

**FILED**

OCT 13 2015

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**SC ADMIN. LAW COURT**

Reginald Spellman, 251838,	)
	)
Appellant,	)
vs.	)
	)
South Carolina Department of Probation,	)
Parole & Pardon Services,	)
	)
Respondent.	)

Docket No.: 15-ALJ-15-0029-AP

**RECEIVED**

ORDER NOV 30 2015

**SC Court of Appeals**

**STATEMENT OF THE CASE**

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to an appeal by Reginald Spellman (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections. On April 22, 2015, 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 April 30, 2015, Appellant filed a Notice of Appeal with the Court seeking judicial review of the Board’s denial of parole. Appellant argues the Board denied Petitioner a realistic opportunity to participate in the parole program because it denied his parole based on the same factors on which it previously based its denial.

On May 18, 2015, Appellant timely filed his brief with this Court. On June 10, 2015, the Department filed the Record on Appeal. Thereafter, on June 2, 2015, the Department filed its brief in the form of a Motion to Dismiss for Failure to File an Appellant’s Brief. On July 27, 2015, this Court denied the Department’s motion, citing the Appellant’s timely filed brief. Also, on July 27, 2015, Appellant filed a Motion to Clarify with this Court. In the motion, Appellant argued counsel for the Department slandered him by alleging Appellant was arrested for rape in 2006. Appellant further argued the Department sent him a letter improperly stating he could not request a rehearing or appeal a routine denial of parole. Appellant then filed another motion on September 2, 2015, arguing the Court should rule in his favor because the Department failed to file a Respondent’s Brief.

## DISCUSSION

First, Appellant moves this Court to rule in Appellant's favor because the Department failed to file a Respondent's Brief. Although the Department has failed to file a Respondent's Brief, the Record on Appeal is before the Court as well as Appellant's Brief, which is all that is necessary for this Court to address the merits of the case. Accordingly, Appellant's motion is denied.

Next, Appellant moves this Court to clarify that he was not arrested for rape in 2006 as asserted by the Department's counsel. A review of the Department's brief in the form of a Motion to Dismiss shows the Department recited facts, which included the fact that Appellant was accused of rape of a young girl, but was later charged and convicted for the offense of lewd act upon a minor. Accordingly, in the context of the brief, the Department did not falsely assert Appellant was charged or convicted of rape. Appellant's motion in this regard is therefore denied.

Appellant also moved this Court to clarify that he is entitled to an appeal of a routine denial of parole. Appellant cites to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) and Furtick v. South Carolina Department of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2003) to support his position. Generally, the relevant code section, section 24-21-640 of the South Carolina Code, creates no administratively reviewable liberty interest in the routine denial or granting of parole. Furtick, 352 S.C. at 598 n.4, 576 S.E.2d at 149 n.4. However, under very limited circumstances, the 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.").

Here, Appellant is arguing that the Department denied him parole for the same reasons stated in previous parole denials and because these reasons will never change, the Department has effectively denied him parole eligibility. Accordingly, this Court has jurisdiction to review the issue under Cooper to ensure Appellant received minimum due process. See id.

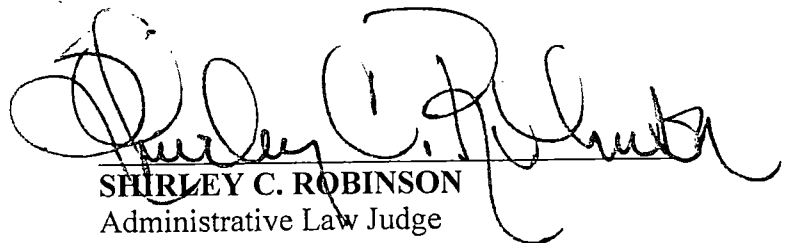
The "criteria" referenced in Cooper are "the factors outlined in section 24-21-640 and the fifteen factors published in [the Department's] parole form." Cooper, 377 S.C. at 500, 661 S.E.2d

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.

I find the Board’s decision was not in error because it did not base its decision solely on the two un-changed factors of which Appellant complains: the Nature and Seriousness of the Current Offense and Prior Criminal Record Indicates Poor Community Adjustment. Part of the issue in Cooper was that the Board only considered non-changing, immutable facts without considering the other factors as required by section 24-21-640 and the Department’s fifteen factor form. See Cooper, 377 S.C. at 502, 661 S.E.2d at 113 (“In the instant case, the Parole Board apparently failed to consider the requisite factors and, instead, based its decision on certain fixed factors that are unaffected by any rehabilitation efforts on the part of Cooper.”). To remedy this, the supreme court held the Board must show it reviewed and considered section 24-21-640 and the Department’s criteria to comply with due process. Id. at 500, 661 S.E.2d at 112. In this case, the Board’s letter denying parole “clearly states” that it “considered the factors outlined in section 24–21–640” and “the factors published in Department Form 1212 (Criteria for Parole Consideration).” 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. Cooper, 377 S.C. at 500, 661 S.E.2d at 112. Therefore, the Board’s decision was not solely based on non-changeable, immutable facts and it met the minimum due process requirements of Cooper. See id.

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

**AND IT IS SO ORDERED.**

  
**SHIRLEY C. ROBINSON**  
Administrative Law Judge

October 13, 2015  
Columbia, South Carolina

Page 3 of 3

CERTIFICATE OF SERVICE  
This is to certify that the undersigned has this date served this order and the above entitled action upon all parties to this cause by depositing a copy thereof in the United States mail postage paid or by the Emergency Mail Service addressed to the party(ies) or their attorneys.

This 13 day of October 2015  
By: [Signature]  
Administrative Law Judge