

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM RICHLAND COUNTY
ADMINISTRATIVE LAW COURT
Hon. S. Phillip Lenski Judge
Case No. 17-ALJ-15-0023-AP
Appellate Case No. 2018-000112

Rodney Mollins, 210264, Appellant

RECEIVED

v.

MAY 21 2018

South Carolina Department of Probation, Parole and
Pardon services, Respondent

SC Court of Appeals

RECORD ON APPEAL

Rodney Mollins, 210264
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, S.C. 29210

Pro - Se

Mr. Tommy Evans Jr.,
P.O. Box 50666
Columbia, S.C. 29250
Attorney for Respondent

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rodney Mollins, #210264,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

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

ORDER

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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SC ADMIN. LAW COURT

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:

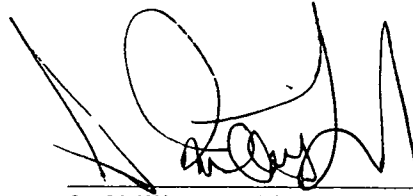
(A) The board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case ninety days prior to the effective date of the parole; however, at least two-thirds of the members of the board must authorize 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.

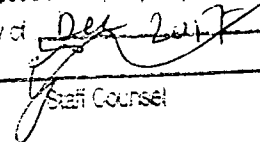


S. Phillip Lenski, Judge
S.C. Administrative Law Court

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

State of South Carolina
Department of Probation, Parole and Pardon Services

7

HENRY McMASTER
Governor



JERRY B. ADGER
Director

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May 25, 2017

Mr. Rodney Mollins #00210264
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Mollins:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Use Of Deadly Weapon In This Or Previous Offense
Vote Count: 5 Rejected - 1 Parole

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support Services

5/24/2017

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State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JERRY B. ADGER
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June 12, 2017

Rodney Mollins, #210264
Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210-4012

Dear Mr. Mollins:

I am responding to your Request for Reconsideration from your recent parole denial. Please be advised that there is no appeal process for the routine denial of parole. Also, keep in mind that the Board is an independent body and makes its decisions in its absolute discretion. Furthermore, the Board was within its authority to reject you for parole for the same reason as in years past.

You have also stated that the full Board was not present at your hearing. The Board members serve for six-year terms. When they expire, the Governor appoints replacements with the consent of the Senate. When your hearing was held, two positions had expired and the replacements had not been appointed yet. Regardless, the five members still constituted a quorum per the Board's own rules and South Carolina law.

In an effort to assist you, I am forwarding your letter to our office of Board Support Services to be placed in your parole file for review by the Board at any future hearings.

Thank you for your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan".

Matthew C. Buchanan
General Counsel

MCB:dn

cc. Larry Patton, Director of Board Support Services

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

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Rodney Mollins,)
 Peitioner,)
))
 V.))
))
South Carolina Dept. of)
Probation, Parole and)
Pardon Services,)
 Respondents.)
_____)

ORIGINAL BRIEF

17 P023

STANDARD OF REVIEW

The Court's Jurisdiction to review this matter is derived from the South Carolina Supreme Court decision in HL-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. Dept. of Prob. Parole and Pardon Servs. 352 S.C. 594, 576 S.E.2d 146 (2003) (Incorporating final decisions of the 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. Dept. of Corr. 602 S.E.2d 58 (2004). Where the department deviates from our renders it's decision without consideration of the appropriate (statutory) criteria ... it essentially abrogates an inmates Right to parole eligibility and thus infringes on a State-created Liberty Interest 661 S.E.2d at 111.

Under the Appellate Standard of the Administrative Procedures Act, the Court's Review is limited to the record S.C. Code Ann 1-23-330(4) (Supp 2016) The Court may modify or Reverse the decision of the Agency when substantial Rights of the Appellant have been prejudices S.C. Code Ann 1-23-380(5). 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.

STATEMENT OF ISSUES ON APPEAL

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1. Was Petitioner denied eligibility to participate in the Parole Program, by the Parole Board continuing to use factors that will never change to deny him parole.

2. Was Petitioner unConstitutionally denied a meaningful opportunity to participate in the Parole Program, when the Board failed to consider the fact that Petitioner was juvenile at the time of the offense. When the criteria for Parole requires the Board to consider the Petitioner before his incarceration.

3. Was Petitioner's Constitutional Due Process Right violated when the Petitioner who is classified as violent had his Parole Hearing before only 6 Parole Board Members, thereby making him ineligible to participate in the Parole Program?

STATEMENT OF THE CASE

Petitioner was indicted by the Lexington County Grand Jury, during the March 1, 1993 term of General Session Court for Murder, A.B.S.I.K., Armed Robbery, Possession of a Firearm during the Commission of a Violent Crime. On March 21, 1994. Petitioner Pled guilty and was sentenced to Life. At the time of the offenses, Petitioner was 17 years old.

ARGUMENT

1. Was Petitioner denied Eligibility to participate in the Parole Program, by the Parole Board continuing to use factors that will never change to deny him Parole?

