

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gary Slezak, #109201,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 15-ALJ-15-0005-AP

ORDER OF DISMISSAL

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Reginald Mack (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On January 16, 2015, the South Carolina Department of Probation, Parole and Pardon Services (Department) denied Appellant a rehearing of his September 18, 2014 decision by the South Carolina Parole Board (Board) which rejected him for parole. Appellant filed an appeal with the ALC on February 3, 2015. Appellant challenges the Board's denial of parole on the grounds that: The findings of fact in the Board's decision are not supported by evidence; the Department failed to conduct a psychological evaluation before the hearing; and the Board relied on factors that cannot be changed.

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:

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SC ADMIN. LAW COURT


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 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. 2014) 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 which this Court has no jurisdiction to hear.

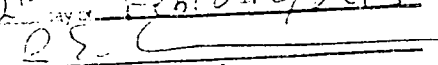
The Notice of Rejection dated January 15, 2015, states that the parole board considered the fifteen factors and § 24-21-640, mentioned above. Thus, this is a routine denial of parole, and the ALC has no authority to consider this appeal.

ORDER

IT IS THEREFORE ORDERED that this appeal is **DISMISSED**, with prejudice.
AND IT IS SO ORDERED.


Deborah Brooks Durden
Administrative Law Judge

February 12, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date
served a copy of the above entitled action upon all
parties to this cause by depositing a copy thereof,
in the United States mail, postage paid, or in the emergency
mail service addressed to the party(ies) or their attorney(s).
This 12th day of February 2015.
By 
JUDGE OF THE COURT