

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from the Administrative Law Court
The Honorable Robert L. Reibold, Administrative Law Judge
Docket Number 23-ALJ-15-0026-AP

SC Court of Appeals

Appellate Case No.: 2024-000889

ERIC CANTY, #196262, APPELLANT

v.

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

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the ALC erred when it dismissed Appellant's appeal because the Board followed the requirements outlined in *Cooper* and *Compton* by considering all the requisite factors including the validated actuarial risk and needs assessment tool.

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. 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. (R.p.10).

Upon receiving the notice of rejection, Appellant requested a rehearing, which was denied. He subsequently filed a notice of appeal to the Administrative Law Court (ALC). In his appeal, he argued the Parole Board rendered him ineligible for parole by using incorrect criteria. The Honorable Robert L. Reibold, administrative law judge, dismissed the appeal because he found that the Board had not rendered Appellant permanently ineligible for parole, and that the ALC had limited authority to hear the matter because the Board followed the requirements of *Cooper* and

Compton. (R.p.3-p.8). Appellant now brings this appeal, arguing that the ALC erred and that the Board rendered him ineligible for parole because it is using the incorrect criteria.

In response, Respondent will argue that the ALC was correct in its determination that the Board did not make Appellant ineligible for parole and that it utilized the correct procedure outlined in *Cooper* and *Compton*. 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 correctly dismissed the appeal by determining that the Parole Board complied with the requirements of *Cooper and Compton*.

Appellant claims that the Parole Board rendered him ineligible for parole by using the incorrect criteria when it considered him for parole.

Respondent would submit that the ALC properly determined that the Board considered the criteria for parole consideration, and that it correctly determined that the Board followed all statutory requirements which constrains the ALC to dismiss the appeal.

Parole-eligible 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). The notice of rejection must clearly state that the Board considered 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.

Appellant argues that he never received the actuarial needs assessment pursuant to 24-21-10(F)(1). However, according to Department records his screening was completed on December 14, 2022, roughly six months before his hearing on June 21, 2023 which fits the regular timetable for the preparation of the necessary information for the Board. Perhaps Appellant believed that he would receive another assessment closer in time to his hearing, but the interviews for the assessment did take place, and its results were submitted to the Board two weeks before the hearing as is standard procedure.

Furthermore, the Board's letter of rejection included the statement that its members had carefully considered the criminogenic risk-needs assessment mandated in Section 24-21-10(F)(1). (R.p.10). Appellant argues that the General Assembly added that section after *Cooper* was decided, which is correct, but this Court has determined that the risk-needs assessment must be acknowledged as well as the parole consideration criteria and the factors listed in S.C. Code 24-21-640. *Spigner v. S.C. Dept. of Probation, Parole and Pardon Services*, 2015 WL 1681270 (Ct.App. 2015). Thus, the Board has considered the results of the assessment as well as informed the Appellant that it had in its letter. (R.10).

Respondent would point out that the ALC's own rules require the Department supply only a copy of the agency decision and the decision following a motion for reconsideration, if applicable. SCALC Rule 61. Respondent has complied with the rule and submitted the required information to make up the Record, which has been determined by the South Carolina Supreme Court as 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.

¹ *Id.* at 500, 661 S.E.2d at 112.

Respondent respectfully submits that the ALC was also constrained to dismiss the appeal because it lacks the authority to consider 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*² 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.p.10). The ALC would thus be required to

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

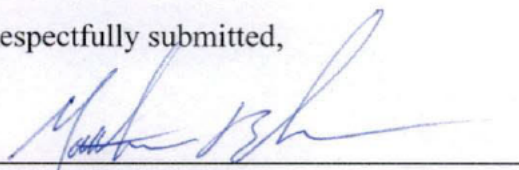
dismiss the appeal per the instructions of the Supreme Court in *Compton v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 385 S.C. 476, 684 S.E.2d 175 (2009). “We emphasized that ... if the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24–21–640 and the fifteen factors published in Form 1212, and that if the Parole Board complies 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.

In the instant case, Appellant was rejected for parole by the Board after consideration of the requisite factors mandated by *Cooper* and *Compton* as well as the risk and needs assessment tool required by Section 24-21-10(F)(1). (R.p.10). Therefore, Respondent respectfully submits that despite Appellant’s insistence that he did not receive the assessment, the ALC properly determined the record contained sufficient evidence that he had in fact been assessed and the Board had carefully considered it, along with the other requisite criteria. Therefore, this Court should affirm the ALC’s dismissal of the appeal.

CONCLUSION

Appellant appealed a routine denial of parole. Thus, the ALC had limited authority to hear the appeal, and only to review whether the Board followed proper procedure. 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 affirmed.

Respectfully submitted,



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September 25, 2024

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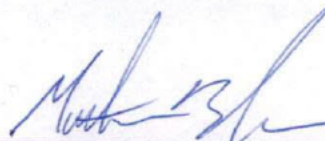
v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 25th day of September, 2024.



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