Petitioner has a Constitutional Right to be eligible to participate in the Parole Program. The Parole Board effectively rendered the Petitioner ineligible for Parole when it makes its decision based on immutable factors:

1. Nature and Seriousness of the current offense.
2. Indication of violence in this or previous offense.
3. Use of deadly weapon in his or previous offense.

The Parole Board, by employing "immutable" factor (criteria) in denying Petitioner's request for Parole, Constitutes a violation of Petitioner's State and Federally created Liberty interest. The Parole Board must not construct artificial factors to deny Petitioner's eligibility to participate in the S.C. Parole Program.

The Seriousness of the underlying crime may be considered only as an element in determining whether the Offender's punishment has been adequate. The continued reliance by the Board on evidence of such can only be understood as a makeweight to overcome the lack of substantial evidence

to support the Board's conclusions. This amounts to a determination based on other than the appropriate criteria, but on factors arbitrarily selected to support a desired result, it is manifestly a violation of Petitioner's Constitutional Rights and renders Petitioner ineligible to participate in the Parole Program. Review or consideration for Parole is a substantial Due Process Right granted by the statute. By using factor (criteria) that is immutable, violates that Substantive Due Process Right. If the Parole Board deviates from or fails to render its decision without consideration of the appropriate criteria, it essentially abrogates the Petitioner's Right to parole eligibility, thus infringing on the State Created Liberty Interest.

The Parole Board has failed to consider the requisite factors and, instead, based its decision of certain fixed factors that are unaffected by any Rehabilitation efforts on the part of Petitioner. Mere recitation of the circumstances of the commitment offense, absent articulation of a rational nexus, between those facts and current dangerousness, fails to provide the required modicum of evidence of unsuitability. The Parole Board by using immutable factors to deny Parole, the Parole Board is violating Petitioner's Due Process Right and the Parole Board is not doing what the General Assembly intended.

2. Was Petitioner's Constitutional Due Process Rights violated when the Petitioner had his Parole Hearing before only "6" Parole Board Members, thereby making him ineligible to participate in the Parole Program?

Composition of the Board (Policy and Procedure Manual, S.C.D. P.P.P.S.) The Board is composed of seven members, one from each of the state's seven congressional districts. Members are appointed by the governor with the advice and consent of the senate, to a six-year term and serve until a successor is appointed and confirmed.

Scheduling meetings and hearings of the Board violent versus non-violent (S.C.D.P.P.P.S. Policy and Procedure Manual). Offenders convicted of a violent crime will be scheduled for Parole Hearing before the full Board only. The South Carolina Legislature vests the South Carolina Probation, Parole and Pardon Services with the power to create specific criteria for the granting of Parole. The Parole Boards created a Policy and Procedure for conducting Parole Hearing for violent crime. And the Policy and Procedure is clear. When the Parole Board fails to follow the correct criteria it essentially abrogates Petitioner's right to Parole eligibility SEE: Cooper V. S.C.D.P.P.P.S. 661 S.E.2d 106 (2008). By failing to have the correct number of Board members at the Parole Hearing the Parole Board is denying Petitioner his Right to be eligible for Parole.

3. Was Petitioner unConstitutionally denied a meaningful opportunity to participate in the Parole program, when the Parole Board failed to consider the fact that the Petitioner was a juvenile at the time of the offense. When the criteria for Parole consideration requires the Parole Board to consider the Petitioner before his incarceration?

Petitioner was ____ years old at the time of his offense. Our state and U.S. Supreme Courts have held that juvenile under the age of 18 are different from adults. Juvenile minds are not fully developed. Aiken V. Byars 410 S.C. 534, 765 S.E.2d 572 (2014); Miller V. Alabama 132 S.Ct.2455 (2012).

Petitioner has a Right to a meaningful opportunity for release juvenile characteristics should be considered in deciding Parole Montgomery V. Alabama 136 S.Ct.718 (2016) See also: Hawkins V. N.Y.D.O.C. 30 NYS3d 397 (NY App Div 2016), Hayden V. Keller 137f. Supp. 100 (Ed IVC 2015), Atwell V. State 197 SO.3d 1040 (Fla 2016), and Greiman V. Hodges 79 F. Supp.3d 933 (SD 2015)

Youths sentenced to Life in prison have a life expectancy of 50.6 yeas, 20 years less than the average expectancy of an African-American male. Life expectancy are reduced for juveniles sentenced to Life in prison and that without a meaningful opportunity for Parole, he will die in prison. "An offender's age is relevant to the Eighth Amendment" so "Criminal Procedure Law that fail to take defendants youthfulness into account at all would be flawed." Id, 132 S.Ct. at 2466

In Miller, the Court reasoned that "the distinctive attributes of youth diminish the penological justification for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." Id. 132 S.Ct at 2465. Both common sense and science bear out that an adolescent's moral culpability is lessened between juvenile minds and adult minds. Adolescent, generally, are prone to transient rashness, proclivity for risk and inability to assess consequences" due to a lack of neurological development after neurological development occurs, however, just a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior "And, in most cases an adolescent's deficiencies will be reformed." (quoting Roper-V.-Simmons-543-U.S.551, 125-S.Ct.-1183-(2005)). Likewise, the case for deterrence is much less persuasive. "because the same characteristics that render juvenile less culpable than adults -- their immaturity, recklessness, and impetuosity, make them less likely to consider potential punishment."

