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MAR 14 2016

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT SC Court of Appeals

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,<sup>1</sup> but instead reviews the procedure by which the determination of denial was reached. See id.

<sup>1</sup> 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

DEC 08 2015

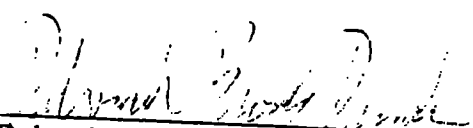
at 499, 661 S.E.2d at 112. If the Board complies with the correct procedure, this constitutes a routine denial of parole and this Court can summarily dismiss the appeal. Id. at 500, 661 S.E.2d at 112. To follow the correct procedure, the Board must state "that it considered the factors outlined in section 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,<sup>2</sup> 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.

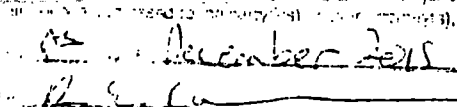
**ORDER**

**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

  
December 2015

<sup>2</sup> The Court does not consider the "Amended Notice of Rejection" dated after the filing of this appeal as properly part of the Record.

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

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SC Court of Appeals

JERRY B. ADGER  
Director

NIKKI R. HALEY  
Governor



2221 DEVINE STREET, SUITE 600  
POST OFFICE BOX 50666  
COLUMBIA, SOUTH CAROLINA 29250  
Telephone: (803) 734-9220  
Facsimile: (803) 734-9440  
[www.state.sc.us/ppp](http://www.state.sc.us/ppp)

December 10, 2015

Billy Lisenby, #200273  
Ridgeland Correctional Institution  
PO Box 2039  
Ridgeland, South Carolina 29936

Dear Mr. Lisenby:

Pursuant to the enclosed order dated December 8, 2015, your case has been remanded to the Parole Board. Your previously scheduled hearing has now been scheduled on April 13, 2016. Pursuant to South Carolina law, if you are denied parole, you will have to wait one year from that date to be considered again for parole.

Sincerely,

  
Tommy Evans, Jr.  
Assistant General Counsel

TE:dn

cc: The Honorable Deborah Brooks Durden  
Larry Patton, Director of Parole Board Support

Exhibit #2

DENIED

State of South Carolina  
Administrative Law Court

*Deborah Brooks Dunder* 1/14/16  
Deborah Brooks Dunder  
SC Administrative Law Judge  
Date

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

Billy Lee Lisenby, JR, #200273,  
Appellant,

vs.

South Carolina Department of Probation  
Parole and Pardon Services,  
Respondent

Notice of Motion and Motion For Contempt  
and Ancillary Relief

The Honorable Deborah Brooks Dunder

On May 13, 2015, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board had denied him parole. Appellant filed his appeal with the ALC on June 26, 2015.

On December 8, 2015 The Honorable Judge Deborah Brooks Dunder Ordered as follows:

"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."

[See Exhibit # 1]

In a letter dated December 10, 2015 from Assistant General Counsel Tommy Evans, JR, he Refused To Comply with The Honorable Judge Deborah Brooks Dunders Remand order by stating:

"Dear MR. Lisenby:

Pursuant to the enclosed order dated December 8, 2015, your case has been Remand to the Parole Board. Your previously scheduled hearing has now been scheduled on April 13, 2016. Pursuant to South Carolina law, if you are denied parole, you will have to wait one year from that date to be considered again for parole."

FILED.

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SC ADMIN. LAW COURT

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SC ADMIN. LAW COURT

1.

Exhibit #3

LEGAL MAIL

Appellant contends he should be scheduled for a rehearing asap, because he was denied due process in the initial hearing. Now due process is due. Evermore Appellant contends that the parole board is retaliating against Appellant and making statements with hopes they won't be check for accuracy. Tommy Evans states:

"Pursuant to South Carolina law, if you are denied parole, you will have to wait one year from that date to be considered again for parole." See Exhibit #2

The South Carolina Board of Paroles and Pardons Operations Manual has an entire section on re-hearings. Next MR. Evans above quote is not true. Attorney Tommy Thomas advised Appellant that he was suppose to receive a rehearing ASAP. Infact MR. Thomas stated "Inmate Antonio Gantt went up for Parole on Nov. 18<sup>th</sup> 2015, and due to the denial of due process he has a rehearing scheduled for January 26<sup>th</sup> 2016."

To afford Appellate due process he should have a rehearing asap, and still be afforded his yearly parole hearing in April 16<sup>th</sup> 2016. Evermore April 16<sup>th</sup> 2016 is a projective date meaning that the exact date is not set in stone. Appellant's Parole Examiner states "he will not go up for parole until July 2016. Please note April 16<sup>th</sup> 2016 is on a Sunday."

The allegations here are supported by *Compton v. S.C. Dept. of Probation and Parole Pardon Services* 385 S.C. 476 685 S.E. 2d 175.

Relief

The Parole Board has fail to comply with the remand order. Since it is ruled by this Court, appellant Lisenby's May 2015 order concerning the parole Release application was flawed constitutionally contrary to due process clause, arbitrary, he should be granted the May 2015 parole hearing, a new hearing if this cannot be complied with, then Lisenby should be released forthwith.

Dated: Dec. 21<sup>st</sup> 2015

Billy Lee Jr.  
Billy Lee Lisenby JR; #200273  
Ridgeland Corr. Inst.  
P.O. Box 2039  
Ridgeland S.C. 29924

CERTIFICATE OF SERVICE  
This is to 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 hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).  
This 11<sup>th</sup> day of January 2016  
By: R. E. C.  
Judicial Law Clerk

Billy Lee Limby JR; # 200 273

Ridgeland Corr. Inst.

P.O. Box 2029

Ridgeland S.C. 29936

**RIDGELAND CORRECTIONAL  
INSTITUTION**

**MAR 10 2016**

**MAILROOM**

**# 2 0 0 2 7 3**

**LEGAL MAIL**

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**\$ 00.48<sup>5</sup>**

MAR 10 2016

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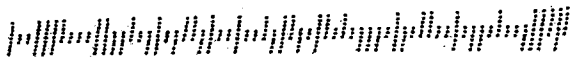
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South Court of Appeals MAR 14 2016

SC Court of Appeals

P.O. Box 11629

Columbia S.C. 29211



THE DEPARTMENT OF CORRECTIONS HAS NOT  
CENSORED THIS ITEM; THEREFORE, THE DEPARTMENT  
OF CORRECTIONS DOES NOT ASSUME RESPONSIBILITY  
OF ITS CONTENTS.

LeVERN COHEN, WARDEN  
RIDGELAND CORRECTIONAL INSTITUTION  
S.C. DEPARTMENT OF CORRECTIONS