

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Admin. Law Court  
Admin Law Judge Shirley C. Robinson

Case # 14-ALS-15-0052-AP

App. No # 2015-001028

Jimmy Long # 197708

Appellant

vs

SCDPPPS

Respondent

NOTICE and MOTION TO FILE  
DOCUMENT out of time

Now comes the above named Appellant  
who moves this Hon Court in the above  
entitled matter.

On Dec 22 2015 the Appellant had served this  
Hon Ct. with the requested document. See enclosed  
although he had put down the wrong zip  
code see enclosed env.

cc: A/gen counsel  
Tommy Evans, Jr.

Sincerely  
Jimmy Long

THE STATE OF SOUTH CAROLINA **RECEIVED**

IN THE COURT OF APPEALS

JAN 19 2016

Appeal from Admin. Law Court  
Admin Law Judge Shirley C. Robinson  
SC Court of Appeals

Case # 14-KLS-15-0052-AP  
App. No # 2015-001028

Jimmy Long # 199708

Appellant

SCDPPPS

vs

Respondent

PROOF OF SERVICE

I Jimmy Long hereby certify that I have served the below persons my motion to take out of time. By placing the above said into the W.C. # mail room on this 11 day of 11-2016 to be placed in the U.S. mail w/ postage prepaid

Jenny A. Kitchings  
P.O. Box ~~11629~~  
Columbia SC 29201

Attn Counsel  
Tommy Evans, Jr  
P.O. Box 50666  
Columbia SC 29250

Sworn to before me  
this 11 day of January 2016

Jimmy Long

Jeff Franklin  
Notary Public

my Commission Expires 12-16-2015

State of South Carolina  
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY  
Governor



KELA E. THOMAS  
Director

2221 Devine Street, Suite 600  
Post Office Box 50666  
Columbia, South Carolina 29250  
Telephone: (803) 734-9220  
Fax: (803) 734-9440  
www.dppps.sc.gov

November 6, 2014

Mr. Jimmy Long #00197708  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

**RECEIVED**

JAN 19 2016

SC Court of Appeals

RE: NOTICE OF REJECTION

Dear Mr. Long:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense  
Indication Of Violence In This Or Previous Offense  
Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.  
Director of Parole Board Support Services

11/5/2014

**FILED**

APR 30 2015

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Jimmy Long, 197708, )  
)  
Appellant, )  
vs. )  
)  
South Carolina Department of Probation, )  
Parole & Pardon Services, )  
)  
Respondent. )

Docket No.: 14-ALJ-15-0052-AP

**RECEIVED**

JAN 19 2016

ORDER 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 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]he *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.

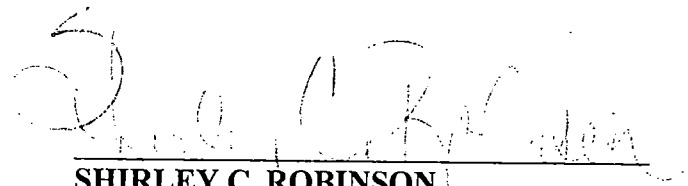
Regardless, the Fourth Circuit's decision in Bradford does not support Appellant's case. In Bradford, the Fourth Circuit merely determined "due process clause has application to parole eligibility proceedings." Bradford, 519 F.2d at 732. As to the specifics of what constituted due process in this situation, the court refused to remark. Id. at 733 ("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 <sup>30<sup>th</sup></sup>, 2015  
Columbia, South Carolina

CERTIFICATE OF SERVICE  
I, the undersigned, hereby 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 thereof, in the United States mail, in the post, or in the appropriate Mail Service addressed to the party(ies) or their attorney(s).  
This 30 day of April, 2015  
By: Kathryn M. Becker  
Deputy Law Clerk

South Carolina Department of Probation, Parole and Pardon Services  
Criteria For Parole Consideration

SC Board of Probation, Parole and Pardon Services  
P. O. Box 50666  
Columbia, SC 29250

Inmate Name <b>Jimmy Long</b>	SCDC # <b>197708</b>
----------------------------------	-------------------------

set 11/6

Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainees or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature <b>Jimmy Long</b>	Date <b>7-2-14</b>	Witness <b>Judy Brown</b>	Date <b>7-2-14</b>
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copy

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

Appeals from Administrative Law Court  
Admin. Law Judge Shirley C. Robinson  
Case # 14-ALJ-15-0052-AP  
App. No. # 2015-001028  
JAN 19 2016  
SC Court of Appeals

Jimmy Long # 197708

Appellant

vs

South Carolina Dept. of Probation  
Parole & Pardon Services

Respondent

SUPPLEMENTAL DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on appeal

- (1) Notice of rejection dated Nov 6, 2014
- (2) Criteria for Parole Consideration dated July 2, 2014
- (3) Order of the Admin Law Ct dated April 30, 2015

I certify that this supplemental designation contains no matter which is irrelevant to this appeal

Date Aug 20 15

Jimmy Long  
McCornick C.F.  
386 Redemption Way  
Unit 4-213-B  
McCornick-SC 29949