In applying Miller, the South Carolina Supreme Court noted that a sentence must be allowed to consider that youth is more than a chronological fact and carries with it immaturity, irresponsibility, impetuosity, and recklessness, factors as transient as youth itself."

Aiken-V.-Byans-765-S.E.2d-572.

Considering the reasoning in Miller led the New York Supreme Court, Appellate Division to hold that, in consideration an inmate for Parole, the Board must consider

the significance of the inmate's youth and its attendant circumstance at the time of the commission of the crime. Matter of Hawkins-V.-N.Y.-State-Dept.-of-Corr.-&-Cmty. Supervision 140-A.D.3d-34,-30.N.Y.-3d-397-(N.Y.-App.-Div.-2016). The New York Supreme Court noted that "Although the U.S. Supreme Court has not specifically reviewed a case regarding a parole determined 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-18 (quoting Montgomery-V.-Louisiana-136 S.Ct.-718-(2016)). As revised (Jan. 27, 2016) "For 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. The Petitioner asserts that the maturity of a juvenile who has taken steps to rehabilitate himself in prison should be considered by the Board. Currently, the Board does not consider these factors.

S.C.-Code-Ann.-24-21-640 "The Board must carefully consider the record of the prisoner before, during and after imprisonment." The Parole Board by statute must consider the fact that Petitioner was a juvenile at the time of his offense. The Parole Board by not following the appropriate criteria and rationale consistent with

the statute, it essentially abrogates Petitioner's Right to be Parole eligibility. See: Cooper V. S.C.D.P.P.S. 661-S.E.2d-106-(2008)

CONCLUSION

This Court must order a new Parole Hearing in accordance with the statute and Law, taking into consideration the fact Petitioner was a juvenile.

Respectfully Submitted,

Rodney Mollins
Rodney Mollins
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, SC 29210-4012

DATE: 4-1-17/2017

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Rodney Mollins,
Petitioner,

V.

S.C.D.P.P.P.S.,
Respondent.

CERTIFICATE OF SERVICE

Petitioner, RODNEY MOLLINS, declared under the penalty of perjury, that he has mailed a copy of his Original Brief to the Parties listed below by placing the same in the U.S. Mail, through the BRCI Mail Room staff, with postage paid, clearly addressed:

1. Honorable Judge Lenski
Administrative Law Court
1205 Pendleton St. Ste. 224
Columbia, S.C. 29201

2. Director of Legal Services
S.C. Dept. of P.P.P.S.
P.O. Box 50666
Columbia, S.C. 29251

DATE: 4/19/2017

Respectfully Submitted,

Rodney Mollins
Rodney Mollins
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, SC 29210-4012

Cc: File

State of South Carolina
Department of Probation, Parole and Pardon Services

21

HENRY McMASTER
Governor



JERRY B. ADGER
Director

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November 17, 2017

The Honorable Phillip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

RE: Rodney Mollins, #210264 v. S.C. Department of Probation, Parole and Pardon Services

Dear Judge Lenski:

Please find enclosed for filing the *Brief* dated November 17, 2017, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Tommy Evans, Jr." with a stylized flourish at the end.

Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures
cc: Rodney Mollins, #210264

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 17-ALJ-15-0023

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

RODNEY MOLLINS, #210264.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

BRIEF OF RESPONDENT

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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

1. Was the Appellant denied eligibility to participate in the parole program, by the Respondent continuing to use factors that will never change to deny parole?
2. Was the Appellant unconstitutionally denied a meaningful opportunity to participate in the parole program, when the Board failed to consider the fact that the Appellant was a juvenile at the time of the offense?
3. Was the Appellant's Constitutional due process right violated when the Appellant who was classified as violent had his hearing before only six board members?

STATEMENT OF THE CASE

On September 4, 1992, the Appellant along with his three co-defendants drove up to the victims armed with handguns. Once they were out of the vehicle they held the victims at gunpoint and demanded items. They then fired shots killing one victim and wounding another. Upon further investigation the Appellant, and his three co-defendants, were arrested and charged with the offenses of murder, assault and battery with intent to kill (ABIK), armed robbery, and criminal conspiracy.

On March 21, 1994, the Appellant appeared before the Honorable Julius Baggett for each offense. Upon the conclusion of this appearance the Appellant received a sentence of incarceration for the remainder of his natural life for the offense of murder, twenty-five years for armed robbery, twenty years for ABIK, and five years for criminal conspiracy.¹ At the time the Appellant committed this offense South Carolina law allowed a person serving a life sentence for murder parole eligibility upon the service of twenty years.

