

State of South Carolina RECEIVED
IN THE COURT OF APPEALS SEP 24 2024
APPEAL FROM THE ADMINISTRATIVE LAW JUDGE SC Court of Appeals

Honorable Robert L. Reibold Administrative
Law Judge

Appellate Case No. 2024-000889

ERIC Canty 196262 - Appellant

V.

South Carolina Dept. of Probation, Parole and
Pardon Services - Respondents.

RECORD ON APPEAL

ERIC Canty 196262, Appellant
Attendale Corp. INST.
1057 REVOLUTIONARY TRAIL
FAIRFAX, S.C. 29287

MATTHEW BUCHANAN
General Counsel, Attorney For Respondent
South Carolina Dept. of Probation, Parole, Pardon Services
293 GREYSTONE BOULEVARD
COLUMBIA, S.C. 29202

Dated: Sept 12, 2024

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Eric Canty, #196262,

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

Appellant,

ORDER

vs.

South Carolina of Probation, Parole and
Pardon Services,

Respondent.

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 PPPS) 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

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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)

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("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)(1). 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

Van Whitehead
Judicial Law Clerk

February 26, 2024
Columbia, South Carolina

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State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JERRY B. ADGER
Director

293 Greystone Boulevard
Post Office Box 207
Columbia, South Carolina 29202
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

June 21, 2023

Mr. Eric Canty #00196262
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

RE: NOTICE OF REJECTION

Dear Mr. Canty:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

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 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 Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

01 Nature And Seriousness Of Current Offense
03 Use Of Deadly Weapon In This Or Previous Offense
Vote Count: Unanimous To Reject

Sincerely,

A handwritten signature in black ink, appearing to read "Valerie Suber".

Valerie Suber
Associate Deputy Director for Paroles, Pardons and Release Services

6/21/2023



South Carolina Department of Probation, Parole and Pardon Services

Criteria for Parole Consideration

Inmate Name CANTY, ERIC	SCDC# 00196262
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SC Board of Probation, Parole and Pardon Services P.O. Box 207 Columbia, SC 29202

Criteria for Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. The files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some errors or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow his/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate
15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.
16. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that the inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate fail to complete any one of these conditions or disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainees or pending charges. If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature: <i>E. Canty</i>	Date: 12/14/2022
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Witness Signature: <i>[Signature]</i>	Date: 12/14/2022
---------------------------------------	------------------

State of South Carolina
Administrative Law Court

ERIC CANTY 196262
PETITIONER

Docket No. 2340026

V.

HONORABLE JUDGE REIBOLD

South Carolina Dept. of P.P.S. Original Brief.
RESPONDENT

STATEMENT OF THE CASE

I WAS ARRESTED IN WASHINGTON, D.C. IN 1992, AND WAS EXTRADITED TO SOUTH CAROLINA, TO FACE CAPITAL CHARGES FOR MURDER, ARMED ROBBERY, KIDNAPPING, BURGLARY AND C.S.C. 1ST. I WAS SENTENCED IN MARCH OF 1993 TO LIFE SENTENCES FOR MURDER AND BURGLARY 1ST, 25 YRS FOR ARMED ROBBERY MANDATORY, ALL CHARGE CONCURRENT, PAROLE ELIGIBLE AFTER SERVICE OF 20 YRS. MY FIRST APPEARANCE

BEFORE THE PAROLE BOARD WAS IN 2013, TO DATE I HAVE BEEN BEFORE THEM 6 TIMES. MY LATEST WAS JUNE 21, 2023. MY REQUEST FOR A REHEARING WAS DENIED. I FILED MY NOTICE OF APPEAL TO THE A.L.C. ON AUGUST 31, 2023.

