

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Joseph Gibbs, #185709, )  
 )  
Appellant, )  
 )  
v. )  
 )  
South Carolina Department of Probation, )  
Parole and Pardon Services, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. 24-ALJ-15-0043-AP

**ORDER DENYING APPELLANT'S  
MOTIONS TO SUPPLEMENT  
THE RECORD ON APPEAL**

**AND PROFFER**

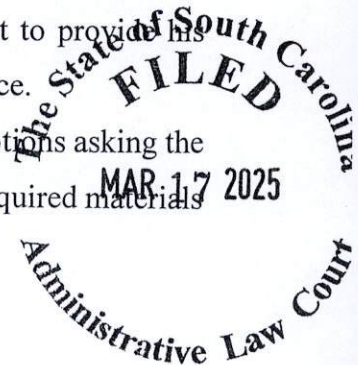
MAY 13 2025

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to Notice of Appeal filed on November 19, 2024, by Joseph Gibbs (Appellant), an inmate in the custody of the South Carolina Department of Corrections (SCDC). On October 30, 2024, the South Carolina Department of Probation, Parole and Pardon Services (Department or Respondent) notified the Appellant of the South Carolina Parole Board's (Parole Board) unanimous decision to deny the Appellant parole. The Appellant appeals the Board's denial of parole on the basis that the Board abused its discretion, and his denial was not routine but contrary to subsection 24-21-640 of the South Carolina Code.

On January 10, 2025, the Department filed the Record on Appeal (ROA). On February 24, 2025 the Appellant filed a Motion to Proffer Appendix 1, Motion to Compel records used at hearing and strike SCALC Rule 61, and the Appellant's brief with the court. In his Motion to Proffer Appendix 1, the Appellant moves to proffer Appendix 1 as an attachment to his initial brief. Appendix 1 consists of a copy of the Appellant's signed Acknowledgment of Parole File, a letter from the Department in response to the Appellant's request for a review of his parole file regarding the parole hearing conducted on October 30, 2024, a letter from the Department in response to the Appellant's request to review his parole file, an Affidavit from the Appellant, and commentary by Jon Ozmint on South Carolina's parole system. In his Motion to Compel and Strike SCALC Rule 61, the Appellant asks the court to compel the Department to provide his complete parole file and disable the use of SCALC Rule 61 in the interest of justice.

On March 10, 2025, the Department filed a response to the Appellant's motions asking the court to deny the Appellant's motions because the Department has provided the required materials



pursuant to SCALC Rule 61, therefore expanding the record would go beyond the court's very narrow scope of review in DPPPS cases. *See, e.g., Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 502, 661 S.E.2d 106, 113 (2008) (noting the court's limited jurisdiction in DPPPS cases involving the routine denial of parole).

### DISCUSSION

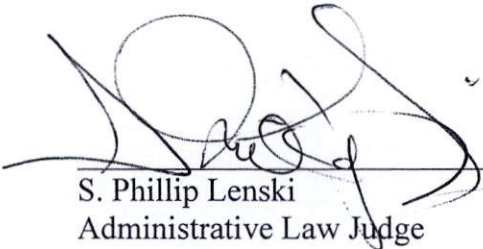
The court's jurisdiction to review this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz* and *Furtick*. *See Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals); *see also Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process).

The South Carolina Code provides, in no uncertain terms, that “[a]n 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) (Supp. 2023). Therefore, since parole is a privilege, not a right, the routine denial of parole does not constitute such a liberty interest. *See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 495-96, 661 S.E.2d 106, 109-10 (2008) (citation omitted). Thus, this court may not review the Board's substantive decision to deny an appellant parole. In *Compton v. South Carolina Department of Probation, Parole & Pardon Services*, the South Carolina Supreme Court further clarified that “if the [ ] 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 . . . ,” its decision is sufficient under *Cooper*. *Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). As such, this court's review is limited to ascertaining whether the Board considered, or stated that it considered, the relevant criteria. *See id.; Cooper*, 377 S.C. at 500, 661 S.E.2d at 112.

Given the limited nature and scope of the court's appellate review in these cases, SCALC Rule 61 limits the record on appeal from decisions of the Probation, Pardon and Parole Board to the agency decision and any decision on a motion for reconsideration. Here, the Appellant has not established that the proposed supplemental evidence falls within the very limited scope of this court's review.

**THEREFORE**, for the foregoing reasons, the Appellant's Motion to Supplement the Record on Appeal and Motion to Proffer are hereby **DENIED**.

**AND IT IS SO ORDERED.**




S. Phillip Lenski  
Administrative Law Judge

March 17, 2025  
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 17 day of March 2025

  
Judicial Law Clerk

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

HENRY McMASTER  
Governor



JODI D. GALLMAN  
Acting Director

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

October 30, 2024

Mr. Joseph Gibbs #00185709  
Broad River Correctional Institution  
4460 Broad River Rd.  
Columbia, SC 29210

RECEIVED

MAY 13 2025

SC Court of Appeals

RE: NOTICE OF REJECTION

Dear Mr. Gibbs:

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  
04 Criminal Record Indicates Poor Community Adjustment  
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

Rec'd 4/11/25  
*[Signature]*

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Joseph Gibbs, #185709, )  
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 Appellant, )  
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 v. )  
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 South Carolina Department of Probation, )  
 Parole and Pardon Services, )  
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 Respondent. )  
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Docket No. 24-ALJ-15-0043-AP

**FINAL ORDER**  
**RECEIVED**  
MAY 13 2025  
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to Notice of Appeal filed on November 19, 2024, by Joseph Gibbs (Appellant), an inmate in the custody of the South Carolina Department of Corrections (SCDC). On October 30, 2024, the South Carolina Department of Probation, Parole and Pardon Services (Department or Respondent) notified the Appellant of the South Carolina Parole Board's (Parole Board) unanimous decision to deny the Appellant parole. The Appellant appeals the Board's denial of parole on the basis that the Board abused its discretion and that his denial was not routine but contrary to subsection 24-21-640 of the South Carolina Code. After careful consideration of the parties' briefs, the Department's decision is affirmed.

