lee looked down at the gear shift and discovered the victim’s foot had knocked the gear into neutral. He turned around and saw that Payne had the victim in a “strangle hold type” position and continued to drive. A few minutes later, he “heard two quick, empty thud type sounds.” He turned around again and saw that Payne still had the victim in a strangle hold with a wrench in his hand. Lee saw that the victim’s body was limp, her face was pale, and her lips were blue.

Payne instructed Lee to turn the music down and stated that he was pretty sure the victim was knocked out. Payne instructed Lee to go to a bridge between Edgefield and McCormick

counties. Lee drove to the bridge and parked. The Defendants and the Appellant got out of the vehicle, leaving the victim in the backseat. Payne informed Lee and the Appellant he was going to have sex with the victim and took off his clothes and her shorts. A vehicle was approaching so the Defendants and the Appellant got back into vehicle and began driving. After the approaching vehicle passed, Lee turned the car around and went back to the bridge. Lee testified that the victim was unconscious the entire time but that she was definitely alive. The Appellant testified that he checked her pulse and believed she was dead. Lee drove away from the bridge again and was approximately 100 feet down the road when Payne instructed him to stop the car. The Defendants and the Appellant carried the victim into the woods and placed her on the ground. Lee returned to the vehicle while Payne and the Appellant remained with the victim. The Appellant testified that while he was standing over the victim's body, Payne instructed him to place a pipe bomb into her mouth. The Appellant complied. Payne lit the fuse and the two ran. A few seconds later, the pipe bomb exploded.

The Defendants and the Appellant were arrested and charged with murder. The Appellant was arrested in Maryland and brought back to South Carolina to stand trial. The Appellant's case was transferred from Family Court to the Court of General Sessions where the Appellant and Payne were tried together as adults. Payne was found guilty of murder and criminal conspiracy. The Appellant was found guilty of murder, possession of a pipe bomb, and criminal conspiracy. The Appellant was sentenced to life imprisonment for murder and consecutive sentences of five years for possession of a pipe bomb and criminal conspiracy.

The Appellant first appeared before the Parole Board on November 18, 2015 and was denied. He was again denied at his second appearance before the Board on November 15, 2017. The Appellant's third hearing was on November 13, 2019, where parole was denied by a vote of three in favor of parole to two opposed. After this denial, the Appellant's appeal resulted in the Court of Appeals' decision in *Kelsey v. South Carolina Dep't of Probation, Parole and Pardon Services*, 441 S.C. 373, 893 S.E.2d 588 (Ct. App 2023) (cert. denied March 5, 2024). This appeal granted the Appellant a rehearing which was held on April 24, 2024, where the Appellant was again denied parole by a vote of two votes for parole and three votes against. The Appellant appeared before the Board in 2021, where he was again denied parole. This parole denial is currently under appeal. The Appellant appeared before the Board on November 29, 2023, where he was unanimously denied parole due to the nature and seriousness of the current offense, use of

a deadly weapon in this or a previous offense, and criminal record indicates poor community adjustment. On December 15, 2023, the Appellant requested reconsideration. On January 11, 2024, the Appellant filed an appeal with the court. On January 19, 2024, the Appellant's request for reconsideration was denied.

ISSUES ON APPEAL

1. Whether the Board failed to consider the required factors of S.C. Code § 24-21-640 and issued an arbitrary and capricious decision that constitutes the permanent denial of parole?

2. Whether the Respondent and the Board violated the Appellant's due process and First Amendment rights by denying parole wholly or partly in retaliation for successful appeals of prior denials?

3. Whether the Respondent intruded on the judicial function by making factual findings inconsistent with the facts as recognized by the South Carolina Supreme Court?

4. Whether the Respondent and the Board have violated inmates' due process right to fair parole proceedings by imposing an arbitrary page limit on materials submitted by parole-eligible inmates?

5. Whether the Respondent must give putative parolees meaningful access to their parole files, with enough time to review the files and provide necessary documentation for any corrections before the file is submitted to the Board?

