RECEIVED
NOV 09 2016
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT

SHIRLEY C. ROBINSON, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE NO.: 2015-001028

JIMMY LONG, #197708, APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, RESPONDENT.

RECORD ON APPEAL

TOMMY EVANS, JR.
ASSISTANT GENERAL COUNSEL
SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES
P.O. BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
(803)734-9220
ATTORNEY FOR RESPONDENT

MR. JIMMY LONG, #197708
MCCORMICK CORRECTIONAL INST.
386 REDEMPTION WAY
MCCORMICK, SC 29899
APPELLANT, PRO-SE

INDEX

INDEX 1
CRITERIA FOR PAROLE CONSIDERATION 2
NOTICE OF REJECTION 3
ORDER OF THE ADMINISTRATIVE LAW COURT 4-7
CERTIFICATE OF COUNSEL 8
AFFIDAVIT OF SERVICE 9

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

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

Inmate Name	SCDC #
Jimmy Long	197708

SD 11B

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 detainers 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.

2

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature	Date	Witness	Date
Jimmy Long	7-2-14	[signature]	7-2-14

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

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

November 6, 2014

Mr. Jimmy Long #00197708
Mccormick Correctional Institution
386 Redemption Way
Mccormick, SC 29899

RE: NOTICE OF REJECTION

Dear Mr. Long:

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
Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

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

15

FILED

APR 30 2015

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jimmy Long, 197708, Appellant, vs. South Carolina Department of Probation, Parole & Pardon Services, Respondent.	)	Docket No.: 14-ALJ-15-0052-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to an appeal by Jimmy Long ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. On November 6, 2014, the South Carolina Department of Probation, Parole and Pardon Services ("the Department") notified Appellant that the South Carolina Parole Board ("the Board") denied him parole. On December 29, 2014, Appellant filed a Notice of Appeal with the Court seeking judicial review of the Board's denial of parole. Appellant argues the Board's decision did not meet the minimum requirements of due process for three reasons. First, Appellant claims the Board's decision did not consider all the requisite criteria, denied him for the same reasons he was previously denied parole, and did not include adequate findings of fact and conclusions of law. Second, Appellant claims the Board's decision violates the requirements of Bradford v. Weinstein, 519 F.2d 728 (4th Cir.). Third, Appellant claims the Board's decision violated the prohibition against ex post facto laws pursuant to Barton v. South Carolina Department of Probation Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013).

DISCUSSION

In Al-Shabazz v. State, the South Carolina Supreme Court held inmates have a right to administrative review in two circumstances: "(1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). The second circumstance includes the permanent denial of parole

eligibility pursuant to section 24-21-640 of the South Carolina Code. See Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs., 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003) ("[T]the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process."). However, the statute creates no such liberty interest in the routine denial or granting of parole. Id. at 598 n.4, 576 S.E.2d at 149 n.4. Therefore, while the permanent denial of parole eligibility constitutes a liberty interest that is reviewable by this Court, the routine denial of parole is, generally, not a sufficient liberty interest to grant parole.

However, a routine denial of parole can bestow jurisdiction on this Court if, in denying parole, the Department fails to follow the statutorily required parole criteria, and this failure renders its decision tantamount to a permanent denial of parole eligibility. See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs., 377 S.C. 489, 502, 661 S.E.2d 106, 113 (2008) ("If a Parole Board fails to consider and apply the statutorily-created parole criteria, it has the effect of rendering an inmate parole ineligible, which under Furtick warrants review by the ALC."). The "criteria" referenced in Cooper are "the factors outlined in section 24-21-640 and the fifteen factors published in [the Department's] parole form." Cooper, 377 S.C. at 500, 661 S.E.2d at 112. Under Cooper, as long as the 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 its parole form . . . 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." Id.

