

SOUTH CAROLINA COURT OF APPEALS
In The State of South Carolina

RECEIVED

MAR 25 2016

SC Court of Appeals

APPEAL FOR THE ADMINISTRATIVE LAW COURT
Deborah B. Durden, Administrative Law Judge
Appellate Case Number 2015-002013

Bobby Ruff, 185024,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

AMENDED RECORD ON APPEAL

Bobby Ruff, 185024
HA250/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

LEGAL

INDEX:

1. SCDPPPS Letter dated 6/25/15
- 2-4. Court of Appeals Appellate Case No. 2014-000811, Ruff v. SCDPPPS
5. ALC Order of Dismissal, Docket No. 15-ALJ-15-0038-AP
6. SCDPPPS Notice of Rejection dated 9/4/13
7. SCDPPPS Criteria
8. Proof of Service dated 3/18/16

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

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

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

June 25, 2015

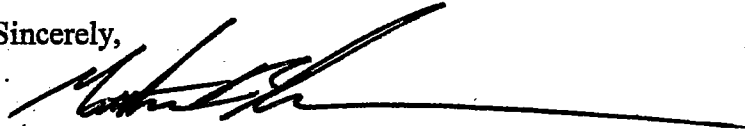
The Honorable Jenny Abbott Kitchings
Clerk of the S.C. Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

RE: Bobby Ruff, #185024
Appellate Case No.: 2014-000811

Dear Ms. Kitchings:

Pursuant to the Court's order filed June 24, 2015, remanding this case back to the Parole Board to evaluate Mr. Ruff's risk using the Department's assessment tool, it has been determined that the actuarial risk and assessment tool was used at his hearing in 2013, however, it was not indicated in Mr. Ruff's notice of rejection letter. The Department's notice of rejection letters have since been amended to include the actuarial risk needs assessment tool. Furthermore, Mr. Ruff is scheduled for another parole consideration hearing on October 21, 2015.

Sincerely,


Matthew C. Buchanan
General Counsel

MCB:dn

cc: Bobby Ruff

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Bobby Ruff, Appellant,

v.

South Carolina Department of Probation, Parole and
Pardon Services, Respondent.

Appellate Case No. 2014-000811

Appeal from the Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Unpublished Opinion No. 2015-UP-309
Submitted May 1, 2015 – Filed June 24, 2015

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Bobby Ruff, pro se.

Tommy Evans, Jr., of the South Carolina Department of
Probation, Parole and Pardon Services, of Columbia, for
Respondent.

PER CURIAM: Bobby Ruff appeals an order of the Administrative Law Court
(ALC) affirming the denial of his parole. Ruff argues (1) he was entitled to special

parole under section 24-21-700 of the South Carolina Code (2007); (2) the ALC erred in finding the Board of Probation, Parole and Pardon Services (the Parole Board) afforded him due process when the Parole Board denied him parole based on the immutable facts of his commitment offenses and also failed to consider a validated actuarial risk and needs assessment tool in reaching his parole decision, as required by section 24-21-10(F)(1) of the South Carolina Code (Supp. 2014); (3) the Parole Board should have "fixed" his base term for parole eligibility upon the service of twenty years' imprisonment rather than not "fixing his term until he is found suitable to the satisfaction of the [Parole Board]"; and (4) the Parole Board should have "fixed" his base term for parole eligibility upon the service of twenty years' imprisonment instead of imposing "a period of incarceration for the remainder of his natural life."¹ We affirm in part, reverse in part, and remand.