The Appellant made his initial appearance before the Board on February 6, 2013. Upon the conclusion of that hearing the Board decided to deny parole. Since this initial hearing the Appellant appeared before the Board two additional times each resulting in a denial of parole. His most recent appearance occurred on May 24, 2017. At the conclusion of that hearing the Board denied parole due to: 1) the nature and seriousness of the current offense; and, 2) a use of a deadly weapon in this or a previous offense. (R. p. 4)

Upon being informed of his denial of parole the Appellant filed a notice of appeal before the Administrative Law Court. (ALC) Within his appeal the Appellant alleges that the Board used factors that would never change thereby denying his liberty interest. He also argues that he was

¹ The Appellant completed his sentence for armed robbery on June 24, 2007, for ABIK on August 21, 2004, and criminal conspiracy on October 21, 1995.

denied due process because there were only six members present at his hearing; and, the Board denied him a meaningful opportunity to participate in parole when they failed to consider the fact he was a juvenile at the time the crime was committed.

The Respondent will argue that the facts of the case is part of the mandatory criteria which the Board must consider pursuant to South Carolina law, and Board policy criteria; that six members being present constitutes a quorum, thereby making the hearing lawful; and, the age of the Appellant at the time he committed the offense was a factor considered by the Board prior to their decision. The Brief supporting these defenses follows.

ARGUMENTS

1. The Respondent followed the mandates proscribed by the South Carolina Supreme Court in the *Cooper* decision, so this decision should be affirmed.

It is the Respondent’s position, that this denial of parole, and the order delivered to the Appellant followed South Carolina law and the mandates found in the South Carolina Supreme Court decision of *Cooper v. S.C. Dept. of Probation, Parole, and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008). The decision given to the Appellant informing him of his denial of parole was in writing, which included a finding of fact and conclusion of law separately stated.² In *Cooper*, the Supreme Court decided that a finding of fact was included; however, the Court determined that the Parole Board neither, “offered an explanation nor indicated that it considered the statutory criteria of section 24-21-640, and the fifteen criteria listed on the parole form.” *Id.*, at 500. The Supreme Court decided that if the Parole Board fails to consider and apply the statutory-

² A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include a findings of fact and conclusion of law separately stated. S.C. Code Ann. §1-23-350(2016).

related criteria, it has the effect of rendering an inmate parole ineligible, which warrants review by the ALC. *Id.*, at 502.

In *Cooper*, the Court established what future Parole Board orders should consist of, *Cooper* specifically states:

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.

Id.

The Respondent also revealed that a risk assessment was considered pursuant to South Carolina law. Since the *Cooper* decision, the General Assembly added an additional requirement requiring that the Department create and consider a risk assessment prior to any parole decision.³ Since this mandatory element was added, each inmate prior to appearing before the Board must have a Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) completed. The results must be provided to the Parole Board prior to their decision. According to the final order this was also listed as one of the criteria considered prior to the final decision.

According to South Carolina law there is also mandatory criteria that must be created by the Department and must be considered prior to the final decision. There are fifteen criteria created by the Department that encompasses the criteria found in South Carolina statutory law.⁴

³ The Department must develop a plan that includes the establishment of a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions, including additional objective criteria that may be used in parole decisions. S.C. Code Ann. §24-21-10(F)(1)(2016).

⁴ The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records. The criteria must be made available to all prisoners at the time of their incarceration and the general public. S.C. Code Ann. §24-21-640(2016).

Within his brief the Appellant argues that the Board used immutable factors which was not the intention of the General Assembly. According to South Carolina law the General Assembly required the Board to use the statutory criteria found in Section 24-21-640; Department created criteria; and the risk and needs assessment.

It is clear by the order of denial the Board considered all of the mandatory criteria and placed their reasons for denial in writing. These reasons would be sufficient to deny parole in the Board's discretion, if the Board's decision evinced consideration of section 24-21-640 and its own criteria. *Cooper*, at 112 n.5. The order delivered to the Appellant clearly states that the criteria within the mandatory criteria found in the statute, mandatory policy, and risk assessment were considered prior to the denial of parole. According to the Supreme Court, if this is shown no further action by the ALC is necessary.⁵

2. The Appellant was not denied due process due to the fact only six members were present at his hearing.

The Appellant argues that he was denied due process because only six members of the seven member Parole Board was present at his hearing.⁶ There was no denial of due process in the Appellant appearing before six members of the Parole Board. In the absence of any statutory or other controlling provision, the common-law rule that a majority of the whole board is necessary to constitute a quorum applies, and the board may do no valid act in the absence of a quorum.

Barton v. S.C. Dept. of Probation, Parole and Pardon Services, 404 S.C. 395, 415, 745 S.E.2d 110, 121 (2013), quoting, *Garris v. Governing Bd. of S.C. Reins. Facility*, 333 S.C. 432, 453, 511

⁵ The Parole Board stated in its notice of rejection that it considered the statutory criteria and the criteria set forth in Form 1212 which is sufficient under *Cooper*. *Compton v. S.C. Dept. of Probation, Parole and Pardon Services*, 385 S.C. 476, 685 S.E.2d 175 (2009).