STANDARD OF REVIEW

The court's jurisdiction to review this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz* and *Furtick*. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals); see also *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). As explained by the *Al-Shabazz* Court, "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted).

Since parole is a privilege, not a right, the routine denial of parole does not constitute such a liberty interest. See *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 495-96, 661 S.E.2d 106, 109-10 (2008) (citation omitted). If, however, the Board "deviates from or renders its decision without consideration of the appropriate [statutory] criteria, . . . it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty

interest.” *Id.* at 499, 661 S.E.2d at 111. Thus, this court may review decisions from the Department for violations of statutory procedure or procedural due process only but may not review the Board’s substantive decision to deny an appellant parole.

In reviewing such matters, the court sits in its appellate capacity. *See id.* at 497, 661 S.E.2d at 110 (citation omitted); *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754 (citation omitted). Under the Administrative Procedures Act, the court’s review in appellate matters is confined to the record. S.C. Code Ann. § 1-23-380(4). The court 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). Substantial rights of the appellant are prejudiced when the agency’s 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. *Id.*

DISCUSSION

As stated *supra*, parole is not a right, but a privilege. *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 104 (2008) (citing *Sullivan v. S.C. Dep’t of Corrs.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 n.4 (2003)). The discretion to grant parole lies solely with the Board. *Id.* at 649, 659 S.E.2d at 104-05 (citing *State v. McKay*, 300 S.C. 113, 115, 386 S.E.2d 623, 623-24 (1989)). If, in denying parole, the Board follows proper procedure, then its decision will constitute a routine denial of parole and summary dismissal of the case would be appropriate. *See Cooper*, 377 S.C. at 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). The proper procedure for the Board to follow includes considering the factors outlined in Section 24-21-640 of the South Carolina Code, as well as those listed in the Department’s parole form. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; *Compton*, 385 S.C. at 479, 685 S.E.2d at 177; *see also* S.C. Code Ann. § 24-21-640 (Supp. 2019) (setting forth the statutory factors warranting parole). Additionally, the Board must utilize an actuarial risk and needs assessment tool, known as COMPAS, in making its parole determinations. *See* S.C. Code Ann. § 24-21-10(F) (Supp. 2019).

If the Board fails to follow proper procedure, giving due consideration to the specified factors, an appellant is denied his liberty interest in parole eligibility. *Cooper*, 377 S.C. at 499,

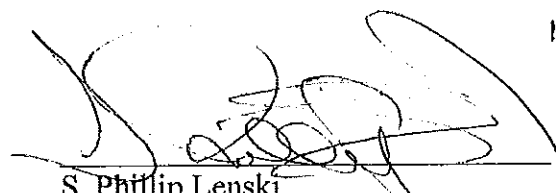
661 S.E.2d at 111. If, however, the Board adheres to procedure and considers all the requisite factors, the appellant's liberty interest is protected, and the Board has the discretion to deny parole based on any of the factors found in Section 24-21-640 or its own criteria. *See id.* at 499, 661 S.E.2d at 111-12. Here, the Board's order plainly reflects that it considered all the appropriate factors – including those set forth in Section 24-21-640, the Department's own criteria for parole consideration, and an actuarial risk and needs assessment – before making its decision to deny the Appellant parole. Thus, as a routine denial of parole, the court's ability to further review this matter is limited:

[T]he [] Board may avoid [reversal of its parole determinations] if it clearly states in its order denying parole that it considered the factors outlined in [S]ection 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, 377 S.C. at 500, 661 S.E.2d at 112; *see Compton*, 385 S.C. at 479, 685 S.E.2d at 177. Consequently, because the record reflects that the Board routinely denied the Appellant parole after complying with the necessary procedure, the court may not interfere with the Department's determination.

THEREFORE, for the foregoing reasons, the Department's decision is hereby **AFFIRMED**.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

August 19, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I/We do hereby certify that the undersigned has this 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 interagency Mail Service addressed to the party(ies) or their attorney(s).

This 19th day of August 2024

Administrative Law Clerk