STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Perry Deveaux, #109601, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	)	Docket No. 17-ALJ-15-0031-AP **ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or Court) on an appeal filed by Perry Deveaux (Appellant), from a decision of the South Carolina Department of Probation, Parole and Pardon Services (Department) denying him parole.

FACTUAL/PROCEDURAL HISTORY

Appellant is in the custody of the South Carolina Department of Corrections after being sentenced to life imprisonment for the offense of murder. The murder took place in November 1975, but Appellant was not charged with the murder until several years later.[1] He pled guilty to the charge on February 24, 1982. At the time of Appellant's offense, South Carolina law provided that a person serving a life sentence for murder was eligible for parole upon the service of ten years' imprisonment. Since 1992, Appellant has appeared before the Parole Board (Board) a total of twenty-two times and has been denied parole every time he has appeared. Appellant last appeared before the Board on October 18, 2017, when the Board voted unanimously to deny Appellant parole. The Board gave the following reasons for denying parole: (1) the nature and seriousness of the current offense; (2) an indication of violence in this or a previous offense; (3) a use of deadly weapon in this or a previous offense; and (4) a failure to successfully complete a community supervision program.[2]

---

[1] Appellant was arrested years after the crime based upon information supplied by a confidential informant implicating him in the murder.

[2] In his brief, Appellant questioned the finding of failure to complete a community supervision program. The Department agrees that this reason was cited in error. Nevertheless, the Department argues this was not the only reason for the denial of parole, and therefore Appellant was not prejudiced and any error is harmless.

After the Board denied Appellant parole on October 18, 2017, he timely filed this appeal with the ALC. The Department filed the Record on Appeal on January 11, 2018. On February 14, 2018, Appellant filed his brief as well as a Motion to Supplement the Record. The Department did not object to the Motion to Supplement the Record and filed its brief on March 2, 2018.[3]

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. South Carolina Department of Probation, Parole and Pardon Services.*, 352 S.C. 594, 576 S.E.2d 146 (2003) and *Cooper v. South Carolina Department of Probation, Parole and Pardon Services.*, 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 section 1-23-380 of the South Carolina Code). 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

Appellant asserts that the denial of parole violated the Eighth Amendment of the United States Constitution and Article 1, section 15 of the South Carolina Constitution. Appellant also

[3] In its brief, the Department contends that the documents Appellant submitted in the Supplemental Record provided mitigating evidence already considered by the Board. In addition, the Department maintains there was no argument regarding the criteria the Board considered.

asserts the Board improperly failed to consider the risk assessment he had prepared for Board review.[4]

The Eighth Amendment of the United States Constitution provides "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. XIII. The South Carolina Constitution states:

> All persons shall be, before conviction, bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, or with violent offenses defined by the General Assembly, giving due weight to the evidence and to the nature and circumstances of the event. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

S.C. Const. art I, §15.

It is unclear from Appellant's brief how the Department violated the proscriptions in the above constitutional provisions. In fact, Appellant does not even reference cruel or unusual punishment in his brief. Rather, Appellant asserts the Eighth Amendment has been violated as a result of the Department's continued denial of his parole, which he claims has converted his original sentence to a de facto sentence of life without parole. In support of that argument, Appellant cites both *Furtick v. South Carolina Department of Probation, Parole & Pardon Services*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003) and *Steele v. Benjamin*, 362 S.C. 66, 71, 606 S.E.2d 499, 502 (Ct. App. 2004). He claims these cases stand for the proposition that "a sufficient liberty interest may be implicated to trigger due process requirements even though the Parole Board's decision did not constitute a permanent denial of parole eligibility."

The U.S. Supreme Court has held that "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz v. Neb. Penal Inmates*, 442 U.S. 1, 7 (1979). In other words, "given a valid conviction, the criminal defendant has been constitutionally deprived of his liberty." *Meachum v. Fano*, 427 U.S. 215, 224 (1976). Thus, if Appellant has a liberty interest in parole, then it must emanate from state law. *See Ellis v. Dist. of Columbia*, 84 F.3d 1413, 1415 (D.C. Cir. 1996).

