

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James Tinsley 171943,

The Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 14-ALJ-15-0028-AP

ORDER **RECEIVED**

JAN 29 2015

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 James Tinsley (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. 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 him for parole. On April 29, 2014 the Appellant sent a letter requesting reconsideration to the Board. The Board denied his request for reconsideration in a letter dated May 29, 2014. On June 13, 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’s sole basis for denial of parole, failure to successfully complete a community supervision program, was based on incorrect information and that he has never failed to complete a community supervision program.

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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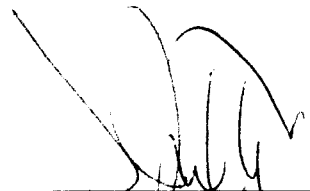
Furtick, 352 S.C. at 598, 576 S.E.2d at 149 n.4. Therefore, claims arising from the Board's decision denying parole are not appealable to the ALC, only claims that the Board failed to consider the appropriate criteria so as to be tantamount to an abrogation of parole eligibility. Cooper v. S.C. Dep't. of Probation, 377 S.C. 489, 661 S.E.2d 106 (2008).

The Appellant challenges the sufficiency of the Board's order based on the fact that the basis for rejection, failure to complete a prior community supervision program, was based on inaccurate information. The Appellant claims that, although he once had probation revoked many years ago, the probation revocation had been expunged or declared a nullity and should not be considered by the Board. The Appellant argues that the Board violated his due process rights by relying on false, incorrect or incomplete information as a sole ground for denying his parole. Although the court is sympathetic to the Appellant's plight if the Board is, indeed, considering information that has been or should have been expunged from the Appellant's record, the court cannot review the factual criteria on which the Board based its decision. If the Board considers all of the appropriate criteria in determining whether to grant or deny parole, the decision constitutes a routine denial of parole and this court has limited authority to review the decision only to determine whether the Board followed proper procedure. Cooper, 377 S.C. 489, 661 S.E.2d 106 (2008). In this case, the Board considered all of the appropriate criteria when determining whether to grant or deny the Appellant's parole. Therefore, the Board's decision is not tantamount to a permanent denial of parole and the court does not have jurisdiction to review the factual basis for the Board's decision.

ORDER

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

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

January 14, 2015
Columbia, South Carolina

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

January 14, 2015
Columbia, South Carolina

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