⁶ The Board of Probation, Parole and Pardon Services is composed of seven members. The terms of office of the members are for six years. Each of the seven members must be appointed from each of the congressional districts. S.C. Code Ann. §24-21-10(B)(2012)

S.E.2d 48, 59 (1998). There were six of the seven members present so there was a quorum present, they were lawfully enough members present to conduct business.

The Appellant was never denied due process. He was allowed to appear before the board and present any mitigating evidence in support of him being allowed to be released on parole. He was also notified of his denial in writing where the findings of fact and conclusions of law was separately stated. The fact he only appeared before six of the seven member board did not deny him any due process rights.

According to the final denial of parole order, he was denied by a final vote count of five for rejection and only one for parole. So the Appellant has revealed no prejudice in only have six members of the board being present. According to South Carolina law existing at the time he committed the offense, at least two-thirds of the members of the board must authorize and sign orders authorizing parole for a person convicted of a violent crime as defined in Section 16-1-60. S.C. Code Ann. §24-21-645(1986). The Appellant was convicted of murder which is a classified violent offense pursuant to Section 16-1-60 of the South Carolina Code of Laws.⁷ So pursuant to South Carolina law the Appellant needed at least five affirmative votes in order to be released on parole. So even if a seventh member was present and voted in his favor he would have still been denied parole. Since he cannot reveal any prejudice the decision of the board should be affirmed. To warrant reversal the Appellant must show both error of the ruling and resulting prejudice. *Burroughs v. Worsham*, 352 S.C. 382, 574 S.E.2d 215 (S.C. App. 2002)

⁷ For purposes of definition under South Carolina law, a violent crime includes the offenses: murder (Section 16-3-10) S.C. Code Ann. §16-1-60(1986).

3. The Board did consider the Appellant's age at the time he committed the offense as part of the mandatory criteria that must be considered prior to any parole decision.

The Appellant was seventeen years of age when he committed this offense. He argues that the Board failed to consider this fact prior to their final decision to deny parole. However, the circumstances surrounding the offense is always considered prior to making the final decision. The General Assembly created mandatory criteria that must be considered by the Board for each inmate appearing before them requesting to be released on parole. The South Carolina Code of Laws specifically state:

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 imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

S.C. Code Ann. §24-21-640(2016).

The record of the prisoner before, during, and after imprisonment must be considered. The General Assembly has also made it mandatory that the Board establish written specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records. S.C. Code Ann. §24-21-640 (2016). The Department created fifteen criteria that encompasses all of the statutory criteria listed above. The Appellant was given a copy of this criteria prior to his hearing, as proven with a copy of the Form 1212 placed in the record. (R. p. 5) One of the fifteen criteria states that the Board will consider is, "The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it." One of the circumstances surrounding the offense

is the inmate's age at the time the offense was committed. So this is an element that is considered by the Board prior to the final decision.

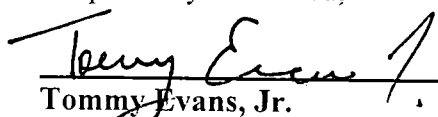
Within his brief the Appellant compared this case to the United Supreme Court case of *Miller v. Alabama*, 132 S.Ct. 2455 (2012); and the South Carolina Supreme Court case of *Aiken v. Byers*, 410 S.C. 534, 765 S.E.2d 572 (2014). These decisions were relating to minors being subjected to life sentences without the possibility of parole. This is not the situation regarding the Appellant in the present case. The Appellant does have an opportunity to be released if granted parole. In both *Aiken*, and *Miller*, the Court decided that a life sentence for a juvenile is only constitutional if that before a life sentence is imposed upon the juvenile the offender must receive an individualized hearing where the mitigating hallmark features of youth are fully explored. *Aiken*, S.C. at 545, S.E.2d at 578. With these decisions a life sentence is Constitutional as long as a hearing is held where the youth of the offender at the time the crime is committed is considered. This is what is given to the Appellant in this matter during his parole hearing. Since the Appellant in the present case has an opportunity to have his immaturity at the time of the offense considered before an impartial Parole Board with an opportunity of a possible release from incarceration, the *Miller* nor *Aiken* decisions apply. The Appellant was not denied any Eighth Amendment rights in the denial of parole.

Since the Appellant has failed to produce any evidence that his age at the time of the offense was not considered, it must be presumed by this Court that it was. In the absence of any proof to the contrary, public officers are presumed to have properly discharged the duties of their offices and to have faithfully performed his duties with which they are charged. *S.C. Nat'l Bank v. Florence Sporting Goods, Inc.*, 241 S.C. 110, 115-116, 127 S.E.2d 199, 202 (1962).

CONCLUSION

The Respondent respectfully requests this appeal be dismissed or the final decision of the Respondent allowing yearly hearings be affirmed.

Respectfully submitted,



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November 17, 2017

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

RODNEY MOLLINS, #210264 APPELLANT

v.

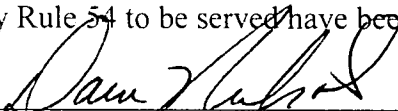
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Brief*, dated November 17, 2017, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 17th day of November, 2017, addressed to:

Rodney Mollins, #210264
Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210-4012

I further certify that all parties required by Rule 54 to be served have been served.