---

[4] The Board is statutorily required to produce a "validated actuarial risk and needs assessment," which it must use when determining whether to grant parole. *See* S.C. Code Ann. § 24-21-10(F). In this case, Appellant took the unusual step of submitting a risk assessment that was prepared independently on his behalf.

In South Carolina, section 24-21-620 of the South Carolina Code generally provides for review of an inmate's case for parole. *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 ("Section 24-21-620 provides for review by the Board, 'regardless of whether or not any application has been made therefore, for the purposes of determining whether or not such prisoner is entitled to any of the benefits provided for in this chapter.'"). Furthermore, the court held in *Furtick* that "the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process." *Id.* However, "[a]lthough [section 24-21-620] creates a liberty interest in parole eligibility, it does not create a liberty interest in parole." *Id.* at 598 n. 4, 576 S.E.2d at 149 n. 4. Shortly after the issuance of *Furtick*, the Supreme Court further explained:

> Recently, in *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, this Court held that the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process, and, therefore, review by the [ALC]. In reaching this conclusion, the Court emphasized the finality of the Department's decision, and distinguished the *final* determination of parole eligibility from the *temporary* granting or denial of parole to an eligible inmate. Although the Court found S.C. Code Ann. § 24–21–620 created a liberty interest in the one-time determination of parole *eligibility,* it was quick to note that the statute did not create a liberty interest in parole.

Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (citations omitted). The court in *Sullivan* emphasized that: "[t]he only way for the [ALC] to obtain subject matter jurisdiction over [inmate] claim[s] is if it implicates a state-created liberty interest." *Id.*

Here, Appellant alleges the Department's continued denial of parole is akin to a permanent denial of parole eligibility. However, the Department's continued denial of parole does not constitute the permanent denial of parole eligibility. Appellant was sentenced to a life sentence with the possibility of parole after ten years. There is no dispute that in 1975 the South Carolina Code provided that a person who is convicted of murder must be "punished by death or by imprisonment for life." Furthermore, there is no contention that the Parole Board considered any law other than that provision. In addition, Appellant has not been denied the opportunity to appear before the Board. In fact, consistent with this State's law, since 1992 he has appeared numerous times before Board for the purpose of considering whether to grant him parole.

Rather, the Department's denial of parole eligibility for the last twenty-five years relates to the Board's exercise of its discretion. Clearly, 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. Additionally, as explained in *Cooper*, this Court's review is limited to ascertaining whether the

Board "followed proper procedure." *Id.* at 500, 661 S.E.2d at 112. Therefore, the Court may summarily dismiss Appellant's appeal unless it determines that the Board failed to consider the appropriate statutory and Department criteria in making its determination. *See Compton v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E. 2d 175, 177 (2009) (holding that an order denying parole and showing consideration of all statutory and Department criteria is sufficient to support denial of parole).

Here, the Department properly followed all procedures in denying Appellant parole. The Record clearly reflects that the Board considered the appropriate statutory and Department criteria in making its determination. Specifically, it considered the characteristics of the offense and prison disciplinary record, the statutory criteria of section 24-21-640, the factors published in its parole criteria form (Form 1212), and the actuarial risk and needs assessment factors pursuant to Section 24-21-10(F)(1)). Although Appellant asserts that the Board failed to consider the risk assessment he submitted, the Board considered the actuarial risk and needs assessment factors as it was required to pursuant to section 24-21-10(F)(1) as noted in its letter denying Appellant parole.[5] Therefore, the Department complied with all required procedures in evaluating Appellant for parole.

Ultimately, Appellant is in the exact same position he was in when he was sentenced for his crime: he has a life sentence for murder with the possibility of parole. Furthermore, Appellant has failed to show that the Board did not follow statutory requirements in denying him parole. He also failed to show that the Board actions violate the Constitutional prohibitions cited in his brief.

ORDER

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

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

April 6, 2018
Columbia, South Carolina

[5] In addition, Appellant argues on one hand that he is "a model inmate" with a record "devoid of violence," yet acknowledges "two incidents of physical altercations" in his brief.

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

April 6, 2018
Columbia, South Carolina