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MAY 11 2017

SC Court of Appeals

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Derrick Woods, #197161,

Docket No. 16-ALJ-15-0052-AP

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

ORDER FILED

APR 12 2017

ADMIN. LAW COURT

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC or court) pursuant to the appeal of Derrick Woods (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On October 13, 2016, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified the Appellant that the South Carolina Parole Board (Board) had rejected his application for parole. The Appellant challenges the Board's denial of parole on the grounds that the Department's decision was in violation of constitutional or statutory provisions, clearly erroneous, and arbitrary and capricious.¹

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

¹ The Appellant also references the alleged unconstitutionality of his sentence and attached exhibits to his brief. The court does not address any issue, such as the sentence of the circuit judge, which falls outside the purview of the ALC. See *Bloodgood v. Garraghty*, 783 F.2d 470, 472 (4th Cir. 1986) ("A parole proceeding is not a proper forum for an inmate to contest the legal sufficiency of past convictions."). Further, pursuant to the standard of review in this matter, the court confines its examination of this case to the record on appeal and is barred from considering the Appellant's attachments. S.C. Code Ann. § 1-23-380(4) (Supp. 2016).

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 is 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) (Supp. 2016).

In this case, the Appellant challenges the denial of his parole on the grounds that the Board failed to consider the factors in Form 1212.² However, the Department's decision states that the factors in Form 1212 were considered in denying the Appellant parole. The ALC's review in a routine denial of parole is limited:

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.

Cooper, 377 S.C. at 500, 661 S.E.2d at 112. Because the Board issued a routine denial decision in this matter, the court concludes that dismissal is appropriate.

ORDER

IT IS THEREFORE ORDERED that this appeal is **DISMISSED**, with prejudice.
AND IT IS SO ORDERED.

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action on all parties to this cause by depositing a copy of the same in the United States Mail for delivery by first class mail service addressed to S. Phillip Lenski, Judge
This 12 day of April, 2017
[Signature]
Judicial Law Clerk

April 12, 2017
Columbia, South Carolina

² Specifically, the Appellant argues that the Department was responsible for contacting members of his family regarding his parole hearing so that the Board could consider their support as a factor in reviewing his case. However, the Appellant does not cite any authority for his argument that the Department is responsible for making these arrangements, nor is the court aware of any authority. Furthermore, there is no evidence that the Appellant was denied the opportunity to contact his family and present testimony at the hearing.

STATE OF SOUTH CAROLINA
Administrative Law Court
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COLUMBIA, SOUTH CAROLINA 29201



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EVANS CORRECTIONAL INSTITUTION
610 HWY 9 WEST
BENNETTSVILLE, SC 29512

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SC Court of Appeals



PROOF OF SERVICE

I, DERRICK B. WOODS CERTIFY UNDER PENALTY OF PERJURY THAT ON THE BELOW LISTED DATE I SERVED THE FOREGOING LETTER ON THE OFFICE ALSO LISTED BELOW BY DEPOSITING A COPY OF SAID LETTER IN THE U. S. MAIL VIA THE PRISON MAILROOM POSTAGE PREPAID ADDRESSED TO:

JENNY ABBOT KITCHINGS, CLERK
SOUTH CAROLINA COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

D B Woods

DERRICK B. WOODS, 197161
EVANS CORRECTIONAL INST.
610 HIGHWAY 9 WEST
BENNETTSVILLE SC 29512

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 9 DAY OF MAY 2017

D Quill

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2/17/24

DERRICK B. WOODS, 197161
EVANS CORRECTIONAL INSTITUTION
610 HIGHWAY 9 WEST, FB B-119
BENNETTSVILLE SOUTH CAROLINA 29512

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RE: DERRICK B. WOODS, #197161 V. SCDPPPS
APPELLATE CASE NO. 2017-001066


DEAR MS. KITCHINGS :

I AM IN RECEIPT OF YOUR LETTER DATED MAY 3, 2017 AND RECEIVED BY ME MAY 8, 2017. ACCORDINGLY, PLEASE FIND ENCLOSED THE ORDER AND/OR JUDGEMENT BEING CHALLENGED ON APPEAL.

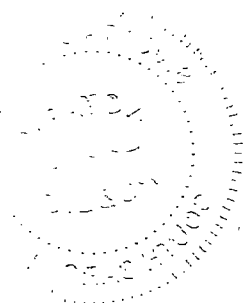
I FURTHER INFORM YOU THAT I AM INDIGENT AND BECAUSE OF MY POVERTY I AM UNABLE TO PAY THE FILING FEE. THIS SHOULD CORRECT THE DEFICIENCIES YOU CITED. PLEASE INFORM ME IF ANYTHING MORE IS REQUIRED.

YOUR TIME, ATTENTION AND ASSISTANCE WITH THIS MATTER IS GREATLY APPRECIATED. PLEASE RESPOND AS SOON AS POSSIBLE.

RESPECTFULLY, - - -


DERRICK B. WOODS

C: FILE




DEARTRICK B. WOODS, 197161
EVAN'S CORRECTIONAL INSTITUTION
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