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STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
DOCKET NUMBER 17-ALJ-15-0025

Rodney Mollins
Appellant,

REPLY BRIEF OF
THE APPELLANT

V.

South Carolina Dept. of Probation,
Parole, and Pardon Services
Respondent.

November 27, 2017

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STATEMENT OF ISSUES ON APPEAL

1. Was Appellant denied eligibility to participate in the parole program, by the parole Board continues to use factors that will never change to deny Appellant parole?

2. Was Appellant constitutional due process right violated when the Appellant who classified as violent had his parole hearing before only " 6 " parole Board members, thereby making him ineligible to participate in the parole program?

3. Was Appellant unconstitutionally denied a meaningful opportunity to participate in the parole program, when the parole Board failed to consider the fact that Appellant was a Juvenile at the time of the offense, when the criteria for parole requires the board to consider the Appellant before his incarceration.

STATEMENT OF THE CASE

Appellant was indicted by the Lexington County Grand Jury, during the March 1, 1993, term of General Sessions court for Murder, A.B.I.K., Armed Robbery, Possession of a firearm during the commission of a violent crime. On March 21, 1994, Appellant pled guilty and was sentenced to Life. At the time of the offense Appellant was 17 Years old.

ARGUMENT

Was Appellant denied eligibility to participate in the parole program, by the parole Board continuing to use factors that will never change to deny him parole?

S.C. code Ann. 24-21-640 "The Board must establish written, specific criteria for the Granting of Parole and provisional parole". By using immutable factors to deny Appellant parole, the parole Board in fact is denying Appellant eligibility to participate in the parole program. When the Board uses factors that never change Appellant is already denied parole before he even get to the parole hearing, so the issue here is one of eligibility. When the criteria that is used is one that creates an opportunity for the Board to deny parole, before the Appellant goes before the Board, then this criteria is not a criteria for the granting of parole. And therefore not in line with what the, General Assembly ordered. The respondent does not deny that immutable factors deny eligibility, the only State that they follow the mandates of Cooper v. S.C.D.P.P.P.S. 6615 S.E. 2d 106.

Was Appellant's constitutional due process rights violated when the Appellant had his parole hearing before only " 6 " parole Board members, thereby making him ineligible to participate in the parole program?

The respondent in reply to this issue states "in the absence of any statutory or other controlling provision, the common-Law Rule that a majority of the whole board is necessary to constitute a quorum applies". To this End the Appellant declares that under Policy created by the parole (which must be given the same effect as statute, because the power to create this Policy come from the General Assembly). Under the South Carolina Dept. of Probation, Parole, and Pardon services Policy and procedure manual. Under responsibilities of the Department Director and staff. Number 2, page 14/15 scheduling meetings and hearings of the Board (b) violent versus non-violent. " Offenders convicted of a violent crime will be scheduled for parole hearing before the full Board only." The respondent cannot predict what would have happen and the respondent cannot deny what Policy demands.

Was Appellant unconstitutionally denied a meaningful opportunity to participate in the parole program, when the parole Board failed to consider the fact that Appellant was a Juvenile at the time of the offense, when the criteria for parole requires the Board to consider the Appellant before his incarceration?

In response to this issue the respondent states that" the circumstances surrounding the offense is always considered prior to making the final decision. At page 6 of the respondents Brief and" one of the circumstances surrounding the offense is the inmate's age at the time the offense was committed" at page 6 and 7. "Since the Appellant has failed to produce any evidence that his age at the time of the offense was not considered, it must be presumed by this court that it was." S.C. Nat'L Bank v. Florence Sporting Goods Inc. 241 S.C. 110, 127 S.E. 2d 199 (1962). In this courts order date April 26, 2017 (Docket No. 16-ALJ-15-0049-AP) the court state's on page 4" this court finds the reasoning in Hawkins V. NY DOC 30 NYS 3d 397 (NY App. Div. 2016)

Peasuasive. The Appellant's argument that the maturity of a Juvenile who has taken steps to rehabilitate himself i prison should be considered by the board has merit, in the court's opinion, currently, the Board does not consider these factors. However, no existing United States or South Carolina authority requires the South Carolina parole Board to consider age or immaturity in it's decisions. The respondent by their own response prove that Appellant age was not consider as a factor in his parole decision. While the United States or South Carolina authority requires consideration of age and immaturity, other Jursidictions in the United States have, see Miller v. Alabama, 132 S.Ct. 2455, matter of Hawkins v. N.Y. State Dept. of Corr.conty supervision 30 N.Y. 3d 397. Montgomery v. Louisiana 136 S.Ct. 718. It is within the authority of this court to rely upon decisions of other Jurisdiction in decsiding this issue when there is no presidence in this state. This court can move this very impartant issue forward by Ruling that the parole board must consider the Appellant's age and immaturity at the time of the offense a decision factor they claim they already do even though there is no state authority that requires the Board to consider those factor.

