

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Willie Asbury, #200788,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Probation,)
 Parole and Pardon Services,)
)
 Respondent.)

Docket No. 16-ALJ-15-0045-AP

ORDER

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the Notice of Appeal filed October 18, 2016, by Willie Asbury (“Appellant”), an inmate in the custody of the South Carolina Department of Corrections (“SCDC”). Appellant is appealing the decision of the South Carolina Department of Probation, Parole and Pardon Services (“Department” or “Respondent”), which denied Appellant’s parole application based on its findings of fact: “Nature And Seriousness Of Current Offense[.]” “Indication Of Violence In This Or Previous Offense[.]” and “Prior Criminal Record Indicates Poor Community Adjustment[.]”

BACKGROUND

Appellant appeared before the Parole Board (“Board”) for a parole hearing on August 10, 2016. Appellant was denied parole on the bases of “Nature and Seriousness of Current Offense[.]” “Indication Of Violence In This Or Previous Offense[.]” and “Prior Criminal Record Indicates Poor Community Adjustment[.]” The Board, in its Notice of Rejection, stated that it considered the “factors published in Department Form 1212” and the factors outlined in S.C. Code Ann. § 24-21-640 (Supp. 2016). Additionally, the Board considered the “actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1)[.]”

Appellant filed his Notice of Appeal before the ALC on October 18, 2016. Appellant argues that the Board incorrectly denied his parole and erred in not allowing him to submit to a psychological evaluation prior to his parole hearing.

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DISCUSSION

An individual has a right for ALC to review 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 Services*, 352 S.C. 594, 598-99, 576 S.E.2d 146, 149-50 (2003); see also *Sullivan v. S.C. Dep't of Corrections*, 355 S.C. 437, 443, 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 (2007), the statute does not create a liberty interest in the granting of parole itself. *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 n. 4.

Therefore, appeals arising from the Board's decision denying parole are not reviewable by 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 Services*, 377 S.C. 489, 661 S.E.2d 106 (2008); S.C. Code Ann. § 1-23-600(D) (Supp. 2016).

When acting in an appellate capacity, the ALC must apply the criteria of S.C. Code Ann. § 1-23-380(5) (Supp. 2016), which reads:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

As noted in *Cooper*, an inmate “has no right to be paroled; however, [an inmate] does have a right to require the [Parole] Board to adhere to statutory requirements in rendering a decision.” *Cooper* at 499, 661 S.E.2d at 112. The Parole Board must issue “orders that are sufficiently detailed for

the ALC to conduct appellate review, limited to the Board's adherence to section 24-21-640, of decisions denying parole." *Id.* at 500, 661 S.E.2d at 112.

The Board has the exclusive authority to grant or deny applications for parole. *Cooper* at 496, 661 S.E.2d at 110. The ALC's role is limited by statute and the rulings of the South Carolina Supreme Court to assuring that the Board carries out, to the letter of the law, its statutorily mandated duties. To this end, the South Carolina Supreme Court has determined that the ALC has limited jurisdiction to review the Board's decisions that implicate "a liberty interest sufficient to require at least minimal due process." *Furtick* at 598, 576 S.E.2d at 149.

Likewise, the South Carolina Supreme Court has observed that the Legislature created the Board "to operate within certain parameters" but did not intend "for it to render decisions without any means of accountability."¹ *Cooper* at 499, 661 S.E.2d at 111. Accordingly, the Supreme Court in *Cooper* advised the Board to issue "orders that are sufficiently detailed for the ALC to conduct appellate review, limited to the Board's adherence to section 24-21-640, of decisions denying parole." *Id.* at 500, 661 S.E.2d at 112. It also required the Board and the ALC to comply with the Administrative Procedures Act and specifies that an agency adjudication, as directed by S.C. Code Ann. § 1-23-350 (Supp. 2016), "shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." *Id.*

Subsequently, the South Carolina Supreme Court, observing that *Cooper* was being misinterpreted, reiterated that if the Board stated "that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212, and that if the Board complies with this procedure, the decision will constitute a routine denial of parole...." *Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009).

¹ Article I, Section 22 of the South Carolina Constitution states:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and **he shall have in all such instances the right to judicial review.** [Emphasis added].

Appellant argues that the Board erred in not allowing him to submit to a psychological evaluation prior to the parole hearing. S.C. Code Ann. § 24-21-610 reads:

Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist.

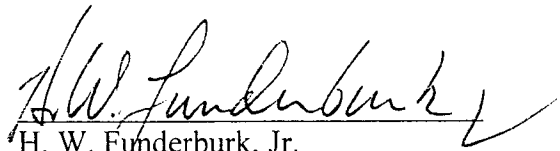
The Board interprets this statute to require an inmate who has served at least ten consecutive years in prison and is granted conditional parole to be given a mental evaluation by a duly qualified psychiatrist or psychologist. *See Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) (Courts give “deference to an administrative agency's interpretation of an applicable statute or its own regulation.”). Therefore, Appellant was not entitled to a mental evaluation prior to the parole hearing.

In the case at hand, the Department has complied with the South Carolina Supreme Court’s ruling in *Compton*, and therefore the ALC’s review of this matter is limited. Because the Board considered the mandatory criteria of fifteen factors published in Form 1212, the factors outlined in S.C. Code Ann. § 24-21-640, and the risk assessment required under S.C. Code Ann. § 24-21-10 (F)(1) (Supp. 2016), the ALC must affirm the decision. It is therefore,

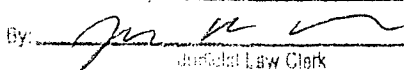
ORDERED that the decision of the Parole Board is **AFFIRMED**.

AND IT IS SO ORDERED.

Columbia, South Carolina
March 13, 2017


H. W. Funderburk, Jr.
Administrative Law Judge

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 13th day of March 2017
By: 
Administrative Law Clerk

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