

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT
S.C. Department of Probation, Parole and Pardon Services

SC Court of Appeals

Samuel L. Johnson, Administrative Law Judge

Appellate Case No. 2026-001051

Bernard Bagley,

Appellant,

v.

South Carolina Department
of Probation, Parole and
Pardon Services,

Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bernard Bagley, #175851,

Appellant,

vs.

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

Respondent.

Docket No. 25-ALJ-15-0019-AP

ORDER

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Bernard Bagley (Appellant), an inmate incarcerated at Kershaw Correctional Institution. Appellant challenges the South Carolina Department of Probation, Parole, and Pardon Services' (Department's) decision denying him parole.

FACTS/PROCEDURAL HISTORY

On or about June 18, 2025, the Department's Parole Board issued a Notice of Rejection informing Appellant that he was denied parole by a unanimous vote, based upon the nature and seriousness of his offense, an indication of violence with respect to the offense or a prior offense, and the use of a deadly weapon in the offense or prior offense. The Notice of Rejection included the following paragraph:

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.

After unsuccessfully petitioning the Parole Board for reconsideration, Appellant filed a notice of appeal to the ALC, arguing that the Board did not follow procedure because he was not seen by a duly qualified psychologist or psychiatrist, that the Board failed to consider the 1996 amendment to the sentence for murder, and that the denial of parole prejudiced Appellant by being arbitrary and capricious.

/

FILED

03/20/2026

SC Admin. Law Court

On August 7, 2025, this matter was assigned to the undersigned Administrative Law Judge. On August 29, 2025, the Department filed the Record on Appeal. On October 22, 2025, Appellant filed his brief. On November 5, 2025, the Department filed its respondent's brief. On November 20, 2025, Appellant filed his reply brief.

ISSUE

Did the Department err in denying Appellant parole by applying an improper review criterion?

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court's decision in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. South Carolina Department of Probation, Parole & Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003), and the contours of the Court's authority to review parole denials is set forth in subsequent decisions interpreting and clarifying *Furtick*, including *Cooper v. South Carolina Department of Probation, Parole & Pardon Services*, 377 S.C. 489, 499, 661 S.E.2d 106 (2008)¹ and *Compton v. South Carolina Department of Probation, Parole & Pardon Services*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009).

An administrative law judge may not reverse or modify an agency's decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly arbitrary or affected by an error of law. See *Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Lab., Licensing and Regul. v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). In cases involving parole, the ALC has authority to review a determination that an inmate is permanently ineligible for parole. See *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149. However, the Court's authority to review routine parole decisions is statutorily limited; Section 1-23-600(D) of the South Carolina Code (Supp. 2025) provides 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." Thus, for parole denials that do not amount to a finding of permanent parole ineligibility, this Court's review examines only whether the Parole Board followed the

¹ *Cooper* was abrogated in part, on grounds unrelated to the issues in this appeal, by *Allen v. South Carolina Department of Corrections*, 439 S.C. 164, 886 S.E.2d 671 (2023) (clarifying use of the term "subject matter jurisdiction" with respect to inmate appeals).

proper procedure in making its decision. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111 (2008) (“If a Parole Board deviates from or renders its decision without consideration of the appropriate criteria, we believe it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest.”). Where 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 ... 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 [and] the ALC can summarily dismiss the inmate’s appeal.” *Id.* at 500, 661 S.E.2d at 112; *see also Compton*, 385 S.C. at 479, 685 S.E.2d at 177 (“[I]f 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 ... the decision will constitute a routine denial of parole and the ALC will have limited authority to review the decision.”). “[W]hen appealing an agency's decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced” *S.C. Dep’t of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008).

DISCUSSION

As an initial matter, Appellant’s brief does not argue that the Parole Board’s denial order failed to clearly state that the Parole Board considered the factors outlined in S.C. Code Ann. § 24-21-640 (2025) and the factors published in Form 1212, as contemplated by *Cooper* and *Compton*.² Moreover, review of the record shows that the Parole Board’s denial order included a clear statement to that effect. Rather than challenge the Parole Board’s compliance with established law, Appellant asks the Court to mandate consideration of additional factors by the Parole Board.

² In his reply brief, Appellant notes that the Notice of Rejection did not state that the Parole Board “considered the ‘16’ factors published on Form 1212.” The Court does not address arguments raised for the first time in a reply brief. *State v. Wakefield*, 323 S.C. 189, 191, 473 S.E.2d 831, 832 (Ct. App. 1996). However, the Court notes that Appellant is correct in pointing out that Form 1212, as revised on May 16, 2017, now includes a list of sixteen factors. Appellant is also correct that the rejection notice states that the Parole Board carefully considered the factors published in Form 1212 but did not state it considered the *sixteen* factors. If the Court were to consider this issue, the Court would find that the language used in the notice (“careful consideration of ... the factors published in Department Form 1212”) satisfies the requirements of *Cooper* and *Compton*, as held by the South Carolina Court of Appeals in *Buchanan v. S.C. Dep’t of Prob., Parole, & Pardon Servs.*, 442 S.C. 393, 899 S.E.2d 600 (Ct. App. 2023) (affirming parole denial where “order of denial stated the Board had considered ‘the factors outlined in [s]ection 24-21-640’ and ‘the factors published in Department Form 1212’” and finding Parole Board’s decision constituted routine denial of parole).

