STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the Administrative Law Court
The Honorable Samuel L. Johnson, Administrative Law Judge
Docket Number 25-ALJ-15-0019-AP

Appellate Case No.: 2026-001051

BERNARD BAGLEY, #175851, ...APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, ...RESPONDENT

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the ALC erred when it determined that the psychological report referenced in S.C. Code 24-21-610 was not required to be presented to the Parole Board prior to its decision whether to grant or deny parole?

2. Whether the ALC erred when it determined that the Parole Board was not required to consider statutory changes to the sentence for murder when considering Appellant for parole?

3. Whether the ALC correctly determined that questions regarding Appellant's claims regarding violations of the Americans with Disabilities Act was not appropriate in an appeal from a denial of parole?

STATEMENT OF THE CASE

On August 23, 1990, after getting into an argument with his wife the day before, the Appellant discovered she resigned from her job, withdrew money from their bank account, and took their daughter to her mother's house in Eastover, South Carolina. The Appellant traveled from Raleigh, North Carolina to Eastover to confront her. Upon arrival he kicked in the front door of his mother-in-law's home and inquired to his wife about a possible affair. During the ensuing argument Appellant shot her twice causing her death. Appellant was eventually arrested and charged with the offense of murder.

During the October 1990 term, the Richland County Grand Jury indicted Appellant for murder (90-GS-40-5849) and first-degree burglary (90-GS-40-5864). On April 10, 1991, Appellant proceed to a jury trial before the Honorable Dan F. Laney, Jr. Appellant was found guilty as charged and sentenced to two consecutive life sentences for his convictions. At the time of his offense, parole eligibility for murder was allowed after the service of twenty years.

Appellant became parole eligible on August 23, 2010, and had his first parole hearing on September 8, 2010. The Parole Board (the Board) denied Appellant's request for parole. Since that time, Appellant has appeared before the Board eight additional times, including one opportunity for medical parole. His most recent appearance was on June 18, 2025, at which time the Board unanimously rejected him for parole, citing the nature and seriousness of the offense and the use of a deadly weapon. (R.p.8).

Appellant submitted a request for a rehearing on June 25, 2025, which was denied by the Department. Appellant then filed an appeal to the Administrative Law Court. Within his appeal, Appellant argued that the Board did not follow the requirement of having a psychological report from a duly qualified psychologist or psychiatrist; the Board failed to consider the 1996

amendment to the sentence for murder; and that the Board's decision was either arbitrary and capricious, discriminatory, or violative of the Americans with Disabilities Act (ADA).

The Honorable Samuel L. Johnson, administrative law judge, dismissed the appeal because the psychological report is not required to be conducted before parole consideration; that the 1996 amendments to the sentence for murder were prospective only; and that Appellant's arguments concerning the ADA is outside the ALC's purview.

Appellant now appeals the ALC's dismissal. Respondent's brief follows.

STANDARD OF REVIEW

In criminal cases the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. When reviewing a parole case, the ALC sits in an appellate capacity. *Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2004). Under the appellate standard of the Administrative Procedures Act, the ALC's review is limited to the record, absent irregularities in the procedure of the agency. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but 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). However, "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." S.C. Code Ann. § 1-23-600(D).

In an appeal from an ALC decision, the Administrative Procedures Act provides the standard of review. S.C. Code Ann. §1-23-610(B). This Court may only reverse the decision of the ALC if that decision is:

(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.

"The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact." *Id.* In determining whether the ALC's decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached. *Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

ARGUMENTS

1. **The psychological report mandated in 24-21-610 is not one of the requisite factors of parole consideration.**[1]

Appellant argues that his due process rights were denied because the Respondent did not present a report to the Board regarding his mental condition as required by S.C. Code 24-21-610. The relevant portion of that law states that "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."

Respondent first emphasizes that this is an identical issue raised by Appellant in a prior filing with this Court. In *Bagley v. S.C. Dep't of Probation, Parole, & Pardon Servs.*, Order 2026-UP-268 (S.C.Ct.App. dated June 3, 2026), this Court disagreed with Appellant's position. "Bagley

[1] Respondent will address the first four of Appellant's arguments in this section because they each relate to Section 24-21-610 and the psychological report requirement.

misreads section 24-21-610 in arguing SCDPPPS must present and the Board must receive a report on his mental condition and ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist prior to determining whether to deny parole. Section 24-21-610 requires the Board receive a report prior to granting parole; it does not require the Board receive or consider a report prior to denying parole."[2]

Further, the ALC correctly found that the term "paroled" as used in Section 24-21-610 described a type of release from custody. Therefore, the operation of the statute requires the psychological report to be received by the Board before the inmate is released from custody, not prior to being considered for parole.

This interpretation follows the necessary process outlined in Section 24-21-645(A), that says, "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." Thus, when the Parole Board votes to parole an inmate *provisionally*, his or her release to parole occurs three months later. During that time, the psychological report is created and submitted to the Board which must be done before the inmate may be released per Section 24-21-610.

