

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Alphonso Ware, 168464,

Appellant,

vs.

South Carolina Department of Probation,  
Parole and Pardon Services,

Respondent.

Docket No. 14-ALJ-15-0026-AP

ORDER

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DEC 03 2014

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Alphonso Ware ("The Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. The Appellant is serving a life sentence for the offense of murder, which he committed in 1989. At the time the Appellant committed this offense, South Carolina law allowed an inmate serving a life sentence for murder parole eligibility upon the service of twenty (20) years. On April 9, 2014, 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 April 17, 2014 the Appellant filed a request for a rehearing which was denied by the Parole Board pursuant to a letter dated May 29, 2014. On June 11, 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 failed to apply the appropriate criteria for granting or denial of parole and that the Board considered factors outside of the appropriate criteria for granting or denial of 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)

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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 by alleging that the Board did not apply the correct criteria for granting or denial of parole as required by Cooper. 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. 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 reflects 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.

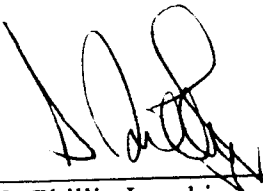
#### ORDER

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

**AFFIRMED.**

**AND IT IS SO ORDERED.**

October 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

October 9, 2014  
Columbia, South Carolina

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