

22 January 2016

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JAN 26 2016

S.C. SUPREME COURT

Honorable Daniel Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: James, I. v. SCPPPS, 2005CP4002795
Appeal from Richland County

Dear Clerk:

The undersigned has enclosed what is set forth below for processing with your office:

1. 12-5-14 'Order';
2. notice of appeal;
3. proof of service;
4. pauper status motion;

Thank you for the assistance and attention in the matter.

Respectfully submitted,

/s/ 

Isiah James, Jr., 96883
RCL, CA-52, POB 2039
Ridgeland, S.C. 29936

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY

RECEIVED

JAMES R. BARBER, III, CIRCUIT COURT JUDGE

JAN 26 2016

2005CP4002795

S.C. SUPREME COURT

ISIAH JAMES, JR., 96883, Appellant,

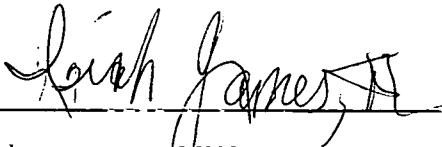
vs.

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE,
AND PARDON SERVICES, Respondent.

NOTICE OF APPEAL

Isiah James, Jr., appeals the Order of the Honorable James R. Barber,
III, dated 5 December 2014. He received written notice of entry of it on
12 January 2016.

January 22, 2016

/s/ 

Isiah James, Jr. 96883
RCI, CA-52, POB 2039
Ridgeland, SC 29936

Other Counsel of Record:

Tommy Evans, Jr.
POB 50666
Columbia, S.C. 29250

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

JAMES R. BARBER, III, CIRCUIT COURT JUDGE

2005CP4002795

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JAN 26 2016

Isiah James, Jr., 096883, Appellant,
vs.
South Carolina Department of Probation,
Parole and Pardon Services, Respondent.

S.C. SUPREME COURT

PROOF OF SERVICE

I certify herein that I have serve the 'Notice of Appeal' on the Agency's counsel by mail, postage prepaid, and the Clerk of the lower court by forwarding envelope(s) addressed to:

Tommy Evans, Jr.
POB 50666
Columbia, SC 29250

Hon. Jeanette McBride
Richland County Clerk of Court
POB 2766
Columbia, SC 29202-2766

This 23 day of January 2016.

/s/  _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Isiah James, Jr. SCDC# 96883,)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Department of Probation,)
 Parole, and Pardon Services,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

C/A No.: 2005-CP-40-02795

ORDER

RICHLAND COUNTY
 FILED
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 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

This matter comes before this Court on an order of remand from the South Carolina Supreme Court. The case was remanded for a decision by this Court on Appellant's appeal of a denial by the Parole Board and subsequent dismissal by the Administrative Law Court (ALC). Appellant contends that the South Carolina Department of Probation, Parole, and Pardon Services (SCDPPPS) arbitrarily and capriciously denied his parole, in violation of the due process clause, and that the ALC erred in dismissing his appeal.

Statement of Facts/History

In 1979, Isiah James was indicted by the Sumter County Grand Jury for two counts of murder and one count of armed robbery committed on October 25, 1978. On June 18, 1979, James pled guilty to two counts of voluntary manslaughter and one count of armed robbery. He was sentenced to a total of 85 years—30 years for the first manslaughter, 30 years for the second manslaughter, and 25 years for armed robbery, all running consecutively.

Appellant first became eligible for parole in 1988, when he was denied parole for the first time. Since that denial, Appellant has had several subsequent parole hearings, and his parole has been denied each time. The Parole Board gives three reasons for his denying parole: (1) the

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.

In the instant case, Appellant argues that the Parole Board's denial of his parole was arbitrary and capricious. This appeal was first filed with the ALC on June 26, 2003. On May 19, 2005, the ALC found that Appellant has no right to an appeal from a Parole Board's decision to deny parole at a regular parole hearing. Appellant then filed an appeal with the circuit court on June 13, 2005. In 2011, the Department of Probation, Parole, and Pardon Services (SCDPPPS) filed a motion to dismiss, arguing the circuit court does not have subject matter jurisdiction over a decision of the ALC, and a hearing was held before the Honorable DeAndrea Gist Benjamin. On April 11, 2011, Judge Benjamin granted the motion to dismiss, finding that the Court of Appeals had jurisdiction over appeals from the ALC, and the Court of Appeals affirmed.

By Memorandum Opinion No. 2014-MO-012, the Supreme Court reversed the Court of Appeals' dismissal and remanded the case to the Circuit Court. The Supreme Court found that Appellant's appeal was filed in 2005, prior to the enactment of a statutory amendment which gives the Court of Appeals jurisdiction over appeals from the ALC. Because the appeal predates the statutory change, the Supreme Court held that the circuit court has jurisdiction over Appellant's case and remanded the case to this Court for a decision on Appellant's appeal.

