

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Albert Anders, #131939,

Docket No. 15-ALJ-15-0013-AP

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

ORDER

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SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the appeal of Albert Anders (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. The Appellant is serving a life sentence for murder, and was convicted and sentenced in 1986. In 1991, while an inmate at McCormick Correctional Institute, the Appellant was convicted and sentenced for possessing contraband, and was sentenced to five (5) years suspended upon one (1) year of consecutive service.

At the time the Appellant committed the murder, on August 31, 1985, South Carolina law allowed an inmate serving a life sentence for murder parole eligibility upon the service of twenty (20) years. The Appellant initially appeared before the Parole Board on May 3, 2006. Upon the conclusion of the hearing, the Board denied the Appellant parole, and has since denied the Appellant parole on several other occasions. On January 14, 2015, the Parole Board again denied the Appellant parole, based on Findings of Fact that due to the 1) nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense 3) use of a deadly weapon in this or a previous offense and 4) a prior criminal record indicating poor community adjustment, that it had grounds to deny the Appellant parole.

The Appellant sent the Department of Probation, Parole and Pardon Services (Department) a Response of Objection, arguing that the Parole Board cannot apply Section 24-21-640 to his case because he was not a prisoner serving a sentence for a second or subsequent violent offense. On February 27, 2015, the Appellant filed a Notice of Appeal with the ALC

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seeking review of the Board's denial of parole. As grounds for the appeal, the Appellant contends that the Board denied him due process in incorrectly apply Section 24-21-640, and "making the Appellant being convicted of a subsequent violent offense making the Appellant ineligible for parole...."

DISCUSSION

An individual has a right to ALC review of a final decision of the Board only when that decision affects a liberty interest for which due process is required. *See Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146, 149, 150 (2003); *see also Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review). In *Furtick*, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, the statute creates no such liberty interest in the granting of parole itself. *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 n.4. Therefore, claims arising from the Board's decision denying parole are not appealable to the ALC, only claims that the Board failed to consider the appropriate criteria so as to be tantamount to an abrogation of parole eligibility. *Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008).

The Appellant alleges that his case does not fall under the subsequent violent offender law that is mentioned in Section 24-21-640, which states that "[t]he Board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60." S.C. Code Ann. § 24-21-640 (Supp. 2014). The Department agrees that the Appellant currently does not have any prior convictions classified as violent. The Department, additionally, agrees that this particular language of the statute does not apply to the Appellant. Lastly, the Board's letter, dated January 15, 2015, does not indicate that the Board considered the Appellant to be a person convicted of a second or subsequent violent offense.

The Department attempted to explain, in a letter dated February 5, 2015, that Section 24-21-640 not only refers to the Board not granting parole to a subsequent violent offender, but that the same statute generally dictates when parole is warranted, and mandates that the Board establish written, specific criteria for the granting of parole and provisional parole. The statute also requires that the Board consider the record of the prisoner before, during and after

imprisonment. S.C. Code Ann. § 24-21-640 (Supp. 2014).

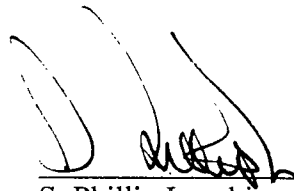
The court in *Furtick* established that, although parole is a privilege and not a right, inmates still have a liberty interest in parole eligibility. 352 S.C. at 598, 576 S.E.2d at 149. If the Board fails to consider the criteria set forth in S.C. Code Ann. § 24-21-640, the inmate is denied his liberty interest in parole eligibility. *Cooper*, 377 S.C. 489, 661 S.E.2d 106 (2008). As long as the Board considers all of the factors required by statute, however, it has protected the inmate's liberty interest in parole eligibility and it has the discretion to deny parole based on any of the factors found in § 24-21-640 or its own criteria. *Id.* The Board's decision reflects that it considered all the appropriate factors before making its decision to deny the Appellant parole. Therefore, the court cannot grant relief to the Appellant.

ORDER

For the foregoing reasons, the Department's decision denying the Appellant parole is **AFFIRMED.**

AND IT IS SO ORDERED.

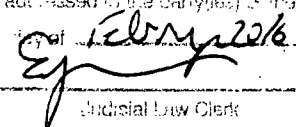
February 25, 2016
Columbia, South Carolina



S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date
delivered to the parties in the above entitled action a copy of all
of the papers in this cause by depositing a copy in the
United States Mail, postage paid, or by the interagency
file service addressed to the party(ies) or their attorney(s).

on 25th day of February, 2016

Judicial Law Clerk