

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Robert Koon, 227826,

Docket No. 13-ALJ-15-0018-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 Robert Koon ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. On May 29, 1998, the Appellant was convicted of Burglary in the Second Degree and Grand Larceny. Because the Appellant had previously been convicted of two other "serious" crimes, the Appellant received a life sentence without the possibility of parole. The Appellant appealed to the South Carolina Court of Appeals, but in an opinion issued April 18, 2000, the Appellant's convictions were upheld.

Subsequently, the Appellant wrote the South Carolina Governor's Office and the Chairman of the South Carolina Parole Board ("Board") seeking to have his sentence commuted. On March 21, 2013, Matthew C. Buchanan, General Counsel of the South Carolina Department of Probation, Parole and Pardon Services ("Department") responded to the Appellant by letter explaining that the Appellant's sentence is not eligible for commutation as South Carolina law only permits the commutation of a death sentence to a life sentence. Mr. Buchanan further explained that there are only two types of clemency remedies available in South Carolina, parole and pardon. Because the Appellant was sentenced to life without the possibility of parole, the only remedy available to the Appellant is a pardon.

Mr. Buchanan's letter outlined the guidelines the Board utilizes when considering a request on for a pardon pursuant to S.C. Code Ann. § 24-21-950. The most essential of those guidelines being that the inmate must produce evidence of the "most extraordinary

circumstance” warranting a pardon. Thereafter, on April 22, 2013, the Appellant filed a Notice of Appeal with this Court challenging the Department’s determination that he is not eligible for parole and seeking an order remanding the matter to the Department for a determination of whether an “extraordinary circumstance” exists which would allow the Appellant to be considered for a parole pursuant to S.C. Code Ann. § 17-25-45.

DISCUSSION

The ALC’s jurisdiction to review a final decision of the Department is derived from the South Carolina Supreme Court’s decisions in Al-Shabbaz v. State, 338 S.C. 334, 527 S.E.2d 724 (2000) and Furtick v. South Carolina Department of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002). In Al-Shabbaz, the court held that inmates have the right to appeal final decisions rendered by state agencies in matters that are “non-collateral” and related to an inmate’s conviction or sentence to the ALC pursuant to the Administrative Procedures Act. The court recognized that these matters typically arise (1) when an inmate is disciplined and a punishment is imposed, and also, (2) when an inmate believes prison officials have erroneously calculated his sentence; sentence-related credits or custody status. Al-Shabbaz, at 369. In Furtick the South Carolina Supreme Court held that an allegation that the Department has erroneously determined that an inmate is not eligible for parole is appealable under the second prong in Al-Shabbaz. The court also held that permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process and review by the ALC. Furtick, at 149.

Additionally, the court determined in Furtick that although an inmate has a liberty interest in parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, this statute creates no such liberty interest in the granting of parole itself. Furtick, fn 4, 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 his appeal, the Appellant seeks review of the Department’s determination that he is not eligible for parole. The Appellant argues that even though he is serving a “life sentence without the possibility of parole,” the Parole Board is obligated to consider the Appellant for parole pursuant to S.C. Code Ann. § 17-25-45. Appellant contends that information provided to this Court establishes “extraordinary circumstances” warranting review of his case and subsequent

release on parole and that the case should be remanded to the Department for said review.¹


However, the Appellant is currently not eligible for parole and while S.C. Code Ann. § 17-25-45 outlines the process Appellant must follow prior to being considered for parole, he has not complied with that process. Appellant's request that this Court remand the matter to the Department with instructions to review the case for compliance with section 17-25-45 is not within the Court's review authority as outlined in Al-Shabazz.²

What process?

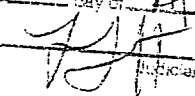
ORDER

Based upon the foregoing reasons, **IT IS HEREBY ORDERED** that the matter is **DISMISSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

April 1, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order on the above named party or parties to this cause by depositing a copy thereof in the United States mail postage paid or in the "Agency Mail Service" addressed to the party (or their attorney's).
This 1 day of April 2014
By: 
Administrative Law Clerk

¹ The Department filed the Record on Appeal with the Court on May 23, 2013, and on June 13, 2013, the Appellant filed a Motion requesting that the Record be expanded. Appellant included numerous documents along with the Motion, and on June 28, 2013 Appellant filed his own Record on Appeal. Appeals to this Court are governed by ALC Rules 58 and 61, and those matters not considered by the agency during its review will not be considered by this Court.

² Appellant filed a Motion with the Court on June 28, 2013 asking that the Court appoint counsel to represent Appellant in this matter, however there is no provision providing for the appointment of counsel in appeals to this Court.