

history, prison disciplinary record and/or criminal record; (2) the parole consideration criteria published in the Department Form 1212; the factors outlined in S.C. Code Ann. § 24-21-640; and (4) the actuarial risk and needs assessment factors pursuant to Section 24-21-10(F)(1). The Board weighed these considerations and denied parole based on the nature and seriousness of the current offense and on the fact that the criminal record indicated poor community adjustment.

Appellant filed his appeal on March 17, 2017. In his brief, Appellant argues that in denying him parole, his substantial rights have been prejudiced; that the Department violated his constitutional rights and statutory rights; that the Department followed unlawful procedure; and that the decision was an error of law and clearly erroneous.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003) and *Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008). When reviewing the Department's decisions in inmate parole matters, the ALC sits in an appellate capacity. *Furtick*, 352 S.C. at 599; 576 S.E.2d at 149; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2016) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2016). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly arbitrary or affected by an error of law. *See Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). Finally, "when appealing an agency's decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced . . ." *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008).

DISCUSSION

The Department informed Appellant that he was denied parole due to the "Nature and Seriousness of Current Offense" and "Criminal Record Indicates Poor Community Adjustment."

Appellant asserts that these factors were considered by the Legislature when drafting the punishments for these crimes and that the Department was usurping the authority of the Legislature in making these determinations.

S.C. Code Ann. §24-21-640 (Supp. 2016) provides:

The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

Without a doubt, the Board “is the sole authority with respect to decisions regarding the grant or denial of parole.” *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. Clearly, the Legislature intended that the Board look at the factors it provides in a statute and thus would not consider the Board to be usurping its authority when the Board does so. According to *Cooper*, this Court’s review is limited to ascertaining whether the Board “followed proper procedure.” *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112. In other words, the Court may summarily dismiss Appellant’s appeal unless it determines that the Board considered inappropriate factors in making its determination.

Here, in its parole-denial letter, the Board expressly stated that it considered “all of the factors published within Department Form 1212 (criteria for parole consideration) as well as the factors outlined in Section 24-21-640 of the South Carolina Code of Laws” in reaching its decision. The Board stated that its decision was based on the following four factors: (1) nature and seriousness of current offense; and (2) criminal record indicates poor community adjustment. Both of these factors fall within the scope of the criteria set forth in Section 24-21-640 and the Board’s parole form.² Appellant nevertheless claims that the Board is considering factors that were already

² The Board’s parole form lists the following non-inclusive criteria: (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 educational 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,

determined to be part of sentencing. However, the Board may not grant parole unless it is satisfied that all of the criteria set forth in Section 24-21-640 are met. S.C. Code Ann. § 24-21-640. The two reasons given for denying parole were clearly factors the Legislature intended the Board to consider.

Additionally, Appellant argues that the Department should set forth the specific findings of fact when denying parole. The South Carolina Supreme Court in *Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 685 S.E. 2d 175 (2009) upheld a very similar rationale as the one followed in this case and found that the Department was not required to include "findings of fact and conclusions of law separately stated." Rather, the Court found it "sufficient under *Cooper*" for "a **routine denial** of parole" (emphasis added) that "the Parole Board clearly stated in its notice of rejection that it considered the statutory criteria and the criteria set forth in Form 1212" 385 S.C. at 478-79, 685 S.E.2d at 176-77. Because this is precisely how the Board rendered its decision in this case, I conclude that the Board followed the proper procedure.

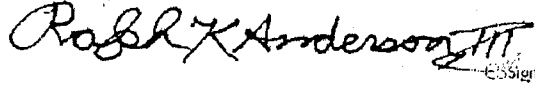
Moreover, Appellant has the burden of proving that the Board erred. *See Mitchell, supra*. The Record reflects that the Board considered all that it is required to consider under *Cooper* and *Compton*, and it is not for this Court to invade the province of the Board's sole authority to make parole-eligibility determinations by second-guessing the weight it gave to the factors it considered. *See Cooper*, 377 S.C. at 496, 661 S.E.2d at 110 ("The parole board . . . has the sole authority to determine parole eligibility . . .") (citation omitted); *see also* S.C. Code Ann. § 24-21-610 (2007) (setting forth the Parole Board's authority to make parole-eligibility determinations); S.C. Code Ann. § 1-23-600(D) (Supp. 2016) ("An administrative law judge shall not hear an appeal . . . involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.").

Accordingly, the Court concludes that the Board followed the proper procedure in denying parole to Appellant.

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; and (15) Other factors considered relevant in a particular case by the Board. *See Cooper*, 377 S.C. at 494 n.2, 661 S.E.2d at 109 n.2.

ORDER

IT IS THEREFORE ORDERED that the decision of the Department is **AFFIRMED**.
AND IT IS SO ORDERED.

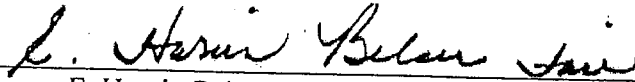
A handwritten signature in black ink that reads "Ralph King Anderson, III". The signature is written in a cursive style. To the right of the signature, there is a small, faint logo that says "eSign".

Ralph King Anderson, III
Chief Administrative Law Judge

August 9, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, 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).



E. Harvin Belser Fair
Judicial Law Clerk

August 9, 2017
Columbia, South Carolina