Jurisdiction and Standard of Review

An individual has a right to A.L.C. Review of a final decision of the department only when that decision affects a liberty interest for which due process is required, see *Furtick v. S.C.D.P.P.S.*, 576 S.E2d 146. Claims arising from a Parole Board decision to deny parole are not appealable to the A.L.C., only claims that the Parole Board failed to consider the appropriate criteria so as to be tantamount to an abrogation of parole eligibility, see *Cooper v. S.C.D.P.P.S.*, 661 S.E2d 106. The provisions of the S.C. Administrative Procedures Act (A.P.A.) govern an appeal from a decision of the department that an inmate is not eligible for parole.

The A.L.C. sits in an Appellate Capacity under the A.P.A., rather than as an independent finder of facts. Consequently, this court review is limited to the record presented, see *Al-Shabazz v. State*, 327 S.E2d 742. The standard used by Appellate bodies to review Agency decisions is provided by S.C. Code Ann. 1-23-380(5) (Supp. 2016)

ISSUE(S) ON APPEAL

Does the S.C. Parole Board render Petitioner ineligible for Parole by using the incorrect criteria in deciding whether to grant Petitioner Parole?

In 2010 the Legislature required the Agency to start administering an objective risk-assessment to each Applicant for Parole. The Agency's responded to this mandate by refusing to administer the assessment before every hearing. The Parole Board's failure to use this publicly funded assessment render me ineligible for Parole and denied me the knowledge to address any weakness that may be hinder me in my quest for Parole. Failure by the Parole Board to use statutory criteria is tantamount to an

Abrogation of Parole Eligibility. This practice of ignoring this legislative mandate effectively nullified state law, and is a clear violation of petitioner's procedural and substantive due process rights required by *Furtick v. S.C.D.P.P.S.* 576 S.E.2d 146. Systemic unfairness has created despair and hopelessness. When I do everything that I can do to prepare for parole and at the same time the Agency has manipulated the system to ensure that although I have decades of perfect behavior and proven reformation, I still have no chance of parole. By not allowing me to know the results from the Risk Needs Assessment, the Board is denying me access to my weakness that I need to address

CONCLUSION

The rights of the petitioner to have a hearing before the State Board using the criteria that is mandated by law is clear. However, the S.C. State Board ignores the law and the fact that taxpayers fund Risk, NEEDS, ASSESSMENT to ensure that the petitioner has knowledge of and addresses his weakness.

State of South Carolina
 Administrative Law Court
 Honorable Judge Reibold.

ERIC Canty, 196262
 Petitioner

CASE No. 23P0026

v.

South Carolina Dept. of P.P.S. Certificate of Service
 Respondents.

Petitioner, declares under the penalty of perjury,
 that he mailed a copy of his Original Brief to the parties
 listed below by placing them in the U.S. Mail addressed
 as below.

Honorable Judge Reibold
 1205 Pendleton St. Suite 224
 Columbia, S.C. 29201

Director of Legal Service
 S.C.D.P.P.S.
 P.O. Box 50666
 Columbia, S.C. 29252

Respectfully

ERIC Canty, 196262
 Allendale Corr. Inst.
 1057 Revolutionary Trail
 FAIRFAX, S.C. 29827

Dated:
 CC: FILE

STATE OF SOUTH CAROLINA
In the Administrative Law Court
Docket Number 23-ALJ-15-0026

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

ERIC CANTY, #196262, APPELLANT

v.

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

BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services**
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(803) 734-9220

ATTORNEY FOR RESPONDENT

TABLE OF AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL

1. This Court has limited authority to review this appeal.
2. Did the Board state clearly that it considered the actuarial risk and assessment of Appellant?

STATEMENT OF THE CASE

On October 4, 1990, Appellant shot Victim 1 in the back and head with a 9mm pistol, killing him. On or about October 27, 1990, Appellant entered the dwelling of Victims 2 and 3 without consent, armed with a deadly weapon, and committed the offense of Armed Robbery. Appellant was eventually arrested and charged with the offenses of murder, burglary 1st degree, and armed robbery.

