

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

James Owens, #82569,)	Docket No. 12-ALJ-15-0018-AP
)	
Appellant,)	
)	
v.)	
)	ORDER AFFIRMING DECISION
South Carolina Department of Probation, Parole and Pardon Services,)	
)	
Respondent.)	
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STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of the above named Appellant (Inmate), an inmate incarcerated with the South Carolina Department of Corrections. Inmate appeals from a decision of the South Carolina Department of Probation, Parole and Pardon Services ("Department" or "PPPS") which denied his parole. Appellant states as Issues on Appeal, the following:

- (1) Did the parole board commit ex post facto and due process violations when it applied the current parole standard rather than the standard in effect at the time of Appellant's offense/conviction?
- (2) The cumulative changes in the South Carolina Parole Board disadvantaged appellant in violation of the ex post facto clause.

DISCUSSION

For the following reasons, the Department's decision is affirmed.

The Supreme Court of South Carolina has spoken clearly upon the jurisdiction of the Administrative Law Court in cases such as this:

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 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.

FILED

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SC ADMIN. LAW COURT

Cooper v. SCDPPPS, 377 S.C. 489, 661 S.E.2d 106 (2008).

The Cooper decision was underscored by Compton v. SCDPPPS, 385 S.C. 476, 685 S.E.2d 175 (2009), as follows:

In Cooper, we held that if the Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate's right to parole eligibility and infringes on a state-created liberty interest, warranting minimal due process protection. Because the Parole Board in Cooper neither offered an explanation nor indicated it had considered the statutory criteria or the criteria set forth in Form 1212, we had no other choice but to determine the order was defective and the decision was arbitrary and capricious. We emphasized that this result could be avoided in the future if the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212, and that if the Parole Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC will have **limited authority** to review the decision. (emphasis supplied).

I have reviewed the record on appeal and in particular the NOTICE OF REJECTION dated June 20, 2012, and find that the parole board followed proper procedure in that it did consider the fifteen factors and § 24-21-640, mentioned above, and that this is a routine denial of parole.

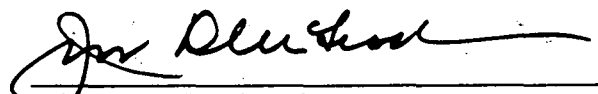
Moreover, § 1-23-600(D) provides "An administrative law judge shall not hear ... an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services."

ORDER

For the foregoing reasons, the Department's determination that Appellant should be denied parole, in this instance, is **AFFIRMED** and this appeal **DISMISSED**, with prejudice.

AND IT IS SO ORDERED.

October 8, 2012
Columbia, SC



John D. McLeod, Judge
S.C. Administrative Law Court

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 8 day of October, 2012 2
By: Anthony R. Bolduan
Judicial Law Clerk