

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Carl J. Chisolm, #185789,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Probation,)
Parole and Pardon Services,)
)
Respondent.)
_____)

Docket No. 18-ALJ-15-0006-AP

ORDER

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AUG 17 2018
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal by Carl J. Chisolm (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. By letter dated January 17, 2018, the South Carolina Department of Probation, Parole and Pardon Services (“the Department”) notified Appellant that the South Carolina Parole Board (the Board) denied him parole. On February 7, 2018, Appellant filed a Notice of Appeal with the Court seeking judicial review of the Board’s denial of parole. Appellant challenges the Board’s decision on six grounds: (1) Board member Christopher Gibbs improperly influenced the rest of the Board; (2) the South Carolina Code of Laws were altered as applied to him; (3) he did not received an unbiased review of his record; (4) the Board penalized him for being placed in an institution that does not have a community program; (5) the Board did not consider his efforts to “rewrite his life narrative”; and (6) his parole hearings are not being held every two years as required by statute.

FACTUAL HISTORY

Appellant was sentenced to life imprisonment after he was convicted of murder on or about March 16, 1992. 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 twenty years’ imprisonment. Since 2011, Appellant has appeared before the Board a total of four times and has been denied parole each time he has appeared. Appellant last appeared before the Parole Board in January 2018. By letter dated January 17, 2018, the Parole Board voted unanimously to deny his parole. In its letter, the Board stated it considered “(1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior

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criminal record.” The Board also specifically stated it considered the factors outline in section 24-21-640 of the South Carolina Code, the factors published in Department Form 1212, and the actuarial risk and needs assessment factors pursuant to section 24-21-10(F)(1) of the South Carolina Code. The Board supported its decision with the following cursory findings of fact: (1) nature and seriousness of current offense; (2) indication of violence in this or previous offense; (3) criminal record indicates poor community adjustment; (4) failure to successfully complete a community supervision program; and (5) institutional record is unfavorable.

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. 2017) (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. 2017). 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

The United States 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).

In *Furtick*, the South Carolina Supreme Court held that “the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process.” *Furtick v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003). However, the South Carolina Supreme Court went on to clarify that “[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. Therefore, while the permanent denial of parole eligibility constitutes a liberty interest that is reviewable by this Court, the routine denial of parole is, generally, not a sufficient liberty interest to grant parole.

Nevertheless, a routine denial of parole can bestow jurisdiction on this Court if, in denying parole, the Department fails to follow the statutorily required parole criteria. See *Cooper*, 377 S.C. at 502, 661 S.E.2d at 113 (“If a Parole Board fails to consider and apply the statutorily-created parole criteria, it has the effect of rendering an inmate parole ineligible, which under *Furtick* warrants review by the ALC.”); see also *Sullivan v. S.C. Dep’t of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (holding “[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.”). The “criteria” referenced in *Cooper* are “the factors outlined in section 24-21-640 and the fifteen factors published in [the Department’s] parole form.” *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112. Under *Cooper*, as long as the Board “clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form . . . the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure.” *Id.*

In this appeal, Appellant contends (1) Board member Christopher Gibbs improperly influenced the rest of the Board; (2) the South Carolina Code of Laws were altered as applied to him; (3) he did not received an unbiased review of his record; (4) the Board penalized him for being placed in an institution that does not have a community program; (5) the Board did not consider his efforts to “rewrite his life narrative”; and (6) his parole hearings are not being held every two years as required by statute.

As to Appellant’s first through fifth complaints, the Court’s jurisdiction is limited to a review of whether the Department complied with procedural requirements outlined in *Cooper*.

377 S.C. at 502, 661 S.E.2d at 113. In this case, the Department's denial letter clearly shows it considered section 24-21-640 and the Department's fifteen factor criteria for parole, including an actuarial risk and needs assessment outlined in section 24-21-10(F)(1). Moreover, the Department's decision included findings of fact and conclusions of law. *See Cooper. Id.* at 500, 661 S.E.2d at 112 (noting a final agency decision "shall include findings of fact and conclusions of law, separately stated"). Therefore, I find the Department's decision complied with *Cooper*, and the law was properly followed in Appellant's case. Additionally, it is within the Board's discretion to give whatever weight it chooses to the evidence it receives when it reviews the required criteria, including evidence of Appellant's efforts to rehabilitate his life or evidence of his participation in a community program. *See id.* at 499, 661 S.E.2d 106, 111 ("Undoubtedly, the Parole Board is the sole authority with respect to decisions regarding the grant or denial of parole.") Finally, though Appellant complains that he was denied parole based upon immutable factors related to his conviction, *Cooper* addressed this concern by requiring the Department to also consider all statutory criteria and Form 1212 as considered here. *Id.* at 502, 661 S.E.2d at 113.

Regarding Appellant's sixth complaint, he asserts he has not timely received a parole hearing every two years as required by section 24-21-645(D) of the South Carolina Code (Supp. 2017). Section 24-21-645(D) provides that "upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole." Appellant was convicted of murder, a violent crime under section 16-1-60 of the South Carolina Code; therefore, he is entitled to have his case reviewed for parole every two years after a denial.¹ Appellant asserts that his parole eligibility hearings are held anywhere from two to four months after the twenty-four-month period in violation of section 24-21-645(D).

As this Court explained above, the South Carolina Supreme Court has narrowly granted jurisdiction to the ALC to hear appeals of Department procedural matters, and this narrow jurisdiction does not include enforcing section 24-21-645(D)'s two-year parole review requirement. Moreover, Appellant brought this complaint after he received a parole hearing pursuant to section 24-21-645(D). As a result, the issue before the Court is moot, as the ALC

¹ This Court has the authority to interpret the parole statute. *Cooper, supra*. In interpreting statutes, this Court looks to the plain meaning of the statute and the intent of the Legislature. *Hinton v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 357 S.C. 327, 332, 592 S.E.2d 335, 338 (Ct. App. 2004).

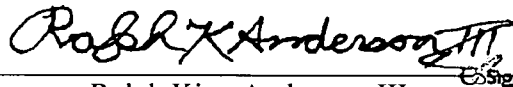
cannot provide further relief to Appellant.² *Jones v. Dillon-Marion Human Res. Dev. Comm'n*, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982); *see also Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996). Furthermore, because the Parole Board denied Appellant's parole, he cannot claim he was substantially prejudiced from being denied release due to a delayed hearing. *See Palmetto Alliance, Inc. v. S.C. Public Service Comm'n*, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984) (noting that to prove the denial of due process, a party must show that it has been substantially prejudiced by the administrative process).

CONCLUSION

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 violated his due process rights.

ORDER

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



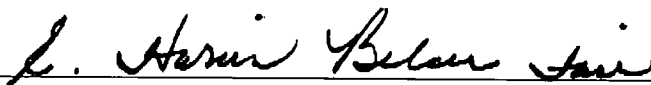
Ralph King Anderson, III
Chief Administrative Law Judge

August 1, 2018
Columbia, South Carolina

² Even if Appellant had brought an action seeking habeas relief, this Court does not have jurisdiction to hear such claims either.

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

August 1, 2018
Columbia, South Carolina