Respondent also submits that there is a practical consideration why this Court's and the ALC's interpretation of Section 24-21-610 should be upheld. Psychological reports are expensive. These reports require a duly qualified psychologist or psychiatrist to enter the institution in which

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[2] The timing of this Court's decision in the prior *Bagley* case being issued shortly after the ALC's order precluded Respondent from raising the doctrine of collateral estoppel in its original response, but it would respectfully suggest that this issue can also be denied on account of this matter being litigated in the prior action, directly determined in the prior action, and supportive of the prior action. See *Carolina Renewal, Inc. v. South Carolina Dept. of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). In this regard, Respondent would also submit that *Bagley* operates as precedent under Rule 268(d)(2), SCACR.

the offender is housed, conduct the necessary interview and inquiry as to the inmate's mental state, and furnish a report "as to his mental condition and his ability to adjust to life outside the prison." The cost to the Department is currently $680.00 per psychological report. Were the Respondent required to obtain a psychological report for the hundreds of inmates who had served ten or more years to the Board regardless of the Board's inclination to parole the inmate, the expense to Respondent would be severely impactful and ultimately unnecessary.

Instead, Respondent only obtains the psychological report for those inmates granted provisional parole by the Board. "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." S.C. Code Section 24-21-645(A). The completed report is submitted to the Board, which will then "provide for his release from custody." Section 24-21-645(D).

In the instant case, Appellant was rejected for parole by the Board after consideration of the requisite factors mandated by *Cooper*[3] and *Compton*[4] as well as the risk and needs assessment tool required by Section 24-21-10(F)(1). (R.p.8-9). The Board did not vote for Appellant to be released to parole, thus obviating the psychological report required by Section 24-21-610. Therefore, Respondent submits his due process rights were not violated.

2. The ALC correctly determined that this appeal is outside the scope of an Americans with Disabilities Act claim.

Appellant appears to argue that the Board violates the ADA by denying him parole based on the nature and seriousness of the offense, indication of violence, and use of a deadly weapon.[5]

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[3] *Cooper v. S.C. Dep't. of Probation, Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008).

[4] *Compton v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 385 S.C. 476, 684 S.E.2d 175 (2009).

[5] The Supreme Court stated that such reasons were sufficient to deny parole in the Board's discretion when the Board also states that it considered the requisite factors of parole consideration. *Cooper*, 377 S.C. at 499 fn. 5, 661 S.E.2d at 111 fn. 5.

Respondent would submit that the ALC correctly dismissed this claim in Footnote 6 of its order, reasoning that there is no valid legal basis in his argument and that that underlying question of whether the *Cooper* standard is discriminatory under the ADA is outside the limited authority of the ALC.

Appellant in his Initial Brief asserts that the ALC should be allowed to consider ADA accommodations as it relates to parole or the psychological report mandated in Section 24-21-610. While a novel attempt to force the Board to make a favorable parole decision, he has provided no authority that supports his position that ADA accommodations must include release to parole. Further, as discussed in Part 1, the psychological assessment only relates to the inmate's ability to adjust to life outside prison. The psychological report has nothing to do with diagnosing an inmate's disability or determining what accommodations should be made.

3. The ALC did not err when it determined that the Parole Board was not required to consider the statutory amendments to the sentence for murder.

Appellant argues that the Board violates his rights by not considering the current statutory sentence for murder in S.C. Code Ann. § 16-3-20 (Supp. 1996). At the time of Appellant's crime, South Carolina law provided one sentence for murder, which was life in prison. S.C. Code § 16-3-20 (1976). However, the sentence was eligible for parole after the service of twenty years. *Id.* The law changed as of January 1, 1996; now the sentence for murder is thirty years to life with no parole eligibility or any other form of early release. "No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any ... credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section."

Appellant asserts that because the law now affords a minimum sentence of thirty years, it places some obligation upon the Board as it relates to parole or other clemency powers given to

the Board through S.C. Code § 24-21-920. The ALC correctly concluded that the changed law does not require the Board to align its parole decisions to the current statute.

The ALC accurately pointed out the General Assembly included a savings clause in the legislation. That clause made the changes to the sentence of murder prospective only, meaning that it would not apply to Appellant's 1990 crime. 1995 S.C. Acts No. 83, §§ 58, 62.

Further, Appellant obviously assumes that had he been sentenced under the current law that he would have received the minimum sentence of thirty years when he could just as well have received a far greater sentence, up to and including life *without* parole. The ALC agreed that Appellant's position was speculative and rightly concluded that his argument lacked merit.

CONCLUSION

This Court has just recently held that the requirement of the psychological report is only necessary before an inmate is *released* to parole, not for when the inmates are being *considered* for parole. The ALC correctly dismissed Appellant's argument for the same reasons. Further, the ALC did not err when it did not take up Appellant's arguments that the ADA applied or that the Board should have considered the change in the law regarding sentencing for murder. The ALC's decision dismissing this appeal should therefore be upheld.

Respectfully submitted,

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