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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lee Lisenby, Jr., #200273,

Docket No. 14-ALJ-15-0017-AP

Appellant,

vs.

ORDER OF DISMISSAL

South Carolina Department of Probation
Parole and Pardon Services,

Respondent.

This case is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Billy Lee Lisenby, Jr. (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On March 12, 2014, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) had rejected him for parole. On April 18, 2014, the Board denied Appellant's request for a rehearing. Appellant challenges the Board's denial of parole on the grounds that this denial is based upon the same grounds given when his parole has been repeatedly denied in previous years.

The Supreme Court of South Carolina has spoken clearly concerning the jurisdiction of the Administrative Law Court in cases such as this.

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 procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

Cooper v. S.C. Dept. of Probation Pardon and Parole Services, 377 S.C. 489, 66 S.E.2d 106 (2008).

The Cooper decision was underscored by Compton v. S.C. Dept. of Probation Pardon and Parole Services, 385 S.C. 476, 685 S.E.2d 175 (2009), as follows:

In Cooper, we held that if the Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate's right to parole eligibility and infringes on a state-created liberty interest, warranting minimal due process protection. Because the Parole Board in Cooper neither offered an explanation nor indicated it had considered the statutory criteria or the criteria set forth in Form 1212, we had no other choice but to determine the order was defective

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and the decision was arbitrary and capricious. We emphasized that this result could be avoided in the future if the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212, and that if the Parole Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC will have limited authority to review the decision.


Moreover, S.C. Code Ann. § 1-23-600(D) (Supp. 2013) provides, "An administrative law judge shall not hear... an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services." Thus, this Court's authority to review a decision of the Board is limited to determining if the Board followed the proper procedure and considered the relevant factors. If that procedure was followed, any decision of the Board constitutes a routine denial of parole and will not be disturbed by this Court.

In this case, Appellant does not claim that the Board failed to consider the factors discussed above. His argument that the Board's denial was based upon identical reasons given for denial of parole in previous years is simply not a claim that invokes the jurisdiction of this Court under S.C. Code Ann. § 1-23-600 (Supp. 2013). Appellant has failed to allege in his Notice of Appeal that this is anything other than a routine denial of parole under the legal authority discussed above. Thus, the Department's decision may not be disturbed upon appeal.

ORDER

IT IS THEREFORE ORDERED that the Board's determination that Appellant should be denied parole in this instance is **AFFIRMED** and this appeal is **DISMISSED**, with prejudice.

AND IT IS SO ORDERED.


Deborah Brooks Durden
Administrative Law Judge

May 21, 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 hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 21st day of May, 2014
By: P. E. C.
Judicial Law Clerk