

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Stuart, #389211,

Docket No. 24-ALJ-15-0029-AP

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

ORDER RECEIVED
FEB 28 2025
SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to an appeal filed by Kenneth Stuart, (Appellant), an inmate incarcerated at the South Carolina Department of Corrections. On August 7, 2024, Appellant received notification from the South Carolina Department of Probation, Parole and Pardon Services (Department) that he was ineligible for parole.

Appellant filed a Notice of Appeal on August 16, 2024, and this matter was assigned to the undersigned on August 29, 2024. The Department filed the Record on Appeal on September 16, 2024. Appellant filed his initial brief on November 4, 2024. The Department filed its brief on December 5, 2024, and Appellant filed a reply brief on December 30, 2024. After careful consideration of the parties' briefs, the record, and the applicable law, the Court finds no error in the Department's determination. Accordingly, the Department's determination is affirmed.

BACKGROUND

Appellant is currently serving a ten-year sentence after pleading guilty in 2022 to trafficking methamphetamine, 28-100 grams (first offense), in violation of subsection 44-53-375(C)(2) of the South Carolina Code of Laws (2015 & Supp. 2024). Appellant was not sentenced for this charge until April 4, 2024.¹ In 2022, Appellant also pled guilty to the distribution of methamphetamine, in violation of section 44-53-375(B) of the South Carolina Code of Laws (2015 & Supp. 2024) and was immediately sentenced to seven years. Appellant received a parole hearing,

¹ For reasons unclear in the record, this indictment was not filed, and Appellant's sentence was not imposed, until April 4, 2024. On the same day, Appellant's indictments were also filed for criminal conspiracy and misconduct in office, in violation of section 16-17-410 of the South Carolina Code of Laws (2015 & Supp. 2024) and the common law of South Carolina.



prior to the imposition of his ten-year sentence for trafficking methamphetamine, on January 11, 2024. On the same day, Appellant received notification from the Department that South Carolina Parole Board (Board) rejected him for parole. Subsequently, on July 29, 2024, Appellant sent correspondence regarding his eligibility for parole following the imposition of his ten-year sentence for trafficking methamphetamine.² On August 7, 2024, the Department sent Appellant a letter informing him that he is not eligible for parole as his current sentence is classified as a “no parole offense.” This appeal followed.

ISSUE ON APPEAL

Did the Department err in determining Appellant is ineligible for parole?

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*. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals); *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). Therefore, the routine denial of parole does not implicate such a liberty interest because being granted parole is a privilege, not a right. *See James v. S.C. Dept. of Prob., Parole & Pardon Servs.*, 376 S.C. 392, 395-96, 656 S.E.2d 399, 401–02 (Ct. App. 2008); *See also Sullivan v. S.C. Dept. of Corrs.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003). However, the denial of eligibility for parole does involve such a liberty interest, and thus is a matter properly before the ALC for review. *Id.*

In reviewing such matters, the Court sits in its appellate capacity. *See Cooper*, 377 S.C. at 497, 661 S.E.2d at 110; *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754. 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) (Supp. 2024). 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) (Supp. 2024). Substantial rights of the appellant are prejudiced when the agency’s findings, inferences,

² Appellant completed a Request to Staff Member form at the South Carolina Department of Corrections on July 29, 2024. This request was mailed to the Department on August 1, 2024.

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

Parole Eligibility

Section 24-13-100 (2025) of the South Carolina Code of Laws states “. . . a ‘no parole offense’ means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more.” In 2022 Appellant pled guilty to trafficking methamphetamine, 28-100 grams (first offense), as defined in subsection 44-53-375(C)(2)(a). This subsection, in pertinent part, states “for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted . . .” As such, the plain language of the statute provides that Appellant is not eligible for parole. Further, Appellant was convicted of a Class B-felony, which is defined by South Carolina law as a no parole offense. *See* S.C. Code Ann. § 16-1-90(B) (2015 & Supp. 2024); *see also* S.C. Code Ann. § 24-13-100 (2025). Additionally, section 44-53-375(F) provides that “sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted.” Therefore, as of April 4, 2024, when Appellant was sentenced for his guilty plea under section 44-53-375(C)(2), he became ineligible for parole.³

Appellant further argues that the requirements of section 24-21-640 of the South Carolina Code of Laws (Supp. 2024) were not complied with at his parole hearing on January 11, 2024. However, as Appellant is now serving a ten-year sentence for a no parole offense, this argument is moot. Generally, a matter becomes moot when a judgment on the issue will have no practical effect on an existing case or controversy. *Sloan v. Dep’t of Transpo.*, 379 S.C. 160, 18, 666 S.E.2d 236, 240 (2008).

³ Appellant was originally eligible for parole when his only sentence was for distribution of methamphetamine, in violation of section 44-53-375(B).

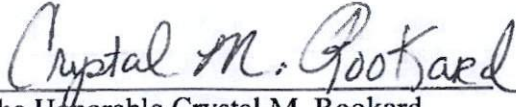
Ex Post Facto

Appellant alleges that the August 7, 2024, letter from the Department permanently denies his parole eligibility. *See generally Jernigan v. State*, 340 S.C. 256, 531 S.E.2d 507 (2000). Specifically, Appellant contends that the Board changed his parole eligibility from once a year to permanent denial thus creating both a liberty interest sufficient to trigger due process and an ex post facto concern. Pursuant to *Elmore v. State*, “[t]he ex post facto clause protects against retroactive legislative provisions which are disadvantageous to the offender” and “the law existing at the time of the offense...determines whether an increase of punishment or reduction of benefits constitutes an ex post facto violation.” 305 S.C. 456, 459, 409 S.E.2d 397, 399 (1991). Further, “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 (2003).

Appellant was arrested in 2020 and pled guilty in 2022 for the above-mentioned crimes. Appellant was sentenced in 2024 for trafficking methamphetamine, in violation of section 44-375(C)(2). The current version of this section went into effect April 21, 2016, and the language has remained unchanged. *See* S.C. Code Ann. § 44-53-375 (2015 & Supp. 2024). As section 44-53-375 was in effect when Appellant was arrested, pled guilty, and sentenced there is no ex post facto concern. Further, as Appellant is now serving a ten-year sentence for the distinct charge of trafficking methamphetamine there is no deprivation of a state-created liberty interest. While Appellant did receive a parole hearing in January 2024, he was not sentenced to trafficking methamphetamine, in violation of section 44-53-375(C)(2) until April 2024, which rendered him ineligible for parole. As Appellant is now serving time for a no parole offense, that was in effect at the time of his arrest, there is no deprivation of a state-created liberty interest.

ORDER

IT IS THEREFORE ORDERED that the Department’s determination is **AFFIRMED**.
AND IT IS SO ORDERED.


The Honorable Crystal M. Rookard
South Carolina Administrative Law Judge

January 28, 2025
Columbia, South Carolina