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STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Boyce Parker, 61396,

Appellant,

vs.

South Carolina Department of Probation,  
Parole and Pardon Services,

Respondent.

Docket No. 14-ALJ-15-0022-AP

ORDER

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STATEMENT OF THE CASE

**SC Court of Appeals**

This matter is before the South Carolina Administrative Law Court ("ALC" or "court") pursuant to the appeal of Boyce Parker ("The Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. On May 15, 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. The Appellant filed a Motion for Rehearing which was denied by a letter dated June 18, 2014. On May 28, 2014, the Appellant filed a Notice of Appeal with the ALC seeking review of the Board's denial of parole. On June 19, 2014, the Appellant filed a Motion to have an audio copy of the parole hearing included in the Record on Appeal. The Department did not file an objection to the inclusion of the recording of the parole hearing to the Record on Appeal; therefore the audio of the parole hearing is part of the Record on Appeal. The Appellant filed his brief on July 2, 2014. The Department filed the Record on Appeal on July 3, 2014. After an extension was granted by the ALC, the Department filed Respondent's brief on October 7, 2014. The Appellant filed a reply brief on October 16, 2014.

On January 21, 1970, the Appellant was convicted of murder and sentenced to a term of incarceration for the remainder of his life. On February 27, 1980, the Appellant was granted parole. On August 28, 1984, the Appellant and a co-defendant kidnapped a woman, took her to an abandoned area, and raped and robbed her. The Appellant was convicted of the charges of kidnapping, criminal sexual conduct in the first degree, and common law robbery. The

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Appellant was sentenced to a term of incarceration for the remainder of his life for offense of kidnapping, and thirty years for criminal sexual conduct in the first degree.

The Appellant appeared before the Board on May 14, 2014 for his most recent parole hearing. The Appellant was denied parole due to: 1) nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; and 3) the use of a deadly weapon in this or a previous offense.

The Appellant now argues that he is entitled to annual parole hearings. The Appellant then states that he is entitled to immediate parole in light of the recent South Carolina Supreme Court ruling in Barton v. S.C. Dep't of Prob., Parole and Pardon Servs., 404 S.C. 395, 745 S.E.2d 110 (2013). Next, the Appellant argues that his due process rights were violated when a retired police officer exerted influence over the Board hearing. Finally, the Appellant challenges the sufficiency of the Board's consideration process and final order.

#### 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 Prob., Parole and Pardon Servs., 352 S.C. 594, 576 S.E.2d 146, 149, 150 (2003); see also Sullivan v. South Carolina Dep't of Corr., 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 Prob., Parole and Pardon Servs., 377 S.C. 489, 661 S.E.2d 106 (2008).

As outlined in Furtick and Cooper, this court only has jurisdiction over claims that an appellant was denied eligibility for parole and claims that the Board failed to consider the appropriate criteria so as to be tantamount to a denial of parole eligibility. Therefore, this court may not consider the Appellant's argument that he is entitled to annual parole hearings. Further, this court may not consider prior parole hearings and the votes received in those prior parole hearings in light of Barton.

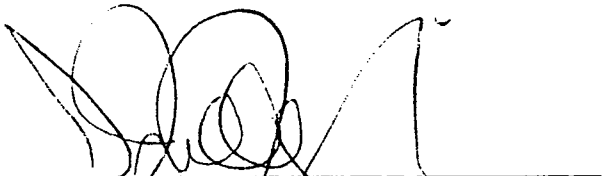
This court may only address whether the Board failed to consider the appropriate criteria in making its decision. The court in Furtick established that, although parole is a privilege and not a right, inmates still have a liberty interest in parole eligibility. 352 S.C. at 598, 576 S.E.2d at 149 n. If 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 indicates that it considered all the appropriate factors before making its decision to deny the Appellant parole. The Appellant contends that his due process rights were violated when a retired police officer engaged in ex parte communication with the chairman of the Board and the police officer had the chairman ask the Appellant a question during the parole hearing. As an initial matter, under South Carolina law, law enforcement must be given notice of the parole hearing. See S.C. Code Ann. § 24-21-221 (2007). After a review of the Record on Appeal, specifically the audio from the parole hearing, the allegations of the Appellant is not supported by the evidence in regards to the retired police officer having ex parte communication with the chairman of the Board, or having the chairman ask the Appellant a question, or exerting any influence over the Board. Therefore, the court cannot grant relief to the Appellant.

#### ORDER

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

**AND IT IS SO ORDERED.**

February 11, 2015  
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).



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Leah E. Garland  
Judicial Law Clerk

February 11, 2015  
Columbia, South Carolina

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