STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ikeef Brailsford, 264172, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No. 14-ALJ-15-0024-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Ikeef Brailsford ("The Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. On March 1, 2011, the Appellant was sentenced to fifteen (15) years, suspended to the service of twelve (12) years, for the offense of manufacture or distribution of crack cocaine, third or subsequent offense. On November 12, 2013, the South Carolina Department of Probation, Parole and Pardon Services ("Department") notified the Appellant that the South Carolina Parole Board ("Board") determined that the Appellant was convicted of a "no parole offense" and is therefore not eligible for consideration for parole. On November 12, 2013 the Appellant filed a Notice of Appeal with the ALC seeking review of the Board's determination that he was not eligible for consideration for parole. As grounds for the appeal, the Appellant contends that the 2010 Omnibus Crime Reduction and Sentence Reformation Act revised South Carolina Code Ann. § 44-53-375(B) so that a person who is convicted of distribution of crack cocaine, third or subsequent offense, may be eligible 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. 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 Board's determination that he is not eligible for parole. Because the Appellant's appeal is based on the denial of his liberty interest in parole eligibility, the court must consider the Appellant's arguments.

The Appellant was convicted of manufacture or distribution of crack cocaine, third or subsequent offense, pursuant to S.C. Code Ann. § 44-53-375(B) on March 1, 2011. Under S.C. Code Ann. § 24-13-100, a "no parole" offense is defined as "a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more." Manufacture of distribution of crack cocaine, third or subsequent offense is a Class A felony. See S.C. Code. Ann. § 16-1-90(A).

The Appellant contends that his conviction is not subject to classification as a "no parole offense". The Appellant relies upon language added to S.C. Code Ann. § 44-53-375(B) by the Omnibus Crime Reduction and Sentencing Reform Act of 2010, which reads:

> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

The court agrees with the Appellant that the 2010 Omnibus Crime Reduction and

Sentencing Reform Act changes the language of S.C. Code Ann. § 44-53-375(B), allowing for the possibility that an individual convicted of manufacture or distribution of crack cocaine, third or subsequent offense, may be eligible for parole. However, the language limits this possibility to individuals whose prior offenses were solely for the possession of a controlled substance. The statute does not extend parole eligibility to individuals with prior convictions for anything other than the possession of a controlled substance.

In this case, the Appellant has a prior conviction for distribution of crack cocaine from 2006. Therefore, pursuant to § 44-53-375(B), the Appellant's conviction for manufacture of distribution of crack cocaine, third or subsequent offense, coupled with his prior conviction for distribution of crack cocaine, render § 44-53-375(B) inapplicable and cause him to be ineligible for parole.

ORDER

For the foregoing reasons, the Department's determination that the Appellant is not eligible for parole is **AFFIRMED.**

AND IT IS SO ORDERED.

November 26, 2014
Columbia, South Carolina

S. Phillip Lenski
Administrative Law Judge