

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charles Kilgore, 140463,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 14-ALJ-15-0001-AP

ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“ALC” or “court”) pursuant to the appeal of Charles Kilgore (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On December 5, 2013, the South Carolina Department of Probation, Parole and Pardon Services (“Department”) notified the Appellant that the South Carolina Parole Board (“Board”) rejected him for parole. On January 10, 2014 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 considered improper criteria when it revoked his parole in 2010, that the Board failed to give him the process he was due during his most recent parole hearing, and that the Board committed an ex post facto violation by applying the current version of S.C. Code Ann. § 24-21-645 subjecting him to more stringent criteria for consideration for parole.

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.

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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 on three factors. First, the Appellant alleges that the Department should not have revoked his parole in 2010 because the revocation was based on a crime for which he was arrested but never convicted. Next, the Appellant alleges that the Department failed provide him with the process he was due when determining whether to grant or deny his request for parole. Specifically, the Appellant claims that the Department did not consider all of the criteria that it is statutorily required to consider and that its finding of facts was insufficient. Finally, the Appellant claims that the Department committed an ex post facto violation by applying the current version of S.C. Code Ann. § 24-21-645 rather than the version that was in effect at the time of his conviction, requiring him to receive favorable votes from two thirds of the Board rather than a majority of the board

As outlined in Furtick and Cooper, this court only has jurisdiction over claims that an appellant was denied eligibility for parole and claims that the Board failed to consider the appropriate criteria so as to be tantamount to a denial of parole eligibility. Therefore, this court may not consider the Appellant's argument regarding the revocation of his original parole. Further, this court may not consider whether the Department's decision to deny parole was based on sufficient findings of fact. This court may only address whether the Board failed to consider the appropriate criteria in making its decision. The court in Furtick established that although parole is a privilege and not a right, inmates still have a liberty interest in parole eligibility. 352 S.C. at 598, 576 S.E.2d at 149 n. If the Board fails to consider the criteria set forth in S.C. Code Ann. § 24-21-640, the inmate is denied his liberty interest in parole eligibility. Cooper, 377 S.C. 489, 661 S.E.2d 106 (2008). However, as long as the Board considers all of the factors required by statute, it has protected the inmate's liberty interest in parole eligibility and it has the discretion to deny parole based on any of the factors found in § 24-21-640 or its own criteria. Id. The Board's decision indicates that it considered all the appropriate factors before making its decision to deny the Appellate parole. Therefore, the court cannot grant relief to the Appellate on the first two grounds of his appeal.

The Appellant also challenges the sufficiency of the Board's decision based on the argument that it committed ex post facto violations by applying the current version of S.C. Code Ann. § 24-21-645 rather than the version that was in affect at the time of his conviction on June 15, 1986. 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).

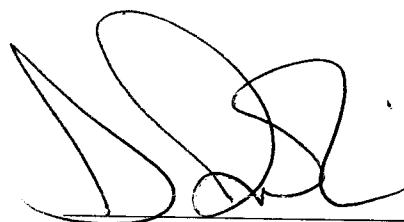
Pursuant to S.C. Code Ann. § 24-21-650 (Supp. 2013), a person convicted of a violent offense must receive a positive vote from two-thirds of the Board in order to receive parole. Prior to the Omnibus Criminal Justice Improvement Act of 1986, which went into effect on June 3, 1986, an individual was only required to receive a positive vote from a majority of the Board members. However, the version of § 24-21-650 requiring a positive vote from two-thirds of the Board members went into effect on June 3, 1986 and the Appellant was not convicted until June 15, 1986. Therefore, the statute requiring a positive vote from two-thirds of the Board members was in effect at the time the Appellant was convicted and the Board did not commit an ex-post facto violation by applying the current version of § 24-21-645.

ORDER

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

AND IT IS SO ORDERED.

~~May~~ 1, 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).

A handwritten signature in cursive script, reading "Leah E. Garland", is written over a solid horizontal line.

Leah E. Garland
Judicial Law Clerk

May 1, 2014
Columbia, South Carolina

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