STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Anthony Enriquez, 215961, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No. 16-ALJ-15-0049-AP **ORDER**

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC or court) pursuant to the appeal of Anthony Enriquez (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On September 22, 2016, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) had rejected him for parole. The Appellant wrote to ask for reconsideration and received a response stating that there is no appeal process for the routine denial of parole.

ISSUE ON APPEAL

1. Whether the Department complied with procedural due process requirements when denying the Appellant parole.

STANDARD OF REVIEW

The court's jurisdiction to review 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 parole is a privilege and not a right, the routine denial of parole does not constitute such a liberty interest. *See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008) (citation omitted). However, where the Department "deviates from or renders its decision without consideration of

the appropriate [statutory] criteria, . . . it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. Therefore, the court reviews this matter only for violations of statutory procedure or procedural due process and does not review the Board's substantive decision to deny the Appellant parole.

When reviewing a decision of the Department, the ALC sits in an appellate capacity. *See id.*, 377 S.C. at 497, 661 S.E.2d at 110; *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. 2016). 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

Parole is a privilege, not a right. *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 104 (2008) (citing *Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 443 n.4, 586 S.E.2d 124, 127 n.4 (2003)). The discretion to grant parole lies solely with the Board. *Id.*, 376 S.C. at 649, 659 S.E.2d at 104–05 (citing *State v. McKay*, 300 S.C. 113, 115, 386 S.E.2d 623, 623–24 (1989)). If, in denying parole, the Board follows proper procedure and issues a routine denial, then summary dismissal of the case may be appropriate. *See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008); *see also Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). The proper procedure includes considering the factors outlined in South Carolina Code Section 24-21-640 and the factors listed in the Department's parole form. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112. Additionally, the Board must utilize an actuarial risk and needs assessment tool, known as COMPAS, as prescribed in South Carolina Code Section 24-21-10(F). The Appellant's first two arguments do not raise statutory procedural requirements or constitutional procedural due process arguments and thus must be dismissed pursuant to *Cooper* and *Compton*.

However, the Appellant's third argument concerns a constitutional argument that this court chooses to address. The Appellant committed his offense when he was seventeen (17) years old. He has remained in prison since that age and is now forty (40) years of age. He avers that he has taken steps to rehabilitate himself, including seeking education and employment. He argues that life expectancies are reduced for juveniles sentenced to life in prison and that without a meaningful opportunity for parole he will die in prison. In support of his position, the Appellant cites constitutional case law from the United States Supreme Court and the Supreme Court of New York.

In *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455 (2012), the United States Supreme Court held that juveniles cannot be sentenced to life without the possibility of parole unless an individualized sentencing hearing is held. The Court stated, "[w]e have by now held on multiple occasions that a sentencing rule permissible for adults may not be so for children." *Id.*, 132 S. Ct. at 2470 (citations omitted). Citing prior precedent, the Court stated that "[a]n offender's age . . . is relevant to the Eight Amendment," so "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Id.*, 132 S. Ct. at 2466 (internal quotation marks and citation omitted).

In *Miller*, the Court reasoned that "the distinctive attributes of youth diminish the penological justification for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes . . ." *Id.* 132 S. Ct. at 2465. A sentence to life without parole "forswears altogether the rehabilitative ideal" and "reflects 'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for change." *Id.* (*quoting Graham v. Florida*, 560 U.S. 48, at 74, 130 S. Ct. 2011 at 2030 (2010)). Both common sense and science bear out that an adolescent's moral culpability is lessened and "the case for retribution is not as strong ...." because there are fundamental differences between juvenile minds and adult minds. *Id.*, 132 S. Ct. at 2465 (internal quotation marks and citation omitted). Adolescents, generally, are prone to "transient rashness, proclivity for risk, and inability to assess consequences" due to a lack of neurological development. *Id.* After neurological development occurs, however, just "a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior" and, in most cases, an adolescent's "deficiencies will be reformed." *Id.* (*quoting Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183 (2005)). Likewise, the case for deterrence is much less persuasive, "because the same characteristics that render juveniles less

culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." *Id.* (internal quotation marks and citation omitted).

In applying *Miller*, the South Carolina Supreme Court noted that a "sentencer must be allowed to consider that youth is more than a chronological fact, and carries with it immaturity, irresponsibility, impetuousness, and recklessness, factors as transient as youth itself." *Aiken v. Byars*, 410 S.C. 534, 539, 765 S.E.2d 572, 574-75 (2014) (internal punctuation and citation omitted). Quoting *Miller* the South Carolina Supreme Court stated, "[a]lthough a court may still sentence a juvenile to life without parole after an individualized hearing, the court cautioned that given children's diminished culpability and heightened capacity for change the appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. *Id.* (internal quotation marks and citation omitted).

Considering the reasoning in *Miller* led the New York Supreme Court, Appellate Division to hold that, in considering an inmate for parole, the board must consider the significance of the inmate's youth and its attendant circumstances at the time of the commission of the crime. *Matter of Hawkins v. N.Y. State Dep't of Corrs. & Cmty. Supervision*, 140 A.D.3d 34, 30 N.Y.S.3d 397 (N.Y. App. Div. 2016). The New York Supreme Court noted that "[a]lthough the [U.S. Supreme] Court has not specifically reviewed a case regarding a parole determination for a juvenile homicide offense, it is axiomatic that such an offender still has a substantive constitutional right not to be punished with life imprisonment for a crime 'reflecting transient immaturity.'" *Id.*, 140 A.D.3d at 38 (quoting *Montgomery v. Louisiana*, 136 S. Ct. 718, 735 (2016), *as revised* (Jan. 27, 2016) (holding, in accord with *Aiken v. Byars*, that *Miller* is retroactive). The court held, "[f]or those persons convicted of crimes committed as juveniles who, but for a favorable parole determination will be punished by life in prison, the Board must consider youth and its attendant characteristics in relationship to the commission of the crime at issue." *Id.*, 140 A.D.3d at 39 (citations omitted).

This court finds the reasoning in *Hawkins* persuasive. The Appellant's argument that the maturity of a juvenile who has taken steps to rehabilitate himself in prison should be considered by the Board has merit, in the court's opinion. Currently, the Board does not consider these factors. However, no existing United States or South Carolina authority requires the South Carolina Parole Board to consider age or immaturity in its decisions. Because, the Appellant received a routine denial of parole consistent with the current statutory and procedural due process requirements under South Carolina law, the court must affirm the Department's decision.

ORDER

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

AND IT IS SO ORDERED.

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

April 26, 2017
Columbia, South Carolina

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SC Court of Appeals

CERTIFICATE OF SERVICE

I, Edye U. Moran, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Edye U. Moran
Judicial Law Clerk

April 26, 2017
Columbia, South Carolina