In this appeal, Appellant argues the Board's decision did not meet the minimum requirements of due process the Board's decision did not consider all the requisite criteria, denied him for the same reasons he was previously denied parole, and did not include adequate findings of fact and conclusions of law. Essentially, Appellant is claiming the Board's decision was not consistent with Cooper. Additionally, Appellant claims the Board's decision violates the requirements of Bradford v. Weinstein, 519 F.2d 728 (4th Cir.) and Barton v. South Carolina Department of Probation Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013).

As to Appellant's first ground, I find the Board's decision is consistent with Cooper. As to Appellant's second ground, the Court is only concerned with whether the Department met the requirements in Cooper in denying Appellant's parole. Here, the Department's order denying parole "clearly states" that it "considered the factors outlined in section 24–21–640." See Cooper,

377 S.C. at 500, 661 S.E.2d at 112. Additionally, the order contains separate findings of fact and conclusions of law. Whether these findings and conclusions are the same as the findings and conclusions in the order denying Appellant's previous parole hearing is not determinative on the issue of due process. See § 21-24-640. Furthermore, the Record shows the Department also considered the fifteen factors published in its parole form. Therefore, the Board's decision met the requirements of Cooper. See Cooper, 377 S.C. at 500, 661 S.E.2d at 112.

Next, Appellant claims the Board's decision was in violation of Bradford v. Weinstein, 519 F.2d 728 (4th Cir.). In Bradford, a North Carolina inmate, in an attempted class action, and a South Carolina inmate, argued they were being denied their right to due process in the parole eligibility decision-making process. Id. at 729-30. I note the case advanced to the United States Supreme Court where the Court determined the issue in Bradford was moot upon its review because the appellant in Bradford was released on parole during the litigation. Weinstein v. Bradford, 423 U.S. 147, 149 (1975). Consequently, the Court vacated the judgment of the Fourth Circuit Court of Appeals and had the case remanded to the District Court for dismissal of the complaint. Id.

Regardless, the Fourth Circuit's decision in Bradford does not support Appellant's case. In Bradford, the Fourth Circuit merely determined "due process clause has application to parole eligibility proceedings." Bradford, 519 F.2d at 732. As to the specifics of what constituted due process in this situation, the court refused to remark. Id. at733 ("On this, we express no view."); id. ("Hence, we leave to the district courts in the first instance the determination of what the due process clause requires in the instant cases after the district courts have conducted the requisite full evidentiary exploration."). Thus, we return to Cooper, which lists the specific requirements for due process in Appellant's situation. As discussed above, these requirements were met in this case.

Finally, Appellant argues the Board's decision resulted in an ex post facto violation pursuant to Barton v. South Carolina Department of Probation Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013). In Barton, the South Carolina Supreme Court held the Parole Board's decision resulted in an ex post facto violation when it applied the current version of section 24–21–645 [of the South Carolina Code] instead of the version of that statute in effect at the time the appellant committed her crime. Id. at 400, 745 S.E.2d at 113. At the time the appellant

committed the offense, section 24–21–645 only required a majority vote of the Parole Board to grant parole, whereas the revised version of the statute required a two-thirds vote. Id. Section 24–21–645 was revised to require a two-thirds vote of the Parole Board to grant parole in 1986. Appellant committed the offense for which he was incarcerated in 1992. Accordingly, there can be no ex post facto violation under Barton.

Based upon the foregoing, the decision of the Department is **AFFIRMED.**

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

April 30th, 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 hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 30 day of April 2015
By: [signature]
Judicial Law Clerk

15

CERTIFICATE OF COUNSEL

APPELLANT, PROCEEDING PRO-SE, CERTIFY THAT THE RECORD ON APPEAL CONTAINS ALL MATERIAL PROPOSED TO BE INCLUDED BY ANY OF THE PARTIES AND NOT ANY OTHER MATERIAL.

/s/ Jimmy Long
JIMMY LONG #190708
McCI F-4 B-SIDE
386 REDEMPTION WAY
McCORMICK, SC 29899

APPELLANT, PRO-SE