STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Carnie Norris, 227226,	Docket No.: 16-ALJ-15-0053-AP
Appellant,	
vs.	**ORDER**
South Carolina Department of Probation, Parole and Pardon Services,	
Respondent.	

RECEIVED
APR 26 2017
SC Court of Appeals

FILED
APR 17 2017

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or court) pursuant to the appeal of Carnie Norris (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On November 7, 2016, the South Carolina Department of Probation, Parole and Pardon Services (Department) issued a final decision letter determining that the Appellant is ineligible for parole because he falls under the 85% rule. The Department determined that the Appellant is ineligible for parole based upon his conviction for Armed Robbery. The Appellant was convicted as indicted of Armed Robbery on July 7, 2009, pursuant to S.C. Code Ann. § 16-11-330. He was sentenced to twenty-eight (28) years. On November 18, 2016, the Appellant filed a Notice of Appeal with this court challenging the Department's decision. Upon careful consideration of the record on appeal and briefs of the parties, the Department's decision is affirmed.

ISSUE ON APPEAL

Whether the Department erred in determining that Appellant is ineligible for parole.

STANDARD OF REVIEW

The court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals), and *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). The *Al-Shabazz* decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Because being granted parole is a privilege and

not a right, the routine denial of parole does not implicate such a liberty interest; however, the denial of eligibility for parole does involve such a liberty interest, and thus is a matter properly before the ALC for review. *See James v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 376 S.C. 392, 395-96, 656 S.E.2d 399, 401–02 (Ct. App. 2008); *see also Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003).

When reviewing a decision of the Department, the ALC sits in an appellate capacity. *See Furtick*, 352 S.C. at 599, 576 S.E.2d at 149; *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754. Under the appellate standard of the Administrative Procedures Act, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). The court may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

Appellant argues that the Department's decision violates the statutes applicable to his case and precedent. The Court disagrees. A review of the relevant statutes supports the Department's determination that Appellant is ineligible for parole.

In determining whether an inmate is eligible for parole, several different statutes must be reviewed. The foundational rules of parole are contained in Title 24 of the South Carolina Code. Specifically, Section 24-21-610 sets the minimum amount of time that must be served of a sentence before an inmate reaches eligibility. *See* S.C. Code Ann. § 24-21-610 (2007). However, these baseline rules have been modified by other subsequently enacted or amended statutes. Section 24-13-100, enacted in 1995, defines Class A, B, and C felonies as "no parole offenses." *Id.* at § 24-13-100. When an inmate's crime is a no-parole offense, the inmate is not eligible for "parole" consideration. *See id.* at § 24-21-30; *see also Bolin v. S.C. Dep't of Corrs.*, 415 S.C. 276, 283, 781 S.E.2d 914, 917 (Ct. App. 2016) ("It is without doubt that the statutory definition for the term 'no-parole offense' in section 24-13-100, i.e., 'a class A, B, or C felony . . . ,' simply describes the types of offenses for which the offender is not eligible for parole."). Instead, the inmate must

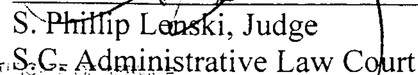
complete a community supervision program. S.C. Code Ann. § 24-21-30 (2007). An inmate becomes eligible for the community supervision program after completion of at least eighty-five (85) percent of the actual term of imprisonment imposed. *Id.* at § 24-13-150 (Supp. 2016). This is sometimes referred to as the 85% rule.

The Appellant was convicted of a Class A felony and thus falls under the 85% rule. *See* S.C. Code Ann. § 16-1-90(A) (2015) (defining "[r]obbery while armed with a deadly weapon" pursuant to Section 16-11-330(A) as a Class A felony). However, the Appellant argues that language specific to his offense overrides this law. In support, he cites *Bolin*, which held that a more recent, specific offense statute that included a "notwithstanding" provision repeals any conflicting older and more general statutory language. The armed robbery statute provides: "[a] person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence." S.C. Code Ann. § 16-11-330(A) (2015). The Appellant argues that this more specific statute grants him parole eligibility. However, the Appellant misapprehends the analysis in *Bolin*. Although, this older statute[1] might be considered more specific, it does not conflict with the newer statutory language[2] providing for Class A felony parole ineligibility. Section 16-11-330(A) does not in fact provide for parole eligibility, but instead places a limitation on it. The no parole offense language further limits parole ineligibility. Thus, not only is there not more recent language, there is no conflict. Because there is no statutory construction requiring disregard for the no parole provisions, they still apply and the Appellant in ineligible for parole.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the agency decision is **AFFIRMED.**

AND IT IS SO ORDERED.



April 17, 2017
Columbia, South Carolina

S. Phillip Lenski, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this notice 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 17th day of April 2017
By: ____________
Judicial Law Clerk

[1] The language regarding parole eligibility predates the 1985 edition of Title 16.
[2] *See* 1995 S.C. Act 83.