CONCLUSION

Appellant Prays this court will order the Board to give the Appellant another hearing as soon as possible. Requiring them to consider Appellant's age and immaturity and well as any other Juvenile related factors in making their decision.

November 27, 2017

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POLICY AND PROCEDURE

South Carolina Board of Pardons and Paroles

**South Carolina Department of Probation, Parole and Pardon Services
DIVISION OF PAROLES AND PARDONS**

March 2016

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- a. **Number of cases.** The number of cases scheduled for hearing on any given day is set by the Department Director and Chair of the Board.
- b. **Violent versus non-violent.** Offenders convicted of a violent crime will be scheduled for parole hearings before the full Board only. Offenders convicted of a non-violent crime may be scheduled for parole hearings before either the full Board or a three-member panel.

3. INVESTIGATING AND PREPARING CASES FOR REVIEW

The Department is responsible for investigating and preparing parole and pardon cases for the Board's review and for ensuring that these cases reach the members no less than two weeks before the date of the hearing.

- a. **Date of Eligibility for Parole.** The South Carolina Department of Corrections is responsible for determining the dates of parole eligibility for offenders who are eligible for parole.
- b. **Assigning Cases.** The Board Support Services Director is responsible for assigning cases for timely review to members of the Board, as may be necessary.
- c. **Preliminary Hearings.** The Department is responsible for scheduling and conducting such preliminary hearings as may be required by law.

4. PROVIDING NOTICE OF HEARINGS TO INTERESTED PARTIES

The Department is responsible for providing timely notice of hearings. See Part II, A., Parole Hearings.

5. EXECUTING DECISIONS AND ORDERS OF THE BOARD

The Department Director and his/her staff are responsible for seeing that the decisions and orders of the Board and its panels regarding paroles, pardons, and revocations are fully carried out.

6. INFORMING THE BOARD OF CURRENT PAROLE LAWS

Through its Office of General Counsel, the Department is responsible for keeping the Board informed of current parole laws as they affect the Board's practices and procedures.

7. MAINTAINING THE OFFICIAL RECORDS OF THE BOARD

The Board Support Services Director and Department's Office of Records Management Services are responsible for maintaining the official records of the Board. These records, including hard copy, electronic and audio, will be maintained until the inmate maxes out, is paroled, until death, or for five (5) years, whichever is sooner.

**South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration**

7/24/17 PD 46
SC Board of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, SC 29250

Inmate Name Rodney Mollins	SCDC # 210264
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Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

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 education 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, 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;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature Rodney Mollins	Date 2-8-17	Witness BR Kuanten	Date 2-8-17
---	-----------------------	------------------------------	-----------------------

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 17-ALJ-15-0023

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

RODNEY MOLLINS, #210264 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

RECORD ON APPEAL

Tommy Evans, Jr.
Assistant General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220**

ATTORNEY FOR RESPONDENT

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Mr. Larry Ray Patton, Jr.
Director of Parole Board Support Services
2221 Devine St. Suite 600
Columbia, SC 29250

June 6, 2017

RE: Rehearing

Mr. Patton:

I am requesting that the South Carolina Parole Board schedule me for a rehearing, based on the below listed reasons:

1. It is the policy of the South Carolina Parole Board to schedule Parole Board hearings for offenders convicted of violent offenses before the full Board only. (See S.C.D.P.P.S. Policy and Procedure Manual page 15). At my last hearing the full Board was not present.
2. As reflected in the decision of the Parole Board, the Board failed to take my youthfulness into account in making their decision. I was 17 at the time the offense occurred. There are fundamental differences between juvenile minds and adult minds, that must (and should be) taken into account. The South Carolina Parole Board by its failure to consider my youth and the attendant characteristics in relationship to the commission of the crime at issue, has made me ineligible to participate in the South Carolina Parole Program.
3. The Board does not consider what I (as a juvenile) have done to rehabilitate myself.
4. By continuing to use factors that will never change (Nature and Seriousness, use of a weapon) the Board as ineffect given me a no parole sentence, thereby making me ineligible for parole.

Respectfully,

Rodney mollins

SCDC #: 210264

BRCI

4460 Broad River Rd.

Columbia, SC 29210-4012

Cc: File

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State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

June 12, 2017

Rodney Mollins, #210264
Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210-4012

Dear Mr. Mollins:

I am responding to your Request for Reconsideration from your recent parole denial. Please be advised that there is no appeal process for the routine denial of parole. Also, keep in mind that the Board is an independent body and makes its decisions in its absolute discretion. Furthermore, the Board was within its authority to reject you for parole for the same reason as in years past.

You have also stated that the full Board was not present at your hearing. The Board members serve for six-year terms. When they expire, the Governor appoints replacements with the consent of the Senate. When your hearing was held, two positions had expired and the replacements had not been appointed yet. Regardless, the five members still constituted a quorum per the Board's own rules and South Carolina law.

In an effort to assist you, I am forwarding your letter to our office of Board Support Services to be placed in your parole file for review by the Board at any future hearings.