Appellant pled guilty to the offenses on March 12, 1993 before the Honorable Victor Rawl who and to possession of a firearm during a commission of a violent crime. The court sentenced him to two concurrent life sentences for the murder and burglary, and thirty years concurrent for the armed robbery. At the time the Appellant committed this offense, South Carolina law allowed an individual serving a life sentence for murder parole eligibility upon the service of twenty years.

Appellant made his initial appearance before the Parole Board on May 8, 2013. On that date and on subsequent appearances, the Board denied him parole. Appellant's last hearing before the Parole Board occurred on June 21, 2023. At the conclusion of the hearing the Board denied parole unanimously due to: 1) the nature and seriousness of the current offense and 3) use of a deadly weapon in this or a previous offense.

Upon receiving the notice of rejection, Appellant requested a rehearing, which was denied. He subsequently filed a notice of appeal with this Court. In his brief, he argues the Parole Board rendered him ineligible for parole by using incorrect criteria. Respondent's brief follows.

ARGUMENTS

1. Because this is a routine denial of parole, this court cannot entertain this appeal.

Respondent respectfully would argue that this Court has limited authority to hear this matter. S.C. Code Ann. § 1-23-600(D) states in pertinent part that “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.”

Inmates who are denied parole and petition the Administrative Law Court are limited to review of whether the Board complied with procedures as outlined in *Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008). It is Respondent’s position that a notice of rejection must include the factors published in Department Form 1212, the factors outlined in S.C. Code Ann. § 24-24-640 and 24-21-10(F)(1), and consideration of the actuarial needs assessment. Respondent is further informed and believes that *Compton v. South Carolina Dept. of Probation, Parole and Pardon Services*, 385 S.C. 476, 685 S.E.2d 175 (2009) bolsters this position. In *Compton*, the Supreme Court held that no specific findings of fact regarding consideration of the inmate’s record were required in the notice of rejection. *Id.*, 385 S.C. at 479, 685 S.E.2d at 177. Because these requirements were met in Appellant’s instant parole denial, there is no jurisdiction for this court to review the matter. As such, Appellant’s parole denial must stand and this appeal must be dismissed.

2. The Board properly utilized the required parole consideration criteria.

Appellant claims that the Parole Board failed to use the actuarial risk and needs assessment tool when it denied him parole. This assertion is incorrect. In the Board’s letter of rejection, it clearly stated that the Board carefully considered the “risk and needs assessment factors pursuant to Section 24-21-10(F)(1).” R p. 1.

According to the Supreme Court in *Cooper*, this is sufficient. 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 its parole form,”¹ it will constitute a routine denial of parole. As Appellant pointed out, the requirement that the Board also consider the results of the actuarial risk and needs assessment was added in 2010, but the Board also clearly stated that it considered those as well.

Appellant cites to *Furtick* in his argument that his due process rights were violated, but fails to note that the opinion states that only “the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process.” *Furtick v. South Carolina Dep’t of Probation, Parole and Pardon Services*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003) (Emphasis in original). Due process rights only attach when an inmate has an actual liberty interest. Inmates clearly do not have the right to receive parole. See *Sullivan v. South Carolina Dep’t of Corrections*, 355 S.C. 437, 443 n. 4, 586 S.E.2d 124, 127 n. 4 (2003). Furthermore, “a prisoner must identify a cognizable liberty interest before he can demonstrate a denial of due process.” *Bowling v. Dir, Virginia Dep’t of Corr.*, 920 F.3d 192, 199 (4th Cir. 2019).

The Parole Board does not deny eligibility when it denies an inmate parole. In fact, the letter of denial informs Appellant that he will be notified before his next scheduled parole date. R. 1. As discussed in Part 1, when the Board follows the procedures outlined in *Cooper*, its denial of parole would be considered routine and this Court would have limited authority to consider the case further.

Consequently, the decision of the Parole Board to proceed with the hearing while Appellant was absent was correct and this appeal must be dismissed.

