

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bernard Bagley, #175851,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 23-ALJ-15-0038-AP

FINAL ORDER

RECEIVED

OCT 07 2024

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a notice of appeal filed on December 14, 2023 by Bernard Bagley (Appellant), an inmate in the custody of the South Carolina Department of Corrections (SCDC). On December 7, 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 unanimously voted to deny him medical parole. The Appellant challenges the Board's denial of medical parole because he was not provided proper notice of a medical parole reconsideration or rehearing for him to submit sufficient evidence or an opportunity to provide additional information of extraordinary compelling circumstances that warrant medical parole. After careful consideration of the parties' arguments, the Department's determination is affirmed.

BACKGROUND

On April 12, 1991, the Appellant was sentenced to life in prison for the murder of his wife. The Appellant's medical parole hearing was heard on November 30, 2022 pursuant to a request from the South Carolina Department of Corrections Director Bryan Stirling and in accordance with S.C. Code § 24-21-715. The Board denied the Appellant medical parole in a decision that appeared to be related to a determination of whether to grant parole pursuant to S.C. Code Ann. § 24-21-640 rather than a determination of medical parole pursuant to § 24-21-715. The Appellant appealed this decision. The case was assigned to the Honorable Deborah Brooks Durden. On October 9, 2023, Judge Durden remanded the matter to the Board to reconsider the application for medical parole based upon the relevant statute. On December 6, 2023, the Board reconsidered the

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AUG 28 2024
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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). Thus, this Court's authority to review a decision of the Board is limited to determining if the Board followed the proper procedure and considered the relevant factors. *Id.* If proper procedure was followed, any decision of the Board constitutes a routine denial of parole and will not be disturbed by this court.

S.C. Code Ann § 24-21-715 is the statute providing for medical parole. Therefore, it is the foremost authority to consult to determine the proper procedure for a decision granting or denying such parole. Section 715 provides in relevant part:

(B) Notwithstanding another provision of law, only the full parole board, upon a petition filed by the Director of the Department of Corrections, may order the release of an inmate who is terminally ill, geriatric, permanently incapacitated, or any combination of these conditions.

(C) The parole order issued by the parole board pursuant to this section must include findings of fact that substantiate a legal and medical conclusion that the inmate is terminally ill, geriatric, permanently incapacitated, or a combination of these conditions, and does not pose a threat to society or himself. It also must contain the requirements for the inmate's supervision and conditions for his participation and removal.

S.C. Code Ann. § 24-21-715 (Supp. 2022).

In short, the statute requires that a petition for medical parole must be initiated by the Director of the Department of Corrections. In this case, that was done by a letter from Director Bryan Stirling. Once initiated, the full parole board must rule on the request. The Board must make its decision, including findings of fact as to:

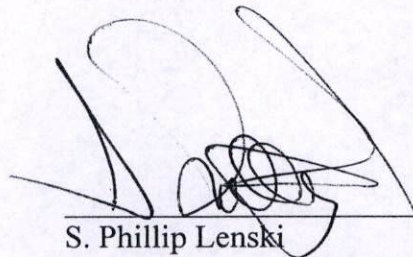
1. Whether the inmate is terminally ill, geriatric, permanently incapacitated, or some combination of these conditions, and
2. Whether the inmate does or does not pose a threat to society or himself.

If the findings as to those issues indicate that the inmate is a proper candidate for medical parole, and the Board's decision is to grant parole, the decision must include conditions for parole and requirements for the inmate's supervision.

Here, the Board's decision reflects that it adhered to the requirements set forth in Section 24-21-175 and found that there was not sufficient evidence to medically or legally conclude that the Appellant's physical condition meets the definition of terminally ill, geriatric, and/or permanently incapacitated and/or that the Appellant does not pose a threat to society or himself. Thus, as a routine denial of parole, the court's ability to review a decision of the Board is limited to determining if the Board followed the proper procedure and considered the relevant factors. *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. 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 28, 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 28th day of August 2024

Judicial Law Clerk