**BACKGROUND**

On March 11, 1992 the Appellant kicked in the front door of the victim's residence and entered while armed with a shotgun. When the victim attempted to flee, the Appellant shot him in the back. The victim died immediately due to the gunshot wound. The Appellant was later arrested and charged with the offenses of murder and burglary in the first degree. The Appellant was convicted of and sentenced to life for the offenses of murder and burglary first degree. At the time the Appellant committed these offenses, South Carolina law permitted an individual serving a life sentence for murder parole eligibility upon the service of twenty (20) years.

On January 4, 2012 the Appellant made his initial appearance before the Parole Board and was denied parole. Since this initial hearing, the Appellant has appeared before the Parole Board six additional times, each resulting in the denial of parole. The Appellant's last appearance before the Parole Board was on October 30, 2024. The Parole Board unanimously denied the Appellant

The State of South Carolina  
**FILED**  
APR 08 2025  
Administrative Law Court

parole due to the nature and seriousness of the current offense; the use of a deadly weapon in this or a previous offense; and because the Appellant's criminal record indicates poor community adjustment. On November 19, 2024 the Appellant filed an appeal with this court.

### **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*. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals); see also *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).

Since parole is a privilege, not a right, the routine denial of parole does not constitute such a liberty interest. See *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 495-96, 661 S.E.2d 106, 109-10 (2008) (citation omitted). If, however, the Board "deviates from or renders its decision without consideration of the appropriate [statutory] criteria, . . . it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest." *Id.* at 499, 661 S.E.2d at 111. Thus, this court may review decisions from the Department for violations of statutory procedure or procedural due process only but may not review the Board's substantive decision to deny an appellant parole.

In reviewing such matters, the court sits in its appellate capacity. See *id.* at 497, 661 S.E.2d at 110 (citation omitted); *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754 (citation omitted). 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). 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). Substantial rights of the appellant are prejudiced when the agency's 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. *Id.*

## DISCUSSION

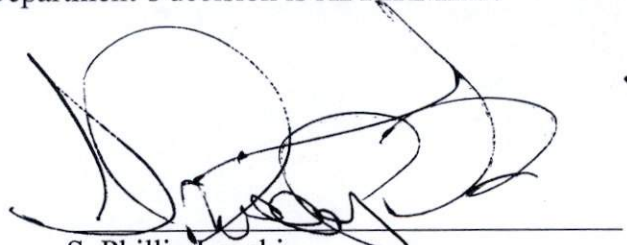
As stated *supra*, parole is not a right, but a privilege. *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 104 (2008) (citing *Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 n.4 (2003)). The discretion to grant parole lies solely with the Board. *Id.* at 649, 659 S.E.2d 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). The proper procedure for the Board to follow includes considering the factors outlined in Section 24-21-640 of the South Carolina Code, as well as those listed in the Department's parole form. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; *Compton*, 385 S.C. at 479, 685 S.E.2d at 177; *see also* S.C. Code Ann. § 24-21-640 (Supp. 2019) (setting forth the statutory factors warranting parole). Additionally, the Board must utilize an actuarial risk and needs assessment tool in making its parole determinations. *See* S.C. Code Ann. § 24-21-10(F) (Supp. 2019).

If the Board fails to follow proper procedure, giving due consideration to the specified factors, an appellant is denied his liberty interest in parole eligibility. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. If, however, the Board adheres to procedure and considers all the requisite factors, the appellant's liberty interest is protected, and the Board has the discretion to deny parole based on any of the factors found in Section 24-21-640 or its own criteria. *See id.* at 499, 661 S.E.2d at 111-12. Here, the Board's order plainly reflects that it considered all the appropriate factors – including those set forth in Section 24-21-640, the Department's own criteria for parole consideration, and an actuarial risk and needs assessment pursuant to Section 24-21-10(F)(1) – before making its decision to deny the Appellant parole. Thus, as a routine denial of parole, the court's ability to further review this matter is limited:

[T]he Parole Board may avoid [reversal of its parole determinations] 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*, 377 S.C. at 500, 661 S.E.2d at 112; *see Compton*, 385 S.C. at 479, 685 S.E.2d at 177. Consequently, 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, based on the foregoing,

**IT IS HEREBY ORDERED** that the Department's decision is **AFFIRMED**.  
**AND IT IS SO ORDERED.**



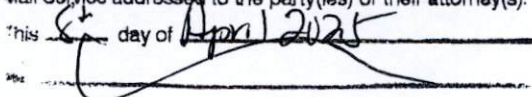
S. Phillip Lenski  
Administrative Law Judge

April 8, 2025  
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 8<sup>th</sup> day of April 2025

  
Judicial Law Clerk