

**FILED**

MAR 25 2014

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**SC ADMIN. LAW COURT**

Bennie Wicker, 122304,

Docket No. 13-ALJ-15-0016-AP

Appellant,

vs.

**ORDER**

South Carolina Department of Probation,  
Parole and Pardon Services,

Respondent.

**STATEMENT OF THE CASE**

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Bennie Wicker ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. On March 13, 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 April 18, 2013, the Appellant filed a Notice of Appeal with the Court seeking judicial review of the Board's denial of parole. The Appellant's appeal asserts that the Board's decision to deny him parole is not supported by law and that the Department willfully denied the Appellant his right to due process. Appellant additionally asserts that he was denied his statutory right to annual parole hearings before the Board.

**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 Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146, 149, 150 (2003); see also Sullivan v. South Carolina 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 creates no such 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

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**SC Court of Appeals**

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 Probation, 377 S.C. 489, 661 S.E.2d 106 (2008).

### **Reliance on Fixed Factors**

In Cooper the Supreme Court gave specific guidance as to what would constitute a sufficiently detailed order by the Board:

We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case 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 procedures. Cooper, 661 S.E.2d at 112.

In this appeal, the Appellant challenges the sufficiency of the Board's order. Appellant contends that the three reasons the Board gave for rejecting his parole request are all "fixed as of the date of the offense and can never be changed by the actions of [the Inmate] while incarcerated." See Cooper, 661 S.E.2d at 111-112. While the Cooper court used the above-quoted language which would seem to criticize a decision denying parole supported solely by the circumstances of the crime, the Court went on to state, "These reasons would be sufficient to deny parole in the Board's discretion, if the Board's decision evinced consideration of Section 24-21-640 and its own criteria." Cooper, 661 S.E.2d at footnote 5. Therefore, the Board has the discretion to deny parole based solely on the nature and seriousness of the Appellant's current offense, indication of violence in this or a previous offense and use of a deadly weapon in this or a prior offense so long as it considers all the factors required by statute.

### **Meaningful Consideration**

The Appellant also argues that the Board failed to provide the Appellant with meaningful consideration for parole because the Board utilized an "assembly line" process whereby the Board interviewed several inmates at one time. However, in its decision letter, the Board explicitly stated that it considered all the factors shown on the parole consideration form, as well as the factors outlined in Section 24-21-640 of the South Carolina Code of Laws when it reviewed the Appellant's case. Although the Appellant disagrees with the Board's approach for

conducting parole hearings, there is nothing in the Record to indicate that the Board does not review each inmate's case individually. Therefore, the Court finds that the Board's review process of the Appellant's case sufficiently meets the standard set forth in Cooper.

### **Annual Parole Hearing**

On April 10, 1984, the Appellant pled guilty to murder, burglary and armed robbery. He was sentenced to remain incarcerated for the remainder of his natural life for the murder and burglary convictions and sentenced to twenty-five years for armed robbery. At the time the Appellant committed these offenses, South Carolina law permitted a person serving a life sentence for murder and burglary to become eligible for parole upon the service of twenty years of incarceration.<sup>1</sup> In addition, statutory law at the time required that an inmate be considered for parole every twelve months after first being denied parole. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000) citing S.C. Code Ann. § 24-21-620 (Supp.1981).

The Appellant first became eligible for parole in 2000. Since then, the Appellant asserts that the Board has not conducted hearings annually to review his eligibility for parole. In its submission, the Department counters that the Appellant has been brought before the Board and denied parole twelve times. The Department also provided the dates that the Appellant appeared before the Board since he initially became eligible for parole. This information shows that the Appellant was considered for parole every year since 2000, except that his parole hearing was delayed in 2011 until January 18, 2012. The Appellant argues that if his parole hearings continue to be delayed, he will essentially miss a parole hearing in 2016 altogether. The Court finds nothing in the Record which indicates that the Appellant has been prejudiced by the delayed parole hearing in 2011, or in subsequent years. Appellant's contention that the delayed hearings will result in his missing a parole hearing in 2016 is mere speculation. Furthermore, this issue was not presented to or addressed by the Board and therefore was not preserved for review by this Court. State v. Norwood, 2004 WL 6248290 (.S.C. App.) ("...issue which is not properly preserved cannot be raised for the first time on appeal.")

### **ORDER**


For the foregoing reasons,

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<sup>1</sup> The Appellant became eligible for parole upon the completion of sixteen years based on the application of good time credits to his sentence max-out date.

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

AND IT IS SO ORDERED.

  
**SHIRLEY C. ROBINSON**  
Administrative Law Judge

March 25, 2014  
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 hereto, in the United States mail postage paid or in the emergency Mail Service addressed to the party(ies) or their attorney(s).  
This 25 day of March 2014  
By: 