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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Crystal M. Rookard, Administrative Law Judge
Docket Number 25-ALJ-15-0033-AP

Appellate Case No.: 2026-001548

HERBERT BELL, #132646, ...APPELLANT

v.

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

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities ii

Statement of the Issues on Appeal 1

Statement of the Case 2

Standard of Review 3

Arguments

1. The Administrative Law Court did not err when it dismissed the appeal and affirmed the Parole Board's decision after it determined the Parole Board followed the proper procedure when denying parole. 4

2. Appellant's due process rights were not violated by Respondent when it denied his request for a reconsideration after he presented information pertaining to his trial 6

3. Appellant's due process rights were not violated by Respondent when it utilized a sex offender assessment tool, and *Thompson v. State* does not apply to Appellant's offense. 9

Conclusion 10

TABLE OF AUTHORITIES

Cases **Page(s)**

Al-Shabazz v. State,
338 S.C. 354, 527 S.E.2d 742 (2000) 4
Allen v. S.C. Dep't. of Corrections,
439 S.C. 164, 886 S.E.2d 671 (2023) 9
Compton v. S.C. Dep't. of Prob., Parole & Pardon Servs.,
385 S.C. 476, 685 S.E.2d 175 (2009) 5, 6, 9
Cooper v. S.C. Dep't. of Prob., Parole & Pardon Servs.,
377 S.C. 489, 661 S.E.2d 106 (2008) 5, 6, 9
Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs.,
352 S.C. 594, 576 S.E.2d 146 (2007) 3, 4, 5, 7
Greenholtz v. Inmates of Nebraska Penal & Corr. Complex
442 U.S. 1, 7 (1979) 7, 8
Hill v. S.C. Dep't of Health and Envtl. Control,
389 S.C. 1, 698 S.E.2d 612 (2010) 4
Kelsey v. South Carolina Dept. of Probation, Parole and Pardon Services,
441 S.C. 373, 893 S.E.2d 588 (Ct. App. 2023) 6, 7, 8
State v. Dingle,
376 S.C. 643, 659 S.E.2d 4 101 (2008) 7
Sullivan v. S.C. Dep't of Corr.,
355 S.C. 437, 586 S.E.2d 124 (2003) 7
Thompson v. State,
415 S.C. 560, 785 S.E.2d 189 (2016) 9, 10

Statutes

S.C. Code Ann. § 1-23-380 3
S.C. Code Ann. § 1-23-600 ..... 3, 4, 5, 9
S.C. Code Ann. § 23-3-430 ..... 8, 9, 10
S.C. Code Ann. § 24-21-10 9
S.C. Code Ann. § 24-21-640 ..... 5, 6

STATEMENT OF ISSUE ON APPEAL

1. Whether the Administrative Law Court erred when it dismissed the appeal after it determined the Parole Board followed the proper procedure as outlined in *Cooper* and *Compton*?

2. Whether the ALC erred when it determined its limited authority over appeals from routine denials of parole required it to dismiss the appeal and not address Appellant's arguments about perceived inaccuracies in his parole file when he had the opportunity to report them to the Board?

3. Whether the ALC erred when it determined its limited authority over appeals from routine denials of parole required it to dismiss the appeal and not address Appellant's arguments about a sex offender assessment tool or to make a *Thompson v. State* analysis?

STATEMENT OF THE CASE

On July 23, 1985, on Bluff Road in Richland County South Carolina, Appellant abducted a fifteen-year-old victim who was driving his father's truck. Appellant forced the victim to drive to different locations in the Richland County area. The abduction lasted at least thirty minutes during which Appellant threatened to shoot the victim. The victim finally was able to escape by getting out of the truck and running nearly a mile to safety. The Appellant was later arrested and charged with the offense of kidnapping. On February 25, 1986, Appellant appeared before the Honorable Marion H. Kinnon after a two-day trial in which he was found guilty by a jury. Appellant was sentenced to life in prison. At the time Appellant committed this offense South Carolina law allowed an inmate serving a life sentence for kidnapping parole eligibility upon the service of ten years incarceration.

Appellant appeared before the Parole Board for his first consideration for parole on August 10, 1994, and was denied. Appellant has been before the Parole Board twenty-seven times since his first appearance. At the most recent hearing on November 19, 2025, Appellant's parole was denied based on the nature and seriousness of current offense; indication of violence; failure to successfully complete a community supervision program; and an unfavorable institutional record. R. 83. Following his rejection, Appellant submitted a request for reconsideration on December 4, 2025. R. 86-87. That request was denied in a letter dated December 11, 2025. R. 112-113. Appellant then filed an appeal with the Administrative Law Court (ALC), alleging that Respondent allowed the Board to consider erroneous evidence and for conducting a risk assessment for sex offenders. The ALC judge affirmed the Board's decision, determining that the Board followed proper procedure. Appellant now appeals the ALC's ruling. 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 case involving the permanent denial of parole eligibility, 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 Administrative Law Court did not err when it dismissed the appeal and affirmed the Parole Board's decision after it determined the Parole Board followed the proper procedure when denying parole.**

When Appellant's annual opportunity for parole arose, he was provided with a copy of his parole file to review, appeared before the Parole Board, had an opportunity to explain to the Board any perceived inaccuracies within his file, and after the Board voted against parole he was provided with a letter that confirmed that the Board carefully considered all the required factors of parole consideration. The letter also informed Appellant that he would be notified thirty days before his next hearing, showing that the Board had not permanently denied him parole eligibility.

The ALC's authority to review final decisions of the Department of Probation, Parole and Pardon Services (the Department) is based upon the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2002), as well as S.C. Code Ann. § 1-23-600(D).

Every appeal from the Parole Board must first address the statutory limitation on the ALC judges. S.C. Code § 1-23-600(D) states in pertinent part that "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." (Emphasis added). Thus, while the ALC may hear an appeal from an inmate whose parole *eligibility* has been denied, an inmate who is

eligible for parole may not appeal the Board's decision to deny him parole. When an inmate alleges that the Department erroneously determined that he was not eligible for parole, *Furtick* held that the "*permanent* denial of parole *eligibility*" by the Department "implicates a liberty interest sufficient to require at least minimal due process." *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 (emphasis in original).

Appellant, however, is not ineligible for parole. Instead, he appealed the Board's denial of parole at his regularly scheduled parole hearing, which the ALC judge does not have the authority to hear. S.C. Code § 1-23-600(D). The ALC correctly dismissed the appeal.

The South Carolina Supreme Court held that an appeal can only be heard if the inmate alleges the Board failed to consider the statutorily-created parole criteria, which would have the effect of rendering an inmate parole ineligible. *Cooper v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 502, 661 S.E.2d 106, 113 (2008). In that case, the Court reviewed an allegation that the Board was not following the procedure established by Section 24-21-640 or utilizing the board-created criteria for parole consideration. The Court remanded the Board's denial of parole, only because there was no evidence that the Board weighed the factors in Section 24-21-640 or its own criteria for parole consideration.

The Court determined, however, that in the future the issue could be remedied by the Board stating clearly that it had considered the required factors before rendering its decision regarding parole. *Cooper* at 500, 661 S.E.2d at 112.

This holding was further clarified by the Supreme Court in *Compton v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 385 S.C. 476, 479, 684 S.E.2d 175, 177 (2009). "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."

As evidenced in the Record, this procedure was followed. The Board stated in its letter of rejection that it carefully considered the required factors. R. 83. The ALC determined that the requirements of *Cooper* and *Compton* were met, and correctly dismissed the appeal.

Appellant, however, argues that the ALC erred by not reaching the merits of his appeal. Brief of Appellant, p. 22. Respondent respectfully submits that the ALC did exactly as the statute and case law require of it; the ALC must dismiss the appeal when the inmate is still considered eligible for parole and the Board followed the procedure outlined in *Cooper*.

2. Appellant's due process rights were not violated by Respondent when it denied his request for a reconsideration after he presented information pertaining to his trial.

Appellant argues that his due process rights were violated because Respondent did not comply with his request for a new hearing and for *Respondent* to present the inaccuracies he perceives to be in his parole file when he had his own opportunity to address the Board. Respondent would argue first that under *Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 441 S.C. 373, 893 S.E.2d 588 (Ct. App. 2023), the *inmate* may report inaccuracies to the Board, not the Department. Second, Appellant vastly overstates his due process rights as they relate to parole hearings in his demand to overhaul the parole consideration process whenever an inmate disputes a fact about his or her conviction.

Routine denials of parole do not trigger due-process guarantees. Only "the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process." *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 (Emphasis in original).

Due process rights are at a minimum at parole hearings. The United States Supreme Court has held that inmates do not have the constitutional right to early release of an otherwise valid sentence. *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 7 (1979). No South Carolina inmate has a right to parole. "Parole is a privilege, not a matter of right." *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 4 101, 104 (2008) (citing *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443 n. 4, 586 S.E.2d 124 127 n.4 (2003)). When the Parole Board denies an otherwise eligible inmate, the Board has deprived the inmate of nothing, and has not added to or extended his sentence. Hence, an inmate does not have a colorable due process argument in an appeal from a routine denial of parole.

Despite this, Appellant argues that his due process rights were violated when Respondent "failed to give [Appellant] the opportunity to present evidence to the Parole Board indicating [his] parole file contained inaccurate information…" Brief of Appellant, p. 10. He makes this argument despite having <u>had</u> the opportunity to review his parole file and to report his perceived inaccuracies to the Board directly per *Kelsey*.

Appellant takes issue with two facts that were presented in the parole file: that the victim alleged he was threatened with a gun, and that Appellant is a sex offender as determined by South Carolina law based on the offense of kidnapping a person under eighteen. Despite Appellant having had the opportunity to explain to the Board his position that there was no gun present during the kidnapping and that there was no sexual assault that took place during the kidnapping, he instead argues that it is the Department's responsibility to do so.

The ALC rightly declined to take up this argument. It is not the place of the ALC to arbitrate a factual dispute over what goes into a parole file. Appellant cites to the footnote in *Greenholtz* that speaks to a possible risk of error if the inmate's file is "wholly inaccurate." *Id.* 442 U.S. at 15, n. 7. While a remand may be appropriate if something in the file is "wholly inaccurate," the facts Appellant disputes are completely supported by the record and South Carolina law. The victim testified at trial that Appellant threatened to shoot him, leading the victim to believe he had a gun. R. 111. Similarly, South Carolina law makes kidnapping a victim under eighteen a sex offense requiring the defendant to register as a sex offender. S.C. Code § 23-3-430(C)(1)(b). Reporting both facts in Appellant's parole file is wholly *accurate*.

It's inevitable for criminal defendants to have a different view of the facts that led to their convictions after a trial, and many maintain their innocence. Respectfully, this Court's holding in *Kelsey* was not intended to allow inmates to relitigate their trials when it determined that the language of Form 1212 entitled inmates to review their files and report inaccuracies. Yet Appellant argues that he has due process rights under *Kelsey* and they are violated when Respondent does not alter the factual summary of the offense to a version tailored to his liking. He is essentially requesting the appellate courts to become a secondary finder of facts for the express purpose of dictating what the Parole Board is allowed to hear.

Notably, this Court did not decide *Kelsey* on the basis of due process rights of the inmate, but instead solely on the language of Form 1212. "[W]e find the language of Form 1212 requiring an inmate to notify the Board if his or her file is incorrect necessarily implies the right to review the file." *Id.* at 378, 893 S.E.2d at 591. When there are no due process rights implicated, the ALC may dismiss an inmate's appeal. "[T]he ALC is not required to hold a hearing in every matter and may summarily dismiss an inmate's grievance if it does not implicate a state-created liberty or

property interest sufficient to trigger procedural due process guarantees." *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 171, 886 S.E.2d 671, 674 (2023),

Respondent would submit that the ALC was correct in not taking on this new role and instead dismissing the appeal under the dictates of *Allen*, *Cooper, Compton,* and S.C. Code §1-23-600(D). This Court should affirm the ALC's dismissal of the appeal.

3. Appellant's due process rights were not violated by Respondent when it utilized a sex offender assessment tool, and *Thompson v. State* does not apply to Appellant's offense.

Appellant argues that his due process rights were violated because the Department conducted a sex offender assessment and the results were provided to the Board. Respondent would again assert that Appellant greatly overinflates his limited due process rights, and the ALC correctly dismissed the appeal based on *Cooper* and S.C. Code §1-23-600(D).

Respondent respectfully submits that the ALC, nor this Court, does not have the authority to dictate what sort of actuarial risk and needs assessment tool is permissible under S.C. Code 24-21-10(F)(1). Quite simply, Appellant was convicted of an offense requiring him to register as a sex offender, so therefore he was convicted of a sexual offense. Appellant cites to the Static 99R definitions that define sex offenses as "sexual misbehavior or criminal behavior with sexual intent." (Brief of Appellant, p. 19). Fortunately, the victim had been able to escape the kidnapping, so whether Appellant had "sexual intent" is unknown but also irrelevant. South Carolina presumes sexual intent whenever a non-parent kidnaps someone under eighteen. S.C. Code 23-3-430(C).[1] Consequently, even if this Court or the ALC had the authority to hear the appeal regarding whether

[1] The current version of S.C. Code Ann. §23-3-430 requires the registry as a Tier III offender for kidnapping a person under eighteen in subsection (C)(3)(d), (2022 eff. May 23, 2022). Prior versions lacked the three-tier system and requires the registry for kidnapping a person under eighteen in subsection (C)(15).

the Static 99R assessment was appropriate, it should find that the Department did not violate Appellant's minimal due process rights because there was no liberty right at stake. Therefore, Appellant's argument that administering the Static 99R assessment violated his due process rights fails.

Appellant also misconstrues *Thompson v. State*, 415 S.C. 560, 785 S.E.2d 189 (2016), and the sex offender registry as it relates to kidnapping in S.C. Code § 23-3-430. In his call for a *Thompson* hearing by this Court to declare that he shouldn't have to register, Appellant overlooks the statute's mandatory registry for kidnapping a person under eighteen years old. The petitioner in *Thompson* had been convicted of four counts of kidnapping along with six counts of armed robbery after a string of hotel robberies. These acts involved adults as victims, meaning that the sex offender registry would not be required if the court made a finding that the kidnapping did not include a sexual offense or attempted sexual offense.

In Appellant's case, the kidnapping victim was fifteen years old, so no such analysis is required by the court. S.C. Code § 23-3-430 requires the registry without a finding of sexual offense, so a *Thompson* analysis is not appropriate.

The ALC correctly declined to address this matter when it dismissed the appeal and affirmed the Board's decision to deny parole.

CONCLUSION

Appellant vastly overstates his due process rights at parole consideration hearings. South Carolina law makes parole a privilege, not a right. Therefore, the Board takes nothing away from him nor does it lengthen his sentence when it denies parole at a routine hearing. The ALC correctly determined that the Board followed the proper procedure when it stated that it carefully considered

the required factors of parole consideration in the letter of rejection. Appellant was provided an opportunity to review his parole file and report any perceived inaccuracies, so the ALC did not err when it declined to address his assertion that it was Respondent's responsibility to tailor his parole file to his liking. Because the ALC correctly dismissed the appeal, this Court should affirm.

Respectfully submitted,

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