

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Deborah Brooks Durden, Administrative Law Court Judge

Case No. 13-ALJ-04-0456-AP
Appellate Case No. 2014-000318

Perry J. Harrison, #127979 Appellant

v.

South Carolina Department of Parole
Probation and Pardon Services Respondent

NOTICE APPEAL

Perry J. Harrison appeals the Order in his case (attached). This appeal is taken from the order of the Honorable Carolyn Matthews, dated January 16, 2014, in the above-referenced matter. Appellant received written notice of entry of this order on January 22, 2014.



PERRY J. HARRISON

#127979

Lieber Correctional Institution

Post Office Box 205

Ridgeville, South Carolina 29472

APPELLANT, pro se

Other counsel of record:

Tommy Evans, Esq.
General Counsel
South Carolina Department of Corrections
P.O. Box 21787
Columbia, SC 29221-1787

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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Perry Harrison, #127979,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 13-ALJ-15-0040-AP

ORDER

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STATEMENT OF THE CASE

This case is before the South Carolina Administrative Law Court (“ALC”) pursuant to the appeal of Perry Harrison (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections. On July 11, 2013, the South Carolina Department of Probation, Parole and Pardon Services (“Department”) notified Appellant that the South Carolina Parole Board (“Board”) rejected him for parole. On August 29, 2013, the Appellant filed a Notice of Appeal with the ALC. The Appellant seeks judicial review of the Board’s denial of parole based on the grounds that the Board’s decision was not supported by law and that the Appellant has received the necessary votes for parole based on Barton v. S.C. Dep’t of Prob., Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013).

DISCUSSION

An individual has a right to ALC review of a final decision of the Board only when that decision affects a liberty interest for which due process is required. See Furtick v. S.C. Dep’t of Prob., Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146, 149-50 (2003); see also Sullivan v. S.C. Dep’t of Corrections, 355 S.C. 437, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review). In Furtick, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole eligibility pursuant to S.C. Code Ann. § 24-21-620, the statute does not create a liberty interest in the granting of parole itself. Furtick, 352 S.C. at 598, 576 S.E.2d at 149 n. 4. Therefore, claims arising from the Board’s decision denying parole are not appealable to the ALC, only claims that the Board failed to consider the appropriate criteria so as to be tantamount to an abrogation of parole eligibility. Cooper v. S.C. Dep’t of Prob., Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008).

The Appellant challenges the sufficiency of the Board’s consideration process and final

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SC ADMIN. LAW COURT

order. However, the Board's decision states that it considered prior history, including prior offenses, prior supervision history, and prison disciplinary record, the factors published in Department Form 1212, and factors outlined in S.C. Code § 24-21-640 in reaching a decision. Thus, the decision to deny Appellant's parole sufficiently complied with the Court's decision in Cooper (stating that an inmate's state-created liberty interest is infringed upon if the Board does not render an inmate's parole determination in consideration of the appropriate criteria) and Compton v. S.C. Dep't of Prob., Parole and Pardon Services, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009) (stating that the result in Cooper "could be avoided in the future if the Parole Board clearly states in its order denying parole that it considered the factors outline 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.").

Here, the Board's decision indicates that each statutory factor was considered in the Appellant's case along with the factors published in Department's Form 1212. The Appellant was convicted on July 10, 1985 of Kidnapping, Assault with Intent to Commit Criminal Sexual Conduct in the First Degree, and Assault and Battery of a High and Aggravated Nature. The Appellant was sentenced to a term of incarceration for the rest of his natural life for the crime of Kidnapping; thirty (30) years for the crime of Assault with the Intent to Commit Criminal Sexual Conduct in the First Degree; and ten (10) years for Assault and Battery of a High and Aggravated Nature. The Appellant was denied parole due to the nature and seriousness of the current offenses. Further, there was vehement opposition expressed by the Colleton County Sheriff and the Fourteenth Circuit Solicitor. These reasons were sufficient to deny the Appellant an opportunity to be released on parole. The Board did not exercise any bad faith or prejudice in reaching their decision. While the Appellant has been a model inmate, never receiving any disciplinary punishment, the decision of the Board was based upon the consideration of all the appropriate criteria and is supported by substantial evidence.

The Appellant also argues that in light of the recent South Carolina Supreme Court ruling in Barton v. S.C. Dep't of Prob., Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013), he should be granted parole because Appellant alleges that he received the requisite number of affirmative votes required. In regards to parole, the law at the time the Appellant committed his offenses stated:

The Board may issue an order authorizing the parole which shall 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 parole.

S.C. Code Ann. § 24-21-645 (Supp. 1984).

However, the Record before the ALC determines that the Appellant has never received an affirmative vote for parole in any hearing from 2002 to 2013. In Appellant's Brief and Appellant's Reply Brief, the Appellant alleges that he did in fact receive at least four affirmative votes at a parole hearing. The Appellant specifically notes the dates of 1997 to 2001 in Appellant's Brief as the time period in which he received the required number of affirmative votes to grant parole. However, the Appellant has proffered no evidence to support his assertion, leaving only bare allegations. The review of the ALC is limited to the record. See S.C. Code Ann. § 1-23-380(4) (Supp. 2012). There is nothing in the Record that substantiates the claim of the Appellant that he did receive the sufficient number of affirmative votes to be released on parole.

ORDER

IT IS THEREFORE ORDERED that the Department's decision denying the Appellant parole is **AFFIRMED**.

AND IT IS SO ORDERED.



CAROLYN C. MATTHEWS
S.C. Administrative Law Court

January 16, 2014
Columbia, South Carolina

DATE 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 16th day of January 2014
By: [Signature]
Judicial Law Clerk

STATE OF SOUTH CAROLINA
In the Court of Appeals

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Honorable Deborah Brooks Durden, Administrative Law Court Judge

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Perry J. Harrison, #127979 Appellant

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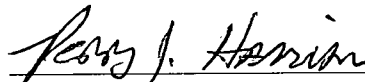
South Carolina Department of Parole
Probation and Pardon Services Respondent

PROOF OF SERVICE

The undersigned hereby certifies that he has served a true and correct copy of the Notice of Appeal on all parties required by Court Rules, by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 27 day of February, 2014, addressed as follows:

Tommy Evans, Esq.
General Counsel
S. C. Dept. of Probation, Parole, and Pardon Servs.
P.O. Box 50666
Columbia, SC 29501

Honorable Jana E. Shealy
Clerk
S.C. Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201



Perry J. Harrison
#127979

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SC Court of Appeals

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The Honorable Claire Allen
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