

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable John D. McLeod, Administrative Law Judge
Docket Number 2013-ALJ-15-0010
Appellate Case No. 2013-001399

MATTHEW HARRIS, #157334, APPELLANT

v.

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

FINAL BRIEF OF RESPONDENT

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APPELLANT'S ISSUE ON APPEAL

1. **Whether the Administrative Law Court (ALC) erred in its order, and improperly denied itself subject and personal matter jurisdiction, under S.C. Ann. §1-23-600(D)(Supp. 2012) and Cooper v. S.C. Dept. of Probation, Parole and Pardon Services, 377 S.C. 489, 500, 600 S.E.2d 106, 112 (2008), and erred in finding of fact and law on the issues raised in Appellants brief and record before the Court; and does order abrogate remedy from Respondent in the ALC?**

STATEMENT OF THE CASE

On September 9, 1988, the Appellant assaulted the victim Mr. Jeffrey Bass about the head and body with a baseball bat, then submerged his head under water until he died. The Appellant threw the victim's body in a dumpster, which was recovered days later in a landfill. Upon conclusion of their investigation, the Lexington County Sheriff's Department arrested the Appellant, and charged him with the offense of murder.

On April 18, 1989, the Appellant was found guilty by a jury of his peers. He was sentenced by the Honorable Julius Baggett to a term of incarceration for the remainder of his natural life. The case was reversed on post-conviction relief, and retried before the Honorable William Keesley on July 10, 1998. Once again he was convicted and received another life sentence for the offense of murder. 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 (20) years.

The Appellant made his initial appearance before the Parole Board on September 10, 2008. Upon conclusion of this appearance, the Parole Board decided to deny the Appellant an opportunity for parole. Since this initial denial the Appellant has appeared before the board an additional two (2) times, last appearing on January 30, 2013. Parole was denied due to: 1) the nature and seriousness of the current offense; and, 2) an indication of violence in this or a previous offense. (R.p.6). Upon being informed of this denial the Appellant requested a reconsideration. (R.p.7). The Board decided to reexamine the Appellant's case, and determined that the reasons for his request did not affect the final decision of the Parole Board, so the request for reconsideration was denied. (R.p.8). The Appellant was informed of this denial of

reconsideration, and immediately filed a notice of appeal before the Administrative Law Court (ALC).

Within this appeal the Appellant alleged that the denial of parole was arbitrary and capricious; and, mandatory department criteria violated the Freedom of Information Act (FOIA). The Respondent argued that the reasons for denial followed the mandatory criteria; and, the information gathered by the Department is deemed privilege, and thereby exempt from the FOIA. On June 7, 2013, the Honorable John D. McLeod issued an order affirming the Department's decision and dismissing the appeal. (R.p.1-p.3). On June 25, 2013, Appellant filed a Notice of Appeal requesting a reversal of the ALC's order. This final brief of the Respondent follows.

ARGUMENTS

1. The denial of parole was neither arbitrary nor capricious, and the final order followed the aspects revealed by the court in the Cooper decision.

The Appellant argues that the decision of the Parole Board denying his parole is arbitrary and capricious, and should be reversed and remanded for another hearing. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are arbitrary or capricious, characterized by abuse or discretion, or clearly unwarranted exercise of discretion. S.C. Code Ann. §1-23-380(6)(f)(Supp. 2012). The denial of parole was lawful and followed the mandatory criteria established by the General Assembly and the Department.

The General Assembly established criteria that must be considered prior to a decision made by the Parole Board. 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 his 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(Supp. 2012)

There also exist fifteen criteria found in department policy that the board must consider.¹ (R.p.9).

This Department criterion does not replace the above referenced criteria, but is more detailed.

The Appellant argues that the reasons given for the denial of parole is arbitrary and capricious and should be remanded. The reasons given were valid and followed the mandatory criteria established under South Carolina law and Department policy.

The Appellant was denied parole due to the nature and seriousness of the offense of murder; and, the indication of violence occurring during the commission of this offense. The Appellant committed the violent act of beating and drowning a man to death. Vehement opposition against parole was voiced to the board by the victