**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Charlton Davis, #231377,<br><br>Appellant,<br><br>vs.<br><br>South Carolina Department of Probation, Parole and Pardon Services,<br><br>Respondent. | ) | Docket No. 15-ALJ-15-0056-AP<br><br>**ORDER** |

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Charlton Davis (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. Appellant disagrees with the decision of the South Carolina Department of Probation, Parole and Pardon Services (Department) rejecting him for parole.

## BACKGROUND

Appellant concedes on February 1, 1996, he was given a forty year sentence for assault with intent to commit criminal sexual conduct, 1st degree; armed robbery; and burglary, 1st degree. In a letter dated September 10, 2015, the Department notified Appellant that the Board had rejected his parole request for the following reasons: (1) nature and seriousness of current offense; (2) indication of violence in this or previous offense; and (3) use of deadly weapon in this or previous offence. On September 29, 2015, Appellant filed a Notice of Appeal challenging the Department's decision. When Appellant filed his Notice of Appeal, he also filed his brief. In the Notice of Appeal and in his brief, Appellant claims that the Parole denied him parole for the same reasons all three times he has appeared before the Board in violation of his liberty interests as the nature of his crimes will not change. In addition, Appellant filed a reply brief in which he asserted that the decision of the Board was arbitrary, capricious, and without findings of fact.

## JURISDICTION

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003). The

Court is authorized to dismiss inmate appeals that do not implicate a state-created liberty or property interest. *See Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 279 n.5, 633 S.E.2d 910, 917 n.5 (Ct. App. 2006).

## DISCUSSION

"The Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Liberty interests protected by the Fourteenth Amendment may arise from the Constitution itself or from an expectation or interest created by state laws or policies. *Id.*; *Hewitt v. Helms*, 459 U.S. 460, 466 (1983), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

Regarding the Constitution itself, the U.S. Supreme Court has held that "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 7 (1979). In other words, "given a valid conviction, the criminal defendant has been constitutionally deprived of his liberty." *Meachum v. Fano*, 427 U.S. 215, 224 (1976). Thus, if Appellant has a liberty interest in parole, then it must emanate from state law. *See Ellis v. District of Columbia*, 84 F.3d 1413, 1415 (D.C. Cir. 1996).

A state statute may create a liberty interest in parole where it uses mandatory language. See, e.g., Bd. of Pardons v. Allen, 482 U.S. 369 (1987); *Greenholtz*, 442 U.S. 1.[1] In interpreting our parole statutes, South Carolina courts have generally held that the temporary denial of parole to a parole-eligible inmate does not, **on its own**, implicate a state-created liberty interest. *See*, e.g., *Furtick v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 352 S.C. 594, 598 n.4, 576 S.E.2d 146, 149 n.4 (2003); *Sullivan v. S.C. Dep't of Corrections*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003); *James v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 376 S.C. 392, 656 S.E.2d 399 (Ct. App. 2008). However, this does not mean that the Board's parole-related decisions can never impinge upon a state-created liberty interest. For instance, South Carolina courts have held that a state-created liberty interest is implicated by the permanent denial of parole eligibility, by a

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[1] As explained in *Brown v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 05-ALJ-15-00013-AP (Nov. 17, 2006), it is the Court's view that the correct methodology to apply in determining whether state law creates a liberty interest **with respect to parole matters** is the methodology used in Greenholtz and Allen, not that used in Sandin v. Conner, 515 U.S. 472 (1995).

change in the time frame in which the Board reviews parole, and by the Board's failure to follow proper procedure in making its decision to deny parole. *See Furtick*, 352 S.C. 594, 576 S.E.2d 146 (denial of parole eligibility); *Steele v. Benjamin*, 362 S.C. 66, 606 S.E.2d 499 (Ct. App. 2004) (change in time frame for reviewing parole); *Cooper*, 377 S.C. 489, 661 S.E.2d 106 (failure to follow proper procedure).

In this case, Appellant challenges the procedure employed by the Board in denying him parole. Clearly, the Board may not grant parole unless it is satisfied that **all** of the criteria set forth in Section 24-21-640 are met. S.C. Code Ann. § 24-21-640 (Supp. 2010). Additionally, in *Cooper v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008), the South Carolina Supreme Court addressed the ALC's review of these matters. In that case, an inmate who had been convicted of murder was denied parole by the Board. In its decision letter, the Board cited the following reasons for denying the inmate 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." *Id.* at 492-93, 661 S.E.2d at 108. The inmate appealed the Board's decision claiming the Board did not consider all relevant factors in making its decision, and therefore the Board's denial of his parole deprived him of a state-created liberty interest under S.C. Code Ann. § 24-21-640. [2] Upon review of the matter, the South Carolina Supreme Court concluded that the Board's decision was "arbitrary and capricious" since the Board "neither offered an explanation nor indicated that it had considered the statutory criteria of section 24-21-640 and the fifteen criteria listed on the parole form." *Id.* at 500, 661 S.E.2d at 112. The Supreme Court, however, explained that:

> We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it 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. If the Board complies with this procedure, the

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[2] Section 24-21-640 provides in pertinent part:

> The board must carefully consider the record of the prisoner before, during and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that, in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and, that suitable employment has been secured for him. The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records.

S.C. Code Ann. § 24-21-640 (Supp. 2010).

> 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. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

*Cooper*, 377 S.C. at 500, 661 S.E.2d at 112.

Without a doubt, the Board "is the sole authority with respect to decisions regarding the grant or denial of parole." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. Therefore, according to Cooper, this Court's review is limited to ascertaining whether the Board "followed proper procedure." *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112. In other words, the Court may summarily dismiss Appellant's appeal unless it determines that the Board considered inappropriate factors in making its determination.

Here, in its parole denial letter, the Board expressly stated that it considered "all of the factors published within Department Form 1212 (criteria for parole consideration), as well as the factors outlined in Section 24-21-640 of the South Carolina Code of Laws" in reaching its decision. The Board stated that its decision was based on the following four factors: (1) nature and seriousness of current offense; (2) use of deadly weapon in this or previous offence; and (3) use of deadly weapon I this or previous offense. All of these factors fall within the scope of the criteria set forth in Section 24-21-640 and the Board's parole form.[3] Appellant nevertheless claims that the Board decision was erroneous because some of its reasons are based upon the facts of his criminal offense and cannot be changed by his actions while incarcerated. However, the Board may not grant parole unless it is satisfied that **all** of the criteria set forth in Section 24-21-640 are

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[3] The Board's parole form lists the following non-inclusive criteria: (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 educational 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; and (15) Other factors considered relevant in a particular case by the Board. *See Cooper*, 377 S.C. at 494 n.2, 661 S.E.2d at 109 n.2.

met, including that "the interests of society will not be impaired thereby." S.C. Code Ann. § 24-21-640. Accordingly, the Court concludes that the Board followed proper procedure in denying parole to Appellant and that the ALC may therefore dismiss Appellant's appeal.

**ORDER**

**IT IS THEREFORE ORDERED** that this appeal is DISMISSED.

**AND IT IS SO ORDERED.**

Ralph King Anderson, III
Chief Administrative Law Judge

February 11, 2016
Columbia, South Carolina