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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Raymond Tillman, #157129,

Docket No. 23-ALJ-15-0039-AP

Appellant,

v.

FINAL ORDER

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

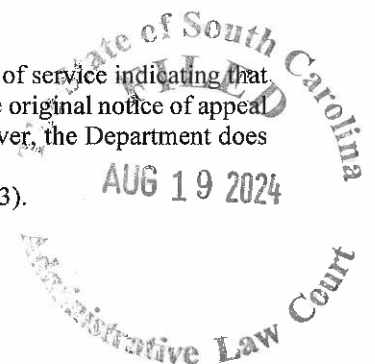
STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Appeal originally filed on September 29, 2023,¹ by Raymond Tillman, (Appellant), an inmate in the custody of the South Carolina Department of Corrections. Following his most recent parole hearing on August 30, 2023, the South Carolina Department of Probation, Parole and Pardon Services (Department or Respondent) notified the Appellant that the South Carolina Parole Board (Board) had determined that his parole should be denied. In his Notice of Appeal, the Appellant challenges the Department's decision on two (2) grounds: 1) that his most recent parole denial, taken together with his seven (7) prior denials on similar grounds, unconstitutionally inhibits him from obtaining parole that he is legally eligible for; and 2) that his due process rights were violated as a result of the Board relying on alleged misinformation contained in reports and other documentation concerning the Appellant in denying his parole.

On March 25, 2024, pursuant to the recent Court of Appeals case of *Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*,² the Appellant filed a Motion to Supplement the Record on Appeal, for Discovery, and to Stay Briefing with the court seeking, among other things, to supplement the Record on Appeal (Record) in this matter with additional documents and materials that were not included in the Record filed by the Department. On April 1, 2024, the Department

¹ The Notice of Appeal was file stamped by the court on October 25, 2023, with a certificate of service indicating that it was served on all parties on September 29, 2023. According to an email in the case file, the original notice of appeal was not filed on the proper form, in accordance with this court's rules of procedure. However, the Department does not challenge the timeliness of the Appellant's appeal.

² *Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 441 S.C. 373, 893 S.E.2d 588 (2023).



filed a response in opposition to the Appellant's motion. On May 20, 2024, the court denied the Appellant's motions but granted the Appellant an additional thirty (30) days to file a brief. On June 20, 2024, the Appellant filed his brief. On July 3, 2024 the Department filed the Respondent's brief. On July 15, 2024, the Appellant filed a Reply brief. After careful consideration of the parties' briefs, the Record, and the applicable law, the Department's determination is affirmed.

BACKGROUND

On October 13, 1988, at a Courtesy Food Mart in the Gaston area of Lexington County, the Appellant robbed the victim at knife point. The Appellant cut and stabbed the victim several times, killing her. The victim's pocketbook was taken, along with an unknown amount of money. The Appellant was arrested and charged with the offenses of murder and armed robbery. On March 8, 1989, the Appellant was found guilty after trial and sentenced to life for his murder conviction and twenty-five (25) years for armed robbery to be served consecutively. At the time of the Appellant's offense, parole eligibility for murder was allowed after the service of twenty (20) years.

The Appellant first appeared before the Parole Board on October 8, 2008 and was denied. He has appeared before the Board seven additional times, each time the Board has denied his request for parole. The Appellant's most recent appearance before the Board was on August 30, 2023, where the Board again denied his parole due to the nature and seriousness of current offense and the use of deadly weapon in this or previous offense.

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

The Appellant argues that by consistently denying parole to him and other similarly situated individuals serving life sentences, solely on the basis the of the nature of and circumstances of the offense, the Board usurps the function of the Legislature in violation of the South Carolina Constitution. The Appellant also argues that the Board violated his due process rights by failing to properly consider the relevant factors in its decision to deny him parole for the eighth time on the sole basis of the nature and circumstances of his offense and issued an arbitrary and capricious decision likely based on misinformation. Additionally, the Appellant argues that the Board's usurpation of legislative and judicial power is particularly problematic in the context of juvenile offenders such as he, for whom the constitutionality of a life sentence rests on certain assumptions about the effectiveness of parole.

