

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Melissa Burris, #212040,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Probation,)
 Parole and Pardon Services,)
)
 Respondent.)
)
 _____)

Docket No. 16-ALJ-15-0010-AP

ORDER OF REMAND

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SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of Melissa Burris (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections. Appellant is appealing the decision of the South Carolina Department of Probation, Parole and Pardon Services’ (“PPPS” or “Respondent”) Parole Board (“Board”), dated February 19, 2016, which rescinded Appellant’s conditional parole and denied parole. Appellant filed her appeal on March 25, 2016.¹

BACKGROUND

Appellant was convicted of the crimes of murder and possession of a firearm in the commission of a violent crime. Appellant was sentenced to a period of incarceration for the remainder of her natural life for the crime of murder and five (5) years for possession of a firearm in the commission of a violent crime. On January 13, 2016, Appellant appeared before the Board and was granted parole conditionally. Because Appellant served more than ten (10) consecutive years in prison, the Board had to obtain “a report as to [her] mental condition and [her] ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist.” S.C. Code Ann. § 24-21-610 (2007).

As a result of the report by Robin Lyn Moody (“Counselor”), the Board rescinded Appellant’s parole because of a “negative psychological evaluation.” Counselor is a Licensed Professional

¹ Appellant received the Order of Rescission on February 24, 2016. A corrected Order of Rescission was sent to her on March 10, 2016.

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SC ADMIN. LAW COURT

Counselor. Although Counselor has a Doctorate of Philosophy in Clinical Psychology & Industrial/Organizational Psychology, she is not a practicing psychiatrist or psychologist and is not licensed by the state of South Carolina as a psychiatrist or psychologist. Nothing in the Record substantiates that Counselor “has completed two years of supervised experience as approved by the [State Board of Examiners in Psychology] and specified in the [Association of State and Provincial Psychology Boards] Agreement and Reciprocity.” S.C. Code Ann. § 44-55-80(4) (2011). In addition, there is nothing in the Record to support a conclusion that Counselor has presented “satisfactory evidence that [Counselor] is competent in psychology as shown by passing written and oral examinations as required by the [State Board of Examiners in Psychology].” *Id.*

Appellant appealed the decision of the Board rescinding Appellant’s appeal on the bases that there was no reason to rescind Appellant’s parole and that the psychological evaluation was not conducted by someone who was a duly qualified psychiatrist or psychologist.

ISSUE

Whether the mental evaluation report, considered by the Board, was proper when it was conducted by a Licensed Professional Counselor instead of a duly qualified psychiatrist or psychologist.

DISCUSSION

An individual has a right to ALC review of a final decision of the Board only when that decision affects a liberty interest for which due process is required. *See Furtick v. S.C. Dep’t of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 598-99, 576 S.E.2d 146, 149-50 (2003); *see also Sullivan v. S.C. Dep’t of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review). In *Furtick*, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole eligibility pursuant to S.C. Code Ann. § 24-21-620 (2007), the statute does not create a liberty interest in the granting of parole itself. *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 n. 4.

Therefore, claims arising from the Board’s decision denying parole are not appealable to the ALC, only claims that the Board failed to consider the appropriate criteria so as to be tantamount

to an abrogation of parole eligibility. *Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008). Here, Appellant “is not appealing the denial of parole, but rather, is challenging the method and procedure employed by the Parole Board in reaching its decision.” *Cooper*, 377 S.C. at 502, 661 S.E.2d at 113. A sufficient liberty interest is involved to warrant due process review by this Court. *Id.*

When acting in an appellate capacity, the ALC must apply the criteria of S.C. Code Ann. § 1-23-380(5) (Supp. 2016), which reads:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Appellant argues she is entitled to a reexamination of her mental condition followed by a rehearing on the basis the Department did not comply with the statute because the evaluation was not conducted by an appropriate person. S.C. Code Ann. § 24-21-610 states:

Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a **duly qualified psychiatrist or psychologist**. [Emphasis added].

Counselor evaluated Appellant after the determination that Appellant was granted conditional parole. Counselor is a Licensed Professional Counselor, and holds a Doctorate of Philosophy in Clinical Psychology & Industrial/Organizational Psychology. At issue is whether Counselor, based on her education and credentials, is a duly qualified psychologist for the purposes of S.C.

Code Ann. § 24-21-610. If the Counselor is not a duly qualified psychiatrist or psychologist, then the decision by the Board was affected by an error of law.

In its brief, Respondent notes that Counselor is not a licensed psychologist, but does possess a doctorate in psychology, clinical psychology, and industrial organized psychology. S.C. Code Ann. 40-55-55 (2011) requires a license to engage in the practice of psychology. In order to obtain a license, the applicant must have a doctoral degree in psychology and meet other requirements such as examinations and supervised experience. S.C. Code Ann. § 40-55-80. There is nothing in the Record to support a conclusion that Counselor has met the examination and supervised experience requirements necessary for licensure in South Carolina.

Nothing in Counselor's curriculum vitae indicates that Counselor holds herself out as a psychologist or provides psychological services. If she were, she would be practicing psychology without a license in violation of S.C. Code Ann. § 40-55-55. Counselor cannot, and does not, hold herself out as a qualified psychologist. Likewise, the Board cannot retain Counselor as a duly qualified psychiatrist or psychologist as required by S.C. Code Ann. § 24-21-610.

Respondent states the evaluation did not cause the denial of Appellant's parole, the evaluation was just used to reconsider the Board's previous decision. The Record contradicts this position as the Order of Parole Rescission plainly states the conditional parole was rescinded because Appellant received a "negative psychological evaluation." Further, the issue in the present case is only whether the evaluation meets the statutory requirements.

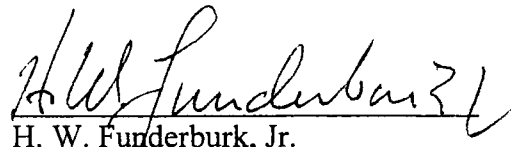
As this evaluation does not conform with the requirements of S.C. Code Ann. § 24-21-610, Appellant is entitled to a new mental health evaluation conducted by a duly qualified psychiatrist or psychologist, as mandated by S.C. Code Ann. § 40-55-10 *et seq* (2011 & Supp. 2016). After receipt of the report from the new evaluation, a rehearing shall be held to consider Appellant's parole.²

² These circumstances require that this case be remanded to the Board for a rehearing. Accordingly, the Court will not address the remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court does not need to rule on remaining issues when the disposition of an issue is dispositive of the appeal).

IT IS THEREFORE ORDERED that this matter is **REVERSED** and **REMANDED** to the Department to conduct a mental evaluation by a psychiatrist or psychologist, and Appellant shall have a rehearing regarding his parole.

AND IT IS SO ORDERED.

Columbia, South Carolina
December 6, 2016


H. W. Funderburk, Jr.
Administrative Law Judge