¹ *Id.* at 500, 661 S.E.2d at 112.

CONCLUSION

Based on the foregoing reasons, Respondent respectfully requests the final decision of the Parole Board be affirmed.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

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Columbia, South Carolina
January 24, 2024

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 23-ALJ-15-0026

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

ERIC CANTY, #196262,.....APPELLANT

v.

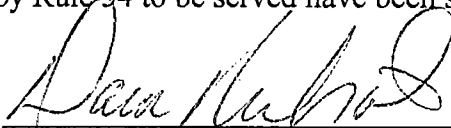
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Motion to Dismiss Appeal*, dated November 7, 2023, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 7th day of November, 2023, addressed to:

Eric Canty, #196262
Allendale Correctional Institution
PO Box 1151, Highway 47
Fairfax, South Carolina 29827

I further certify that all parties required by Rule 54 to be served have been served.



Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202

State of South Carolina
 IN THE ADMINISTRATIVE LAW COURT

ERIC Cmty 196262
 Petitioner

Docket No. 23P0026

Hon. Judge Reibold

South Carolina Dept. of Probation

REPLY BRIEF

Parole, Pardon Services
 Respondent

1. This Court does have Authority to hear this matter, this matter is about the failure by the Parole Board to use the 2010 legislative required Risk Needs Assessment.
2. Although the Board's Claim is that they in their letter of rejection stated that SC Code 24-24-640 and 24-21-10(A) (1) the requirement of Notice are met. They Rely on Compton v. S.C. D.P.P.S. 355 S.C. 476, 685 S.E2d (2009) This was prior to 2010, when the

Legislator required risk needs assessment
was made law. The Petitioner declares that he NEVER
was given this test. The respondent only response
is "This assertion is incorrect, the Board's Letter
of Rejection, it clearly stated that the Board
carefully considered the risk and needs assessment
factors pursuant to section 24-21-10(F)(1)". They were
adding the risk needs assessment to a court ruling
that was made before risk/needs was made law
in 2010. The Petitioner would ask, who did this test,
when and where, who scored the test and what
are the results? It is one thing to be able to
say that you considered the test, however it is important
to this claim to show the who, when, where and
what!

The Deferential Standard of Review does not mean that the Court will accept an Agency decision at face value without requiring the Agency to explain its reasoning. It's decision must be based on documented Factual Finding from Substantial Evidence within the whole record. Prior to the Parole Board Hearing I am required to sign documentation that I received a copy of the Parole Board Criteria (24-24-690, and 24-21-10(E)(1)). There was no Test, there was no other contact with any Official Mental Health Professional or anyone to administer the Risk/Needs Test to me. I have never been told any results of a test, so that I could address any weakness. Under "Compton" the Court allowed them to state that they considered the Criteria, this was in 2009. This Court will take notice Risk/Needs Law is from 2010.

CONCLUSION

Petitioner has the right to require the parole board to adhere to statutory requirement in rendering a decision and failure by the board to consider the requisite statutory criteria constitutes an infringement of a state created liberty interest. Petitioner must be given the taxpayer funded risk/needs assessment exam to fulfill the legislative intent. The intent is to let the board know if I am ready for parole and to let me know what my weaknesses are, instead they rely on factors that will never change.

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SEP 24 2024

SC Court of Appeals

State of South Carolina
In The Administrative Law Court

Eric Canty, 196262
Petitioner
v

Docket No. 23P 0026

Certificate of Service

S.C. Dept. of P.P.S.
Respondent

Petitioner, declares under the penalty of perjury that he mailed a copy of his Reply Brief to the parties listed below clearly addressed, by placing them in the U.S. Mail.

Hon. Judge Reibold
1205 Pendleton St. Suite 224
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Respectfully
*Eric Canty
Eric Canty 196262
Attentate Court East
1057 Revolutionary Trail
Fairfax, S.C. 29827

Dated: 2-7-24
cc: file