However, following the Appellant's most recent parole hearing on August 30, 2023, the Board voted five (5) to one (1) in favor of rejecting parole. The Board's Notice of Rejection states that the Board rendered its decision:

After careful consideration of: (1) the characteristics of [the Appellant's] current

offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record . . . ; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws[;] and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10(F)(1) of the South Carolina Code of Laws.

The South Carolina Code provides, that “[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.” S.C. Code Ann. § 1-23-600(D) (Supp. 2023). That notwithstanding, the South Carolina Supreme Court has held that “the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process.” *Furtick v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003). Importantly, “[a]lthough [Section 24-21-620 of the South Carolina Code] creates a liberty interest in parole eligibility, it does not create a liberty interest in parole.” *Id.* at 598, 576 S.E.2d at 149 n.4. “In simple terms, this means that an inmate has a right of review by the [ALC] after a *final* decision that he is *ineligible* for parole, but that a parole-eligible inmate does not have the same right of review after a decision denying parole. . . .” *Sullivan v. S.C. Dep’t of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 n.4 (2003). Therefore, while the permanent denial of parole eligibility constitutes a liberty interest that is reviewable by this court, the routine denial of parole is, generally, not a liberty interest subject to review.

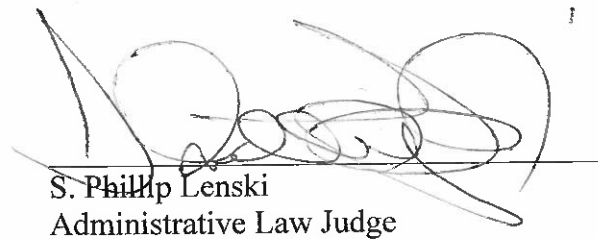
The South Carolina Supreme Court has nonetheless recognized that review of the Department’s routine denial of parole can rise to a reviewable liberty interest under very specific circumstances. *See Cooper v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 502, 661 S.E.2d 106, 113 (2008) (“If a Parole Board fails to consider and apply the statutorily-created parole criteria, it has the effect of rendering an inmate parole ineligible, which under *Furtick* warrants review by the ALC.”). If 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. Crucially, in *Compton v. South Carolina Department of Probation, Parole & Pardon Services*, the South Carolina Supreme Court clarified that “if [the 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 its parole form,” its decision is sufficient under *Cooper*.³ *Compton v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). Thus, this court’s review is limited to ascertaining whether the Board considered, or stated that it considered, the relevant criteria. *See id.*; *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112. If the court determines that the Board considered, or stated that it considered, the relevant criteria, pursuant to *Cooper* and *Compton*, the inquiry ends there.

Thus, as a routine denial of parole, the court’s ability to further review this matter is limited to the record absent “alleged irregularities in procedure before the agency.” *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2023). 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.

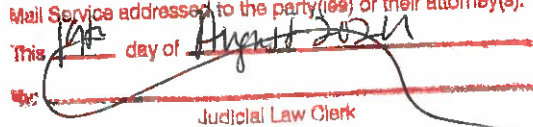
THEREFORE, for the foregoing reasons, the Department’s decision is hereby **AFFIRMED**.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

August 19, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to 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

Judicial Law Clerk

³ Additionally, after *Cooper*, the Department established a “validated actuarial risk and needs assessment tool” to be used when evaluating parole. S.C. Code Ann. § 24-21-10(F) (Supp. 2023). This risk assessment tool, which is known as COMPAS, has been incorporated into the Board’s written criteria and must be considered by the Board in addition to the other aforementioned statutory criteria. *See Cooper*, 377 S.C. at 499, 661 S.E.2d at 112 (holding “the apparent failure by the [] Board to consider the requisite statutory criteria in rendering its decision constitutes an infringement of a state-created liberty interest and, thus, warrants minimal due process procedures.”); *Ruff v. S.C. Dep’t of Prob.*, No. 2015-UP-309 (S.C. Ct. App. dated June 24, 2015) (holding that the actuarial risk and needs assessment is one of the statutory criteria to which the Board must adhere).