STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Timothy L. Marsh, 145874, Appellant, vs. South Carolina Department of Probation, Parole & Pardon Services, Respondent.	)	Docket No.: 17-ALJ-45-0002-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to an appeal filed by Timothy L. Marsh ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. On January 11, 2017, the South Carolina Department of Probation, Parole and Pardon Services ("the Department") notified Appellant that the South Carolina Parole Board ("the Board") denied him parole. On January 30, 2017, Appellant filed a Notice of Appeal with the Court seeking judicial review of the Board's denial of parole. Upon careful consideration of the record on appeal and briefs of the parties, the Department's decision is affirmed.

DISCUSSION

In Al-Shabazz v. State, the South Carolina Supreme Court held inmates have a right to administrative review, in accordance with section 1-23-380[1] of the South Carolina Code, in two circumstances: "(1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). The second circumstance includes the permanent denial of parole eligibility pursuant to section 24-21-640 of the South Carolina Code. See Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs., 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003) ("[T]the *permanent* denial of parole *eligibility* implicates a liberty

[1] The Court's review is limited to the record, absent irregularities in the procedure of the agency, and the Court may modify or reverse the decision of the agency only when substantial rights of the Appellant have been prejudiced. S.C. Code Ann. §§ 1-23-380(4) and (5) (Supp. 2016).

interest sufficient to require at least minimal due process."). However, the statute creates no such liberty interest in the routine denial or granting of parole. Id. at 598 n.4, 576 S.E.2d at 149 n.4. Therefore, while the permanent denial of parole eligibility constitutes a liberty interest that is reviewable by this Court, the routine denial of parole is, generally, not a sufficient liberty interest to warrant review.

However, a routine denial of parole can bestow jurisdiction on this Court if, in denying parole, the Department fails to follow the statutorily required parole criteria, and this failure renders its decision tantamount to a permanent denial of parole eligibility. See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs., 377 S.C. 489, 502, 661 S.E.2d 106, 113 (2008) ("If a Parole Board fails to consider and apply the statutorily-created parole criteria, it has the effect of rendering an inmate parole ineligible, which under Furtick warrants review by the ALC."). The "criteria" referenced in Cooper are "the factors outlined in section 24-21-640 and the fifteen factors published in [the Department's] parole form." 377 S.C. at 500, 661 S.E.2d at 112. Under Cooper, as long as the Board "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 . . . 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." Id.

In this appeal, Appellant argues the Board's decision is in error for five reasons. Appellant argues the following: (1) the Board's decision was arbitrary and capricious because the Board did not follow the correct criteria in deciding whether to grant Appellant's parole; (2) the Board willfully denied Petitioner a realistic opportunity to participate in the parole program by relying on immutable factors in determining Appellant's eligibility; (3) the Board failed to consider or give appropriate weight to favorable information supporting parole; (4) the Board based their denial on erroneous information in the Record; (5) the Board abused its authority when it refused to grant Appellant's request to postpone the parole hearing.

As to Appellant's first three grounds, he claims the Department's decision effectively denied him parole eligibility because it denied him parole based on three immutable factors, namely, "the nature and seriousness of the current offense," "indication of violence in this or previous offense," and "use of deadly weapon in this or previous offense." Appellant further argues that the Board's reliance on these immutable factors, without appropriate consideration and

weighing of other criteria and information favorable to Appellant, constitutes a violation of his state and federally created liberty interest.

In this instance, there is no error in the Board's decision because it did not base its decision solely on the three unchanged factors of which Appellant complains. Part of the issue in Cooper was that the Board only considered immutable factors without considering other factors required by section 24-21-640 and the Department's fifteen factor form. See Cooper, 377 S.C. at 502, 661 S.E.2d at 113 ("In the instant case, the Parole Board apparently failed to consider the requisite factors and, instead, based its decision on certain fixed factors that are unaffected by any rehabilitation efforts on the part of Cooper."). To remedy this, the supreme court held the Board must show that as part of the review the Board considered the criteria outlined in section 24-21-640 and in the Department's fifteen factor form. Id. at 500, 661 S.E.2d at 112. Here, the letter of denial clearly shows that in addition to three immutable factors, the Board considered (1) the Department's fifteen factor criteria published in Department Form 1212 (Criteria for Parole Consideration), (2) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (3) the actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F)(1) of the South Carolina Code of Laws prior to denying Appellant's parole. Because the Board has shown that its decision was not solely based on non-changeable, immutable factors and that it met the minimum due process requirements of Cooper, I conclude that this constitutes a routine denial of parole, and this Court has limited authority to review the decision to determine whether the Board followed proper procedure. See id.

Appellant also argues that the Board's decision refers to the consideration of "prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record", and because none of these applies to him, the Board considered erroneous information when reviewing his parole request. However, the Board's Findings of Fact clearly shows that the decision to reject Appellant's parole request was based on factors related to the crime that resulted in his incarceration. The Court recognizes that Appellant has nothing in his prison record besides his conviction from 1998.[2] Moreover, the substantive decision of whether Appellant should be granted parole does not fall to this Court, but rather is the province of the Parole Board. See James

[2] The Court notes that the Department, in its Respondent's Brief, acknowledges that Appellant does not have any prison disciplinary convictions or a prior criminal history.

v. S.C. Dep't of Prob., Parole & Pardon Servs., 376 S.C. 392, 395-396, 656 S.E.2d 399, 401-402 (Ct. App. 2008) (explaining that the ALC only reviews inmate cases implicating a liberty interest; and because parole is a privilege, not a right, the grant or denial of parole does not implicate a liberty interest).

Lastly, Appellant contends the Board abused its authority when it refused to grant his request to postpone the parole hearing. I conclude that the board did not abuse its authority. See Williams v. Bordon's, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980) (citation omitted) ("It has long been the rule in this State that motions for a continuance are addressed to the sound discretion of the trial judge, and his ruling will not be upset unless it clearly appears that there was an abuse of discretion to the prejudice of appellant.").

Based upon the foregoing,

IT IS HEREBY ORDERED that the decision of the Department is **AFFIRMED.**

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

September 25, 2017
Columbia, South Carolina

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 it by causing a copy thereof, in the United States mail, postage paid, or via the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 25 day of September 2017
By: _____
Judicial Law Clerk