STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ronald Tate, 114188, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No. 13-ALJ-15-0027-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "court") pursuant to the appeal of Ronald Tate (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. The Appellant is serving a life sentence for the offense of murder, twenty (20) years for the offense of attempted armed robbery and assault and battery with intent to kill, ten (10) years for grand larceny, and five (5) years for housebreaking, all of which he committed in 1982. On June 20, 2013, the South Carolina Department of Probation, Parole and Pardon Services ("Department") notified the Appellant that the South Carolina Parole Board ("Board") rejected his petition for parole. On July 3, 2013 the Appellant filed a Notice of Appeal with the ALC seeking review of the Board's denial of parole. As grounds for the appeal, the Appellant contends that the Board committed ex post facto violation by applying the current versions of S.C. Code Ann. §§ 16-1-60 and 24-21-645 therefore classifying him as a violent offender and subjecting him to more stringent criteria for consideration for parole. The Appellant also asserts that the Board is denying him eligibility for parole by failing to allow him to have a parole hearing every year.

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 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).

The Appellant challenges the sufficiency of the Board's decision based on the argument that it committed ex post facto violations by applying the current versions of S.C. Code Ann. §§ 16-1-60 and 24-21-645 rather than the versions that were in affect at the time of his conviction in 1982. An ex post facto violation occurs when a legislative amendment produces a sufficient risk of increasing the measure of punishment attached to the cover crimes. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000).

Section 16-1-60 provides those offenses which are considered violent. Before 1994 the South Carolina Code of Laws did not list which crimes were considered violent as opposed to non-violent. If an individual has been convicted of a crime that has been classified as violent pursuant to § 16-1-60, his eligibility for parole can be affected in two ways. First, pursuant to S.C. Code Ann. § 24-21-640 (Supp. 2011), an individual serving a sentence for a second or subsequent conviction for a violent crime is not eligible for parole. Section 24-21-640 does not apply to the Appellant as he is eligible for parole and has been afforded a parole thirteen parole hearings since 1998.

Second, pursuant to S.C. Code Ann. § 24-21-650 (Supp. 2011), a person convicted of a violent offense must receive a positive vote from two-thirds of the Board in order to receive parole. At the time of the Appellant's conviction, an individual was only required to receive a positive vote from a majority of the Board members. In this case, it is unclear whether the Board applied the majority rule or the two-thirds rule. The Appellant is entitled to application of the majority rule that was in affect at the time of his conviction. Barton v. S.C. Dept. of Probation, Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013). However, even if the Board applied the two-thirds rule to the Appellant, he did not suffer prejudice from any ex post facto violation that may have occurred. According to the affidavit of Roosevelt Hicks, a supervisor in

the Office of Board Support Services, the Appellant did not receive any votes to grant parole during his June 19, 2013 parole hearing. The Appellant would not have been granted parole under either the current version of § 24-21-650 or the version of § 24-21-650 that was in affect in 1982. Whether the Appellant was classified as a violent offender under § 16-1-60 did not affect the outcome of his parole hearing.

The Appellant also claims an ex post facto violation for the application of the current version of § 24-21-640 which provides the criteria the Board must consider when granting parole. The current version of § 24-21-640 states:

> The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

At the time the Appellant was convicted in 1982, S.C. Code Ann. § 55-612 provided the criteria the Board must consider when determining whether to grant or deny parole. Section 55-612 stated:

> The Probation, Parole and Pardon Board shall carefully consider the record of the prisoner, before, during and after imprisonment, and no such prisoner shall be paroled until it appears, to the satisfaction of the Board, that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interests of society will not be impaired thereby; and that suitable employment has been secured for him.

S.C. Code Ann. § 55-612 (Supp. 1982). Thus, the criteria in § 24-21-640 is substantially the same as § 55-612 which was in affect at the time of the Appellant's conviction. Therefore, the criteria applied by the Board when determining whether to grant or deny parole was no more stringent than if it applied § 55-612 and the Appellant suffered no prejudice.

The Appellant also claims that the Board is denying him eligibility for parole by denying him the opportunity for a hearing on an annual basis. The affidavit of Roosevelt Hicks indicates

that the Appellant has been afforded a parole hearing every year since 1998 except for 1999 and 2010. In 1999 and 2010 the Appellant did not have a parole hearing due to unforeseen circumstances. The present appeal is from the Board's 2013 decision to deny the Appellant parole. The record indicates that the Appellant was afforded an opportunity to be heard by the Board in 2013 and has been afforded an opportunity on an annual basis since 1998. It is unclear why the Appellant did not have a parole hearing in 1999 or 2010. However, that issue is not before the court at this time.

The record reflects that the Board considered all the appropriate factors before making its decision to deny the Appellant parole. The Board did not commit any ex post facto violations by applying the current versions of S.C. Code Ann. §§ 16-1-60 and 24-21-640. If any ex post facto violations were committed, the Appellant was not prejudiced. Finally, the Appellant is granted the opportunity for a parole hearing on an annual basis and has not been prejudiced by any delays that may have occurred over the time of his incarceration. Therefore, the court cannot grant relief to the Appellate.

ORDER

For the foregoing reasons, the Department's decision denying the Appellant parole is **AFFIRMED.**

AND IT IS SO ORDERED.

April 9, 2014
Columbia, South Carolina

S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Leah E. Garland, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Leah Garland

Leah E. Garland
Judicial Law Clerk

April 10, 2014
Columbia, South Carolina