1. As to issue two, we find the Parole Board properly considered all factors required by South Carolina Department of Probation, Parole and Pardon Services (the Department) policy and section 24-21-640 of the South Carolina Code (Supp. 2014). However, we find section 24-21-10(F)(1) requires the Parole Board to evaluate an inmate's risk using the Department's adopted assessment tool in reaching a decision to grant or deny parole. *See* § 24-21-10(F)(1) ("The [D]epartment must develop a plan that includes the . . . establishment of a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, *which the [P]arole [B]oard shall use in making parole decisions . . .*" (emphasis added)). Because the ALC failed to make a finding that such an assessment tool was used, its order is affected by an error of law. *See* S.C. Code Ann. § 1-23-610(B) (Supp. 2014) ("The court of appeals . . . may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is . . . affected by other error of law . . ."); *James v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 564, 566, 660 S.E.2d 288, 290 (Ct. App. 2008) ("Section 1-23-610 of the South Carolina Code [(2005 & Supp. 2014)] sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency."); *see also Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 112 (2008) (holding an inmate has a state-created liberty interest in requiring the [P]arole [B]oard to adhere to statutory criteria in rendering a

¹ We address these issues in a different order than Ruff listed them in his statement of issues on appeal.

decision); We therefore reverse as to this issue and remand to the Parole Board for a new parole hearing. The Parole Board is ordered to evaluate Ruff's risk using the Department's assessment tool and consider the results of the evaluation in reaching its decision regarding Ruff's parole.

2. As to issue one, we find Ruff was not entitled to special parole under section 24-21-700. See § 24-21-700 ("*Any prisoner who is otherwise eligible for parole under the provisions of this article, except that his mental condition is deemed by the [Parole Board] to be such that he should not be released from confinement may, subject to approval by the Veterans Administration, be released to the custody of the Veterans Administration or to a committee appointed to commit such prisoner to a Veterans Administration Hospital. Such a special parole shall be granted in the sole discretion of the Board*" (emphases added)).

3. We find issues three and four are not preserved for review. See *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) ("[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration.").

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.²

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bobby P. Ruff, # 185024,

Docket No. 15-ALJ-15-0038-AP

Appellant,

vs.

ORDER OF DISMISSAL

South Carolina Department of Probation,
Parole and Pardon Services,

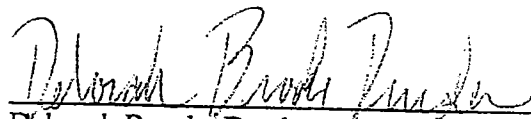
Respondent.

This matter is before the Administrative Law Court (ALC) pursuant to the Notice of Appeal of Bobby P. Ruff (Appellant), an inmate incarcerated with the South Carolina Department of Corrections.

In this case, Appellant is attempting to file a Notice of Appeal seeking relief from a final order of the Court of Appeals, a remedy unavailable in this Court. The Court of Appeals must review the decisions of the ALC, not the other way around. The Appellant accuses the Court of Appeals of wrongfully deciding that he failed to preserve two arguments before the ALC. Rule 205 of the South Carolina Appellate Court Rules provides that, upon service of the notice of appeal to the Court of Appeals, the Court of Appeals has exclusive jurisdiction over the matter appealed. Therefore, this Court lost jurisdiction of Appellant's case when he filed his Notice of Appeal at the Court of Appeals. Since the ALC lacks jurisdiction, this matter must be dismissed.

IT IS THEREFORE ORDERED that this appeal is dismissed.

AND IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

September 1, 2015
Columbia, South Carolina

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 hereto,
in the United States mail, postage paid, or in the interagency
Mail Service addressed to the party(ies) or their attorney(s).
Date: 1st day of September 2015
By: [Signature]
Judicial Law Clerk

FILED

SEP 01 2015

SC ADMIN. LAW COURT

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

September 4, 2013

Mr. Bobby Ruff #00185024
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

RE: NOTICE OF REJECTION

Dear Mr. Ruff:

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

Sincerely,

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

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

9/4/2013

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

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

Inmate Name <i>Bobby Ray</i>	SCDC # <i>185004</i>
---------------------------------	-------------------------

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 <i>Bobby Ray</i>	Date <i>4/17/02</i>	Witness <i>[Signature]</i>	Date <i>4/17/02</i>
--	------------------------	-------------------------------	------------------------