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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lee Lisenby, Jr., #200273,

Docket No. 15-ALJ-15-0034-AP

Appellant,

vs.

ORDER

South Carolina Department of Probation
Parole and Pardon Services,

Respondent.

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Billy Lee Lisenby, Jr. (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On May 13, 2015, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) had denied him parole. Appellant filed his appeal with the ALC on June 26, 2015.

ISSUES ON APPEAL

Appellant raises the following issue: whether the Board failed to comply with Section 24-21-10(F) by not using an actuarial risk and needs assessment tool in reaching its decision. Appellant also questions whether he was given fair notice of his hearing, whether he was denied counsel or friends and family, whether the Board used all necessary records in its determination, whether the Board used all necessary factors in its decision, whether the Board was biased in its decision, whether the hearing was timely, and whether his constitutional rights have been violated.

DISCUSSION

This Court has jurisdiction over an inmate appeal when it sufficiently implicates a state-created liberty interest. Cooper v. S.C. Dept. of Prob., Parole, & Pardon Servs., 377 S.C. 489, 497, 661 S.E.2d 106, 110 (2008) (citations omitted). This Court does not review the routine denial of parole,¹ but instead reviews the procedure by which the determination of denial was reached. See id.

¹ 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."

Exhibit #1

FILED

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SC ADMIN LAW COURT

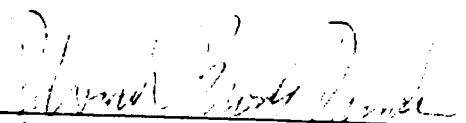
at 499, 661 S.E.2d at 112. If the Board complies with the correct procedure, this constitutes a routine denial of parole and this Court can summarily dismiss the appeal. *Id.* at 500, 661 S.E.2d at 112. To follow the correct procedure, the Board must state “that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212” Compton v. S.C. Dept. of Prob., Parole & Pardon Servs., 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). Section 24-21-10(F) further dictates that the Board must use an actuarial risk and needs assessment tool in making parole decisions. Three recent unpublished opinions of the Court of Appeals found that failing to require the use of this tool, known as “COMPAS,” is an error of law. See Spigner v. S.C. Dept. of Prob., Parole & Pardon Servs., 2015-UP-204, 2015 WL 1681270 *1 (S.C. Ct. App. dated April 15, 2015); Ruff v. S.C. Dept. of Prob., Parole & Pardon Servs., 2015-UP-309, 2015 WL 3885638 *1 (S.C. Ct. App. dated June 24, 2015); and Bagley v. S.C. Dept. of Prob., Parole & Pardon Servs., 2014-UP-326, 2014 WL 4217379 *1 (S.C. Ct. App. dated August 27, 2014).

This Court has reviewed the Record on Appeal and in particular the Notice of Rejection dated May 13, 2015,² and finds that the Board did not follow proper procedure, in that there is no evidence that the Board used the actuarial risk and needs assessment tool mandated by Section 24-21-10(F). Finding this, the Court declines to reach the other issues on appeal.

ORDER

IT IS THEREFORE ORDERED that the Board’s determination that Appellant should be denied parole in this instance is **REVERSED** and **REMANDED** for additional proceedings consistent with this order.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

December 8, 2015
Columbia, South Carolina

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December 2015

² The Court does not consider the “Amended Notice of Rejection” dated after the filing of this appeal as properly part of the Record.