Discussion

Appellant argues the Parole Board denied his parole arbitrarily and capriciously, violating his rights under the due process clause. Specifically, he argues the Parole Board failed to properly consider the list of criteria provided by the Department and the statutory requirements of S.C. Code § 24-21-640. In response, the SCDPPPS argues that Appellant's due process rights

have not been violated and that Appellant has no right to appeal the outcome of a routine hearing before the Parole Board.

The facts at issue in Appellant's case closely mirror the facts of *Cooper v. South Carolina Department of Probation, Parole, and Pardon Services*. 377 S.C. 489, 661 S.E.2d 106 (2008). In the instant case and in *Cooper*, parole was denied for the same three reasons: (1) the 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. *Id.* at 499, 661 S.E.2d at 111. As Appellant does here, *Cooper* argued the Parole Board's decision was arbitrary and capricious and in violation of the due process clause. *Id.* at 494-95, 661 S.E.2d at 109. *Cooper's* appeal was also summarily dismissed by the ALC on the ground that "the ALC did not have jurisdiction to review an appeal from the denial of parole." *Id.* at 493, 661 S.E.2d at 108.

In *Cooper*, the Supreme Court concluded that "the Parole Board's decision was arbitrary and capricious" and the Parole Board's order denying *Cooper's* parole was defective. *Id.* at 500, 661 S.E.2d at 112. The Court found the Parole Board only considered three limited reasons in denying *Cooper's* parole, and those reasons were permanently established by the nature of the underlying offense. *Id.* The Parole Board's failure to consider the statutorily required criteria essentially nullified *Cooper's* parole eligibility, infringing on a state-created liberty interest and triggering due process. *Id.* at 499, 661 S.E.2d at 112.

Based on *Cooper*, this Court finds that Appellant's state-created liberty interest in parole eligibility was infringed upon by the Parole Board's failure to consider the appropriate criteria. Further, this Court finds that the Parole Board's decision was arbitrary and capricious, and the limited reasons given for denying Appellant's parole were defective.

At the hearing, the SCDPPPS also argued that Appellant has been up for parole again, after this appeal was filed and after the Supreme Court's ruling in *Cooper*, and Appellant was once again denied parole. The SCDPPPS argues this subsequent denial of parole should be effective. This Court disagrees.

In *Cooper*, the Supreme Court provides instructions for the Parole Board to avoid future defective denials of parole. *Id.* at 500, 661 S.E.2d at 112. The Court states that Parole Board decisions should be "sufficiently detailed for the [courts] to conduct appellate review, limited to the Board's adherence to section 24-21-640, of decisions denying parole." *Id.* The further states the Parole Board "shall include findings of fact and conclusions of law," and the findings "shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." *Id.* (quoting S.C. Code Ann. § 1-23-350 (2005)).


As to Appellant's most recent denial of parole, this Court finds the Parole Board failed to issue a sufficiently detailed order. The Parole Board's most recent denial does include a brief additional paragraph referencing the requirements of § 24-21-640, but it is not "sufficiently detailed." Despite the language of the additional paragraph, the Parole Board continues to give the same three, limited reasons for denying Appellant's parole. Further, the decision does not include any "explicit statement of underlying facts supporting the finding," as is required § 1-23-350. Based on these deficiencies, this Court finds that Appellant's subsequent denial of parole is also arbitrary and capricious.

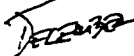
Conclusion

For the reasons stated above, this Court finds that Appellant's state-created liberty interest in parole eligibility has been infringed upon by the Parole Board's failure to adequately consider the appropriate criteria for parole determinations. Further, the reasons given for

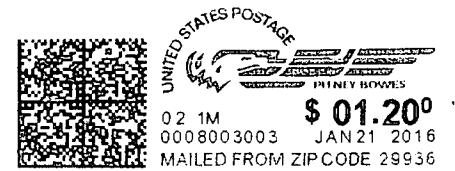
denying Appellant's parole were arbitrary and capricious. The Parole Board's stated reasons are based on fixed factors that can never be remedied by Appellant, and the same reasons were previously rejected in *Cooper*. This case shall be remanded to the Parole Board for a new determination regarding Appellant's parole. The Parole Board shall consider all the required criteria and issue a sufficiently detailed order that shall include the Parole Board's findings and explicit statements of underlying facts supporting those findings.

REVERSED AND REMANDED.


James R. Barber, III
Circuit Court Judge

Columbia, South Carolina
November 5, 2014


Isiah James, Jr., 76883
RIDGELAND, C. I.
Charleston 'A' Unit Room 52
P.O. Box 2039
Ridgeland, S.C. 29936



TO: HON. DANIEL SHEAROUSE, CLERK

SOUTH CAROLINA SUPREME COURT

POST OFFICE BOX 11330

COLUMBIA, SOUTH CAROLINA 29211

RIDGELAND CORRECTIONAL
INSTITUTION

JAN 21 2016

MAILROOM

Legal MAIL

