

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rodney Mollins, #210264,

Docket No. 17-ALJ-15-0023-AP

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

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ORDER SC Court of Appeals

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC or court) pursuant to the appeal of Rodney Mollins (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On May 25, 2017, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified the Appellant that the South Carolina Parole Board (Board) had unanimously rejected him for parole. On June 12, 2017, the Department sent a letter to the Appellant noting that there is no appeals process for the routine denial of parole and addressing his concern about the presence of a quorum at his hearing. On June 21, 2017, the Appellant filed an appeal with the ALC challenging the Board's decision. After review of the arguments of the parties, the court affirms the decision of the Department.

ISSUES ON APPEAL

1. Whether the Department improperly considered immutable factors in denying the Appellant parole.
2. Whether the Board erred in not considering that the Appellant was a juvenile when he offended.
3. Whether the Appellant's due process rights were violated because the Board met with six members.

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

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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. 2017). 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. 2017). 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).

In this case, the Appellant challenges the denial of parole on the basis that he cannot change the factors the Board found as fact in its decision and that because these facts are immutable, the Board has essentially made him ineligible for parole. In this case the denial letter states that the Board considered all the appropriate factors. If the Board states that it has considered the factors in Form 1212 and Section 24-21-640 and has utilized the risk assessment tool, then the court has limited ability to further review the Department's decision.

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.

Cooper, 377 S.C. at 500, 661 S.E.2d at 112; *Compton*, 385 S.C. at 479, 685 S.E.2d at 177. The record reflects that the Board routinely denied the Appellant parole after considering the currently required factors.

The Appellant argues that the Board erred by not considering his age at the time he offended as part of its analysis. The Appellant states that he committed the offense he is currently incarcerated for when he was seventeen (17) years old. 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 courts in other states.¹

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

¹ A summary of the litigation, scholarship, and precedent related to the assertion that parole boards should consider the age of the inmate at the time a crime was committed can be found in a student note entitled *Cruel and Unusual Parole*. See Matthew Drecun, Note, 95 Tex. L. Rev. 707 (2017). Currently, there is no precedent in South Carolina to support the assertion.

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). The Court reasoned, “the case for retribution is not as strong with a minor as with an adult.” *Id.*, 132 S. Ct. at 2465 (internal quotation marks and citation omitted). Nor is the case for deterrence, “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 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 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 of the New York court 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, to the court's knowledge, the factors considered by the Board do not include this issue. 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 cannot impose new requirements upon the Department's decision.

The Appellant further argues that a sufficient number of Board members were not present at his hearing. The Appellant asserts that only six of the seven members of the Board were present at his hearing. The record shows that five members voted against parole, while one voted for parole. The court can find no authority to support the proposition that all seven members of the Board to be present to conduct a parole hearing. Indeed, the state Supreme Court discussed the constituency of the Board and the required votes count for parole at length in the 2013 *Barton* decision. See *Barton v. S.C. Dep't of Prob. Parole & Pardon Servs.*, 404 S.C. 395, 745 S.E.2d 110 (2013). In that case, the inmate was, similarly to the Appellant, convicted of a violent crime. See S.C. Code Ann. § 16-1-60 (2015). The statute governing parole orders states:

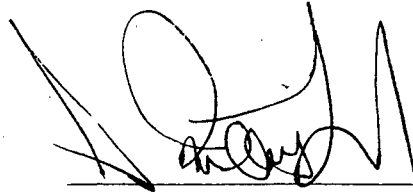
(A) The board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case ninety days prior to the effective date of the parole; however, at least two-thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. A provisional parole order shall include the terms and conditions, if any, to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole.

S.C. Code Ann. § 24-21-645(A) (Supp. 2017). Because the statute does not specify a quorum, the Court held that the common-law rule of a simple majority applied. *Barton*, 404 S.C. at 417-18, 745 S.E.2d at 122. Thus, a violent offender need only receive two-thirds of the votes of the present members of the Board. A hearing attended by six members comports with the simple majority rule in the *Barton* holding. Appellant received one-sixth of the vote and a routine denial decision, and therefore, does not qualify for parole.

ORDER

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

AND IT IS SO ORDERED.



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

December 21, 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 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 21 day of Dec 2017

By: _____
Staff Counsel