Copy

THE STATE OF SOUTH CAROLINA  
In the Court of Appeal

Appeals from Administrative Law Court  
Admin. Law Judge Shirley E. Robinson

Case # 14-ALS-15-0052-AP

App No # 2015-00102B

Jimmy Long #19770B

Appellant

vs

South Carolina Dept. of Probation  
Parole & Pardon Services

Respondent

MOTION DESIGNATION OF MATTER  
TO BE INCLUDED THE RECORD ON APPEAL

Appellant proposes the following be included in the record on Appeal

- (1) Order of the Admin Law Court dated April 30, 15

I certify that this designation contains no matter which is irrelevant to this appeal

7-7-15

Jimmy Long

McCormick C.I.  
386 Redemption Way  
Unit 4-213-B  
McCormick, SC 29899

copy

PROOF OF SERVICE

I Jimmy Long hereby certify that I have served the order of the Admin Law Court. And my designation of matter / Record on appeal upon the below persons. By placing the above said into the McCor. Just. mail room to be placed in the U.S. mail with postage prepaid. 7-7-15

Jimmy Long

copy

THE STATE OF SOUTH CAROLINA  
IN the Court of Appeals

Appeal from Administrative Law Court  
Admin. Law Judge Shirley C. Robinson

Case # 14-ALJ-15-0052-AP

App. No # 2015-001028

Jimmy Long # 197708

Appellant

vs

S.C.D.P.P.S

Respondent

PROOF OF SERVICE

I Jimmy Long hereby certify that I have  
served the below persons my record on appeal. By placing  
the above said into the Ma Corp. Inst. mail room  
on this day of \_\_\_\_\_ to be placed in the  
U.S. mail w/ postage prepaid as the record reflects.

The Ct. of Appeals  
Jenny A. Kitchings  
P.O. Box 29201  
Columbia SC 29201

Admin Law Ct.  
1205 Peadarstown St - Ste 224  
Columbia SC 29201

SCDPPPS

Subscribed to before me Jimmy Long Notary Public  
this 8 day of Sept 2015  
J. Franklin  
Notary Public

Tommy Evans, Jr  
P.O. Box 50666  
Columbia SC 29258

my Commission Expires 12/16/2019

copy

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JAN 19 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeals from Admin. Law Ct.  
Admin Law Judge Shirley C. Robinson

Case # 14-ALS-15-0052-AP

App. No # 2015-001028

Jimmy Long # 197708

Appellant

vs

South Carolina Dept. of Probation  
Parole & Pardon Services

Respondent

PROOF OF SERVICE

I Jimmy Long hereby certify that I have served my supplemental designation of matter upon the below persons. By placing the above said into the M.E.I. mail room on this 20<sup>th</sup> day of Aug 15 to be placed in the U.S. mail with postage prepaid

Clerk, Jenny Kitchings

P.O. Box 11629

Colg SC 29211

SUBORN to before me  
this 20 day of August 2015

Franklin  
Notary Public

My Commission Expires 12-16-2019

M/E Counsel

Tommy Evan, Sr

2221 Devine St - Ste 600

P.O. Box 50666

Colg SC 29250

Jimmy Long

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THE STATE OF SOUTH CAROLINA

JAN 19 2016

IN THE COURT OF APPEALS

SC Court of Appeals

Appeal from Administrative Law Court

Admin Law Judge Shirley C. Robinson

Case # 14-ALJ-15-0052-AP

App. No # 2015-001028

Jimmy Long # 197708

Appellant

VS

S.C.D.P.P. 25

Respondent

PROOF OF SERVICE

I Jimmy Long hereby certify that I have served the below persons my record on appeal. By placing the above said into the McCorr Justice mail room on this 22 day of 22-2015 to be placed in the U.S. mail w/postage prepaid.

The Ct. of Appeals  
Jenny A. Ritchings  
P.O. Box 29201  
Columbia, SC 29201

Allen Coleman  
Tommy Evans, Jr  
P.O. Box 50666  
Columbia, SC 29250

SUBSCRIBED to before me  
this 22 day of Dec. 2015

Jimmy Long

Franklin  
Notary Public

My Commission Expires 12-16-2019

Mr. Jimmy Long  
#197708 / MCCI / F. 4213-B  
386 Redemption way  
McCormack, SC 29899

FL  
213

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JAN 08 2016

MCCI  
MAIL ROOM

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UNITED STATES

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BC: 29899

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Chric  
Packer of



Mr. Jimmy Long # 197708  
# 4-213-B

McCormick Correctional Institute  
386 Redemption Way  
McCormick, SC 29899

**RECEIVED**

JAN 19 2016

SC Court of Appeals

93

The Hon. Clerk of Ct.  
the Ct. of Appeals  
Jimmy A. Kitchings  
P.O. BOX 11629  
Cda, SC 29211

THE DEPARTMENT OF CORRECTIONS HAS NOT  
RECEIVED THE ORIGINAL FROM THE  
THE DEPARTMENT OF CORRECTIONS  
FOR INFORMATION.

RECEIVED  
DEPT. OF CORRECTIONS  
MAIL ROOM

**RECEIVED**

JAN 11 2016

MAIL ROOM

**LEGAL MAIL  
MAIL ROOM**