

**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)

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(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). Here, the current version of § 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.

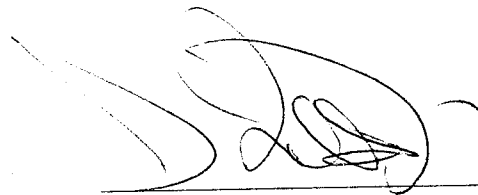
The record reflects that the Board considered all the appropriate factors before making its decision to deny the Appellant parole. The Board did not commit any ex post facto violations by applying the current versions of S.C. Code Ann. §§ 16-1-60 and 24-21-640. If any ex post facto violations were committed, 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



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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 E. Garland  
Judicial Law Clerk

April 10, 2014  
Columbia, South Carolina

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SC ADMINISTRATIVE COURT

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable S. Phillip Lenski, Administrative Law Judge  
Appellate Case No. 2014-001047

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Ronald Tate #114188,.....Appellant,

v.

S.C. Department of Probation,  
Parole and Pardon Services.....Respondent.


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PROOF OF SERVICE

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I, Ronald Tate #114188, certify that I have served a copy of the ORDER of S. Phillip Lenski, Administrative Law Judge to Tommy Evans, Jr., Legal Counsel for the South Carolina Department of Probation, Parole and Pardon Services, at 2221 Devine St., Suite 600, P.O. Box 50666, Columbia, S.C. 29250.

The ORDER is to be attached to the Notice of Appeal received by the aforementioned dated May 7, 2014. Also, copy of same will be mailed to Jana Shealy, Clerk, Administrative Law Court, 1205 Pendleton St., Columbia, S.C. 29201.

  
Ronald Tate #114188  
Appellant Q2 B220  
Perry Corr. Inst.  
403 Oaklawn Road  
Pelzer, S.C. 29669

This 23, Day of May 2014,  
at Pelzer, South Carolina.

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MAY 23 2014  
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MAY 29 2014  
SC Court of Appeals

Ronald Tate, #114188  
Perry Correctional  
Institution Q-1 B-220  
430 Oaklawn Road  
Pelzer, S.C. 29669

May 23, 2014

Hon. Jenny Abbott Kitchings,  
Clerk, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

RE: RONALD TATE V. SCDPPPS (4)  
Appellate Case No. 2014-001047

Honorable Kitchings:


As the Appellate in the above case, I am correcting a deficiency under South Carolina Appellate Court Rules (SCACR), by requesting that you attach to Appellant's Notice of Appeal dated May 7, 2014, the Order of S. Phillip Lenski, Administrative Law Judge, dated April 9, 2014.

I make this request of correction of deficiency noted by the Rules of this Court within the allotted ten (10) day letter date of May 19, 2014. Also, I will send copies to the below listed parties prior to the expiration date concerning same.

Jana Shealy, Clerk  
Admin. Law Court  
1205 Pendleton St.  
Columbia, S.C. 29201

Other Counsel of Record:  
Tommy Evans, Jr.  
SCDPPPS P.O. Box 50666  
2221 Devine St.  
Columbia, S.C. 29250

Respectfully,

  
Ronald Tate #114188  
Appellant Q2 B220  
Perry Corr. Inst.  
403 Oaklawn Road  
Pelzer, S.C. 29669

This 23, Day of May 2014,  
at Pelzer, South Carolina.

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MAY 23 2014

SC Court of Appeals

Ronald Tate, #114188  
Perry Correctional  
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430 Oaklawn Road  
Pelzer, S.C. 29669

Hon. Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

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LEGAL MAIL

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MAY 29 2014

SC Court of Appeals