Thank you for your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan", written over a horizontal line.

Matthew C. Buchanan
General Counsel

MCB:dn

cc. Larry Patton, Director of Board Support Services

b. **Board Annual Training:** Each Board member is required to complete at least eight (8) hours of training annually including (but not limited to):

- Review of Policies and Procedures
- Review of Critical Programs within the Department
- Review of the Department Risk /Needs Assessment Tool
- Review of the Department Public Safety Goals
- Decision Making and Data
- Evidence-Based Practices/Corrections
- Evidence-Based Practices/Crime Victims

Members of the Board shall also participate in additional training as may be required by the Board's Chair and Department Director pursuant to accreditation standards.

5. COMPENSATION

Members of the Board are entitled to reasonable and necessary expenses incurred in the discharge of their official duties and consistent with state law governing the compensation of board or commission members. Members of the Board receive no salary. In addition to fees for hearings, members of the Board receive per diem compensation for the following activities directly associated with their service on the Board:

- Parole hearings, including revocations;
- Pardon hearings;
- Training required by the Board's Chair and Department Director;
- Review of paroles, parole revocations, and pardons prior to the actual hearing of the matter

6. QUORUM FOR CONDUCTING BUSINESS

Five members of the Board constitutes a quorum for conducting business.

7. RULES AND REGULATIONS FOR CONDUCTING BUSINESS

- a. **Implied Powers.** In the exercise of its statutory powers, the Board may make such rules and regulations as are necessary and proper to conduct its business
- b. **Attendance at Hearings.** Members are required to attend all hearings of the full Board or of their respective panel.

State of South Carolina
Department of Probation, Parole and Pardon Services

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HENRY McMASTER
Governor



JERRY B. ADGER
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

May 25, 2017

Mr. Rodney Mollins #00210264
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Mollins:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Use Of Deadly Weapon In This Or Previous Offense
Vote Count: 5 Rejected - 1 Parole

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.".

Larry Ray Patton, Jr.
Director of Parole Board Support Services

5/24/2017

**South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration**

7124111 FD 53

SC Board of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, SC 29250

Inmate Name Rodney Mollins	SCDC # 210264
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Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

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 education 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, 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;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges.

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Inmate's Signature Rodney Mollins	Date 2-8-17	Witness AKuauth	Date 2-8-17
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STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 17-ALJ-15-0023

RECEIVED
APR 30 2018
SC Court of Appeals

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services


RODNEY MOLLINS, #210264 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.



Tommy Evans, Jr.,
Assistant General Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

August 3, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM RICHLAND COUNTY
ADMINISTRATIVE LAW COURT
Hon. S. Phillip Lenski Judge
Case No. 17-ALJ-15-0023-AP
Appellate Case No. 2018-000112

Rodney Mollins, 210264, Appellant

vs.

South Carolina Department of Probation, Parole
and Pardon services, Respondent

RECEIVED

MAY 21 2018

SC Court of Appeals

CERTIFICATE OF COUNSEL

Appellant certify that the record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 16 2018

Rodney Mollins
Rodney Mollins, 210264
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, S.C. 29210

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM RICHLAND COUNTY
ADMINISTRATIVE LAW COURT
Hon. S. Phillip Lenski Judge
Case No. 17-ALJ-15-0023-AP
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Rodney Mollins, 210264, Appellant

VS.

South Carolina Department of Probation, Parole
and Pardon services, Respondent

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MAY 21 2018

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served my final Brief and record on Appeal on Mr. Tommy Evans Jr., (Respondent) on April 25 2018, and the clerk of the South Carolina Court of Appeals on April 25 2018, by placing it in the U.S. mail addressed to Mr. Evans. At P.O. Box 50666, Columbia, S.C. 29250, and the clerk of court at 1220 Senate St. Columbia, S.C. 29201

April 25 2018

Rodney Mollins
Rodney Mollins, 210264
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, S.C. 29210

by placing it in the U.S. mail addressed as below.

On May 16 2018

Mr. Tommy Evans Jr., Esq.

P.O. Box 50666

Columbia, S.C. 29250

Ms. Jenny A. Kitchings, Clerk

S.C. Court of Appeals

1220 Senate St.

Columbia, S.C. 29201

May 16 2018

cc: file

Rodney Mollins

Rodney Mollins, 210264

Broad River Corr. Inst.

4460 Broad River Rd.

Columbia, S.C. 29210

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM RICHLAND COUNTY
ADMINISTRATIVE LAW COURT
Hon. S. Phillip Lenski Judge
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Appellate Case No. 2018-000112

Rodney Mollins, 210264, Appellant

Vs.

South Carolina Department of Probation, Parole
and Pardon Services Respondent

PROOF OF SERVICE

I certify that I have served copy of cover page for my record on Appeal, certificate of counsel for my record on Appeal, certificate of counsel for my final Brief and proof of service for my final Brief. A copy to the respondent (Mr. Tommy Evans Jr., Esq.), and the clerk of the South Carolina court of Appeals.

RECEIVED
MAY 21 2018
SC Court of Appeals