

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Phillip Brown, #118100,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 13-ALJ-15-0020-AP

ORDER

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Phillip Brown (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On March 13, 2013, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Board of Parole and Pardon (Board) had rejected him for parole. Appellant filed for a rehearing and was notified by the Board on May 3, 2013, that his request for rehearing was denied. Appellant timely filed a Notice of Appeal on May 21, 2013.¹ Appellant challenges the Board's denial of parole as well as its procedures related to his parole eligibility hearing.

DISCUSSION

The ALC reviews decisions of the Department in an appellate capacity and is "restricted to merely reviewing the decision[s] below." Al-Shabazz v. State, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000). When acting in an appellate capacity, the ALC must apply the criteria of S.C. Code Ann. 1-23-380(5) (Supp. 2012), which states:

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court 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;

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¹ The Department contends that the Appellant failed to timely file both the Notice of Appeal and his initial brief with this Court. However, a review of the record demonstrates that the Notice of Appeal and the Appellant's initial brief were timely filed and properly served on the Department.

- (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.

The Court has jurisdiction to hear appeals from final decisions of the Department and render opinions accordingly. Rules 51 and 65, SCALCR. This jurisdiction is derived from Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) and Furtick v. S.C. Dept. of Prob., Parole and Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003).

The Supreme Court of South Carolina has spoken clearly concerning the jurisdiction of the Administrative Law Court in cases such as this.

We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it 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. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

Cooper v. S.C. Dept. of Probation Pardon and Parole Services, 377 S.C. 489, 66 S.E.2d 106 (2008). The Cooper decision was underscored by Compton v. S.C. Dept. of Probation Pardon and Parole Services, 385 S.C. 476, 685 S.E.2d 175 (2009), as follows:

In Cooper, we held that 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, warranting minimal due process protection. Because the Parole Board in Cooper neither offered an explanation nor indicated it had considered the statutory criteria or the criteria set forth in Form 1212, we had no other choice but to determine the order was defective and the decision was arbitrary and capricious. We emphasized that this result could be avoided in the future 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.

Moreover, S.C. Code Ann. § 1-23-600(D) (Supp. 2012) provides, "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." 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. If that procedure was followed, any decision of the Board constitutes a routine denial of parole and will not be disturbed by this Court.

Appellant challenges the sufficiency of the Board's order based on the fact that the three reasons for rejection stated by the Board in its decision are all "fixed as of the date of the offense and can never be changed by the actions of [the Inmate] while incarcerated. See Cooper, 661 S.E.2d at 111-12. While the Cooper court used the above-quoted language which would seem to criticize a decision denying parole supported solely by the circumstances of the crime, the Court went on to state, "[t]hese reasons would be sufficient to deny parole in the Board's discretion, if the Board's decision evinced consideration of Section 24-21-640 and its own criteria." Cooper, 661 S.E.2d at footnote 5. Therefore, the Board has the discretion to deny parole-based solely on the seriousness of the criminal offense, an indication of violence in this or a previous offense, and the use of a deadly weapon in this or previous offense so long as it considers all of the factors required by S.C. Code Ann. § 24-21-640 (Supp. 2012). The Board's decision in this case indicates that all of the statutory criteria were considered in Appellant's hearing.²

For the foregoing reasons, the Department's decision denying Appellant parole is **AFFIRMED.**

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 19, 2013
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 September 2013

By: R. E. [Signature]
JUDICIAL LAW CLERK

² Appellant also asserts that the Board erred in revoking his parole prior to his release in 2010. However, Appellant failed to appeal that decision in 2010 and failed to preserve any of the issues from the 2010 decision. Therefore, the issues raised by Appellant regarding the Board's 2010 decision are not properly before this Court.