Psychological Report

First, Appellant contends the Parole Board was statutorily required to obtain and review a report from a duly qualified psychiatrist or psychologist as to Appellant's mental health condition and ability to adjust to life outside of prison. As support for this new requirement, Appellant cites Section 24-21-610 of the South Carolina Code, which provides, in pertinent part:

Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be **paroled** until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist.

(Emphasis added.) Appellant appears to interpret the foregoing provision to say that no inmate who has served at least ten consecutive years may be *granted* parole absent submittal of such a report to the Parole Board. The Department argues the psychological report required by Section 24-21-610 is not a required parole consideration factor, but a factor that must be considered by the Parole Board prior to an inmate's *release on parole*.

The Court agrees with the Department that the legislature's use of the word "paroled" in Section 24-21-610 refers to an inmate's release on parole, and thus the psychological report requirement applies only prior to the release on parole of an inmate who, like Appellant, has served more than ten consecutive years. In *Cannon v. South Carolina Department of Probation, Parole & Pardon Services*, 371 S.C. 581, 641 S.E.2d 429 (2007), the South Carolina Supreme Court analyzed the meaning of the word "paroled" in a statute requiring DNA samples from offenders who were "paroled on or after July 1, 2000." *Id.* at 584, 641 S.E.2d at 430. The *Cannon* opinion held that "the plain wording of the statute indicates the word 'paroled' refers to an individual who is 'released to parole' on or after July 1, 2000." *Id.* Here, the Court finds that the term "paroled" carries the same meaning in the psychological report provision of Section 24-21-610 as it did in *Cannon*, i.e., "released on parole." This construction of "paroled" recognizes that the authorization of parole of an inmate, i.e., by the Parole Board, is distinct from the inmate's release on parole. See, e.g., S.C. Code Ann. § 24-21-645(A) (2025) ("The board may issue an *order authorizing the parole* which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case ninety days prior to the effective date of the parole."). This construction also comports with the common statutory usage of the word "paroled" as describing a type of release from custody. See, e.g., S.C. Code Ann. § 63-19-1440(D) (Supp. 2025) ("A juvenile who has not been *paroled or otherwise released* from the custody of the department by

the juvenile's nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections.”) (emphasis added); S.C. Code Ann. § 24-13-180(A) (2025) (“Any public, private, or nonprofit entity whose primary purpose is in helping to rehabilitate and reintroduce into the community *paroled* inmates and which as part of its program provides or furnishes residential housing in the community to these parolees on either an individual or communal basis must comply with the following provisions of this section....”) (emphasis added). As such, the Court concludes that the Parole Board was not required to obtain and review a psychological report on Appellant prior to deciding whether to authorize or deny parole.³

Amendments to Criminal Statute

Appellant argues the Parole Board should have considered the effect of 1996 amendments to Section 16-3-20 of the South Carolina Code,⁴ the criminal statute related to the punishment for murder, insofar as these amendments might have changed his conviction and sentencing. This argument is unconvincing. First, Appellant’s argument is premised on the Parole Board’s purported ability to, in Appellant’s words, “exercise its executive power to intervene” and “exercise its right of granting clemency” pursuant to Section 24-21-920 of the South Carolina Code (2025).⁵ However, that statute deals with pardon powers and is not applicable to the instant parole decision. Second, as pointed out by the Department, the enactment of the 1996 amendments to Section 16-

³ The Department does not dispute that Section 24-21-610 requires a psychological report be submitted to the Parole Board prior to the final parole order being signed to effect release of an inmate incarcerated for more than ten consecutive years, and notes that the psychological report is obtained as required prior to the release of those inmates granted provisional parole by the Board. *See* S.C. Code Ann. § 24-21-645(A) (2025) (“A provisional parole order shall include the terms and conditions, if any, to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole.”). The Department also notes that obtaining a psychological report requires a duly qualified psychologist/psychiatrist to enter the correctional institution, interview and evaluate an inmate’s mental state, and then furnish the Parole Board with a report as to the inmate’s mental condition and ability to adjust to life outside the prison, at a cost of \$680 as of per report as of November 2025. Only upon submission of the completed report will the Board then “provide for [the inmate’s] release from custody.” S.C. Code Ann. § 24-21-645(D) (2025). The Court agrees with the Department that Section 24-21-610 does not require psychological reports to be obtained prior to the Parole Board’s decision on whether to authorize parole for an inmate who has been incarcerated more than ten years. The Court also notes that the parole denial at issue was based on factors unrelated to Appellant’s mental health status.

⁴ Prior to the amendments’ effective date of January 1, 1996, Section 16-3-20 provided that a person convicted of murder must be punished by death or life imprisonment, but the amendments added a third potential sentence of a mandatory minimum term of thirty years. *See State v. Gay*, 343 S.C. 543, 552, 541 S.E.2d 541, 546 (2001), *abrogated on other grounds by Holmes v. South Carolina*, 547 U.S. 319 (2006).

⁵ Appellant’s brief argues that “the parole board has repeatedly failed to comply with the mandatory language of § 24-21-920 ... by failing to exercise its right of granting clemency....”

3-20 included a savings clause providing that the cited amendments applied prospectively only, but did not affect rights and liabilities existing as of the effective date of the amendments. *See* 1995 S.C. Acts No. 83, §§ 58, 62. Finally, the Court agrees with the Department that Appellant’s implicit assumption—that he would have received a lighter sentence for his conviction under the 1996 amendments to Section 16-3-20—amounts to speculation. And although the Legislature could require the Parole Board to examine this amendment when considering whether to authorize parole, such a policy decision is not within the Court’s purview. As such, the Court concludes that the Parole Board was not required to analyze statutory amendments related to Appellant’s criminal offense prior to deciding whether to authorize or deny parole.

Conclusion

For the foregoing reasons,⁶ the Court concludes that Appellant received the process to which he is entitled, and that the Parole Board followed the proper procedure in denying Appellant parole. S.C. Code Ann. § 1-23-600(D); *Cooper* at 500, 661 S.E.2d at 112; *Compton*, 385 S.C. at 479, 685 S.E.2d at 177.

⁶ Appellant’s third argument—variously described as sounding in “equal protection,” “discrimination,” and “arbitrary and capricious” decisionmaking—amounts to a direct challenge to the holding of the South Carolina Supreme Court in *Cooper* as to the factors required to be considered by ALC when reviewing a parole denial. Appellant’s brief argues that “*Cooper* seems to allow the Board to embrace a bias [sic] perspective towards granting parole to Appellant” and that “*Cooper* tends to promote bias, discrimination, and stereotype [sic] inmates.” The meat of Appellant’s argument appears to be that the *Cooper* standard somehow violates the Americans with Disabilities Act of 1990 (ADA) by not requiring the Parole Board to consider his proffered additional factors, such as legislative amendments to underlying penal statutes and pre-release psychology reports, stating:

Cooper seemingly presumed to describe inmates of a certain crimes, but factually wrong, yet, allows a power in how the Board perceived and treat inmates appearing before it with routine denials of parole. This, in turn, subjects the stereotyped group to prejudice, such as the Appellant, and causing a communication barrier between the Board and Appellant in violation of 28 C.F.R. §35.130(a)(b)(1)(i)(7)(i), General prohibitions against discrimination.

(No alterations to original.) Even if the Court could discern valid legal reasoning in such an argument, Appellant’s argument that the *Cooper* standard itself is discriminatory is not within this Court’s limited scope of review for routine denials of parole. Moreover, to the extent Appellant seeks to raise what his reply brief calls “cognizable ADA claims,” this Court does not adjudicate such matters in the first instance, nor is this an appeal of a denial of an accommodation request. Indeed, Appellant has not established that the Parole Board/Department would be the decisionmaker/agency to consider ADA accommodations requests from inmates incarcerated with the South Carolina Department of Corrections (SCDC). Such requests appear to be in the purview of SCDC. *See, e.g.,* SCDC Policy GA-06.08, *Inmates with Disabilities and the Americans with Disabilities Act* (November 13, 2020).

ORDER

IT IS THEREFORE ORDERED that this matter is **DISMISSED**.

AND IT IS SO ORDERED.



Samuel L. Johnson
Administrative Law Judge

March 20, 2026
Columbia, South Carolina

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

HENRY McMASTER
Governor



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June 19, 2025

Mr. Bernard Bagley #00175851
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

RE: NOTICE OF REJECTION

Dear Mr. Bagley:

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
02 Indication Of Violence In This Or Previous Offense
03 Use Of Deadly Weapon In This Or Previous Offense
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

6/18/2025



South Carolina Department of Probation, Parole and Pardon Services

Criteria for Parole Consideration

Inmate Name
BAGLEY, BERNARD

SCDC#
00175851

SC Board of Probation, Parole and Pardon Services
P.O. Box 207
Columbia, SC 29202

Criteria for Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates a expectancy of release; nor does it bind the Parole Board in any way to favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. The files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some errors or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the Community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow his/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate
15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.
16. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that the inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate fail to complete any one of these conditions or disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges. If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's
Signature:

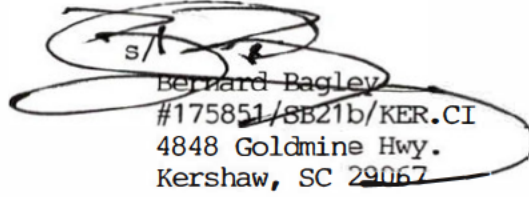
Date: 2/21/2025

Witness
Signature:

Date: 2/21/2025

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


Bernard Bagley
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Kershaw, SC 29067

August 14, 2026

Pro Se

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SC Court of Appeals