STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jimmy Long, 197708, Appellant, vs. South Carolina Department of Probation, Parole & Pardon Services, Respondent.	Docket No.: 14-ALJ-15-0052-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to an appeal by Jimmy Long ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. On November 6, 2014, the South Carolina Department of Probation, Parole and Pardon Services ("the Department") notified Appellant that the South Carolina Parole Board ("the Board") denied him parole. On December 29, 2014, Appellant filed a Notice of Appeal with the Court seeking judicial review of the Board's denial of parole. Appellant argues the Board's decision did not meet the minimum requirements of due process for three reasons. First, Appellant claims the Board's decision did not consider all the requisite criteria, denied him for the same reasons he was previously denied parole, and did not include adequate findings of fact and conclusions of law. Second, Appellant claims the Board's decision violates the requirements of Bradford v. Weinstein, 519 F.2d 728 (4th Cir.). Third, Appellant claims the Board's decision violated the prohibition against ex post facto laws pursuant to Barton v. South Carolina Department of Probation Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013).

DISCUSSION

In Al-Shabazz v. State, the South Carolina Supreme Court held inmates have a right to administrative review in two circumstances: "(1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). The second circumstance includes the permanent denial of parole

eligibility pursuant to section 24-21-640 of the South Carolina Code. See Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs., 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003) ("[T]the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process."). However, the statute creates no such liberty interest in the routine denial or granting of parole. Id. at 598 n.4, 576 S.E.2d at 149 n.4. Therefore, while the permanent denial of parole eligibility constitutes a liberty interest that is reviewable by this Court, the routine denial of parole is, generally, not a sufficient liberty interest to grant parole.

However, a routine denial of parole can bestow jurisdiction on this Court if, in denying parole, the Department fails to follow the statutorily required parole criteria, and this failure renders its decision tantamount to a permanent denial of parole eligibility. See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs., 377 S.C. 489, 502, 661 S.E.2d 106, 113 (2008) ("If a Parole Board fails to consider and apply the statutorily-created parole criteria, it has the effect of rendering an inmate parole ineligible, which under Furtick warrants review by the ALC."). The "criteria" referenced in Cooper are "the factors outlined in section 24-21-640 and the fifteen factors published in [the Department's] parole form." Cooper, 377 S.C. at 500, 661 S.E.2d at 112. Under Cooper, as long as the 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 its parole form . . . 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." Id.

In this appeal, Appellant argues the Board's decision did not meet the minimum requirements of due process the Board's decision did not consider all the requisite criteria, denied him for the same reasons he was previously denied parole, and did not include adequate findings of fact and conclusions of law. Essentially, Appellant is claiming the Board's decision was not consistent with Cooper. Additionally, Appellant claims the Board's decision violates the requirements of Bradford v. Weinstein, 519 F.2d 728 (4th Cir.) and Barton v. South Carolina Department of Probation Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013).

As to Appellant's first ground, I find the Board's decision is consistent with Cooper. As to Appellant's second ground, the Court is only concerned with whether the Department met the requirements in Cooper in denying Appellant's parole. Here, the Department's order denying parole "clearly states" that it "considered the factors outlined in section 24–21–640." See Cooper,

377 S.C. at 500, 661 S.E.2d at 112. Additionally, the order contains separate findings of fact and conclusions of law. Whether these findings and conclusions are the same as the findings and conclusions in the order denying Appellant's previous parole hearing is not determinative on the issue of due process. See § 21-24-640. Furthermore, the Record shows the Department also considered the fifteen factors published in its parole form. Therefore, the Board's decision met the requirements of Cooper. See Cooper, 377 S.C. at 500, 661 S.E.2d at 112.

Next, Appellant claims the Board's decision was in violation of Bradford v. Weinstein, 519 F.2d 728 (4th Cir.). In Bradford, a North Carolina inmate, in an attempted class action, and a South Carolina inmate, argued they were being denied their right to due process in the parole eligibility decision-making process. Id. at 729-30. I note the case advanced to the United States Supreme Court where the Court determined the issue in Bradford was moot upon its review because the appellant in Bradford was released on parole during the litigation. Weinstein v. Bradford, 423 U.S. 147, 149 (1975). Consequently, the Court vacated the judgment of the Fourth Circuit Court of Appeals and had the case remanded to the District Court for dismissal of the complaint. Id.

Regardless, the Fourth Circuit's decision in Bradford does not support Appellant's case. In Bradford, the Fourth Circuit merely determined "due process clause has application to parole eligibility proceedings." Bradford, 519 F.2d at 732. As to the specifics of what constituted due process in this situation, the court refused to remark. Id. at733 ("On this, we express no view."); id. ("Hence, we leave to the district courts in the first instance the determination of what the due process clause requires in the instant cases after the district courts have conducted the requisite full evidentiary exploration."). Thus, we return to Cooper, which lists the specific requirements for due process in Appellant's situation. As discussed above, these requirements were met in this case.

Finally, Appellant argues the Board's decision resulted in an ex post facto violation pursuant to Barton v. South Carolina Department of Probation Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013). In Barton, the South Carolina Supreme Court held the Parole Board's decision resulted in an ex post facto violation when it applied the current version of section 24–21–645 [of the South Carolina Code] instead of the version of that statute in effect at the time the appellant committed her crime. Id. at 400, 745 S.E.2d at 113. At the time the appellant

committed the offense, section 24–21–645 only required a majority vote of the Parole Board to grant parole, whereas the revised version of the statute required a two-thirds vote. Id. Section 24–21–645 was revised to require a two-thirds vote of the Parole Board to grant parole in 1986. Appellant committed the offense for which he was incarcerated in 1992. Accordingly, there can be no ex post facto violation under Barton.

Based upon the foregoing, the decision of the Department is **AFFIRMED.**

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

April 30th, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 30 day of April 2015

By: Kaelyn M Buchanan
Judicial Law Clerk