

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Johnny Lawrence, #232835,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Probation,)
 Parole and Pardon Services,)
)
 Respondent.)
 _____)

Docket No. 15-ALJ-15-0044-AP

ORDER

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to the appeal of Johnny Lawrence (Appellant) regarding the decision of the South Carolina Department of Probation, Parole and Pardon Services (DPPPS or Department) denying his parole request.

FACTUAL/PROCEDURAL HISTORY

By letter dated July 23, 2015, the Department notified Appellant that his request for parole was denied. The Department denied Appellant's request for a rehearing on August 12, 2015. On August 17, 2015, Appellant filed a Notice of Appeal. The Notice of Assignment was filed on August 26, 2015. On September 4, 2015, Appellant filed a "Motion for Order Compelling Discovery." On September 9, 2015, the Department filed a letter with the Court stating that it did not intend to respond to Appellant's motion because the Rules of Procedure for the Administrative Law Court (ALC Rules) did not provide for discovery in "Special Appeals" cases. Appellant filed a response to this letter on September 18, 2015. The Record on Appeal was filed on September 24, 2015. On October 30, 2015, Appellant filed a "Second Motion to Compel Complete Discovery/Objection to the Records [sic] filed with the Court." The Department filed its brief on November 12, 2015, in which it included a request that the Court dismiss Appellant's appeal for failure to file a brief. On November 20, 2015, Appellant filed a brief.

FILED

January 8, 2016

SC ADMIN. LAW COURT

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 Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003).

DISCUSSION

As an initial matter, the Department argues that Appellant failed to file a brief within sixty-five days of the date of assignment, as required by ALC Rule 60. However, ALC Rule 60 was recently amended.¹ Subsection (A) of ALC Rule 60 now allows ninety (90) days for the party first noticing the appeal to file an original brief. In this case, Appellant had until November 24, 2015 to file his brief. Because Appellant filed his brief on November 20, 2015, his brief was timely filed and will be considered by the Court, regardless of the fact that the Department filed its brief on November 12.

As to Appellant's two motions seeking discovery, the ALC Rules do not allow this Court to order discovery at the appellate stage, either in regular or "special" appeals like this one. Appellant cites ALC Rule 58 for the proposition that he should be entitled to certain documents. However, that rule is prefaced with the phrase "**Where applicable**, the record shall consist of" (emphasis added). In PPS cases, the South Carolina Supreme Court has limited what the ALC can consider to ascertaining whether the Parole Board (Board) "followed proper procedure." *Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008). Therefore, the Court may summarily dismiss Appellant's appeal unless it determines that the Board considered inappropriate factors in making its determination. *See Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E. 2d 175, 177 (2009) (holding that an order denying parole and stating consideration of all statutory and Department criteria is sufficient to support denial of parole).

Here, the record clearly reflects that the Board considered the nature and seriousness of Appellant's current or prior offense(s), the indication of violence in this and/or a prior offense(s), the use of a deadly weapon in this offense, his ability to adjust to the community based on his criminal record, his unfavorable institutional record, and other statutory criteria of section 24-21-

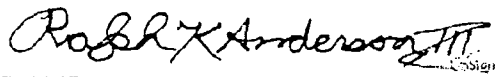
¹ The Rules of Procedure for the ALC were amended effective April 28, 2015.

640, the fifteen factors published in its parole form – Form 1212, and the actuarial risk and needs assessment factors pursuant to S.C. Code Ann. § 24-21-10(F)(1) (Supp. 2015). Thus, there is sufficient information in the record for this Court to determine whether the Board followed the proper procedure. Any other information, such as that which Appellant believes should have been included or that which he believed the Parole Board should not have considered, are beyond what this Court is permitted to review. Therefore, the Court does not consider ALC Rule 58 to be applicable with regard to the extraneous information that Appellant seeks to include in the record on appeal. For this reason, and because the Court cannot compel discovery at the appellate level, Appellant's motions to compel are hereby denied.

In his brief, Appellant disputes the facts found below and argued by the Department. He sets forth his version of the facts. Appellant then argues that he was denied the opportunity to "complete discovery," and that the Board considered "false information," "bold face lies," and "deliberately fabricat[ed] evidence." However, Appellant has not provided any specificity in his brief as to what documents he wished to include in the record that were not already there and how such documents would have been relevant to those factors that this Court is limited to reviewing.

Moreover, as stated above, the record clearly reflects that the Board considered the nature and seriousness of Appellant's current or prior offense(s), the indication of violence in this and/or a prior offense(s), the use of a deadly weapon in this offense, his ability to adjust to the community based on his criminal record, his unfavorable institutional record, and other statutory criteria of section 24-21-640, the fifteen factors published in its parole form – Form 1212, and the actuarial risk and needs assessment factors pursuant to S.C. Code Ann. § 24-21-10(F)(1) (Supp. 2015). Thus, the Board considered all of the factors that this Court is authorized to review in determining whether the Board followed the proper procedure. *See Compton*, 385 S.C. at 478-79, 685 S.E.2d at 176-77 (finding it is "sufficient under *Cooper*" for "a routine denial of parole" that "the Parole Board clearly stated in its notice of rejection that it considered the statutory criteria and the criteria set forth in Form 1212 . . ."). Otherwise, it is not within the province of this Court to second-guess or review the decision of the Parole Board. *See S.C. Code Ann. § 1-23-600(D)* (Supp. 2015) ("An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections . . . involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.").

IT IS THEREFORE ORDERED that the Department's decision is **AFFIRMED**.
AND IT IS SO ORDERED.

A handwritten signature in black ink that reads "Ralph King Anderson, III". The signature is written in a cursive style with a horizontal line underneath it.

Ralph King Anderson, III
Chief Administrative Law Judge

January 8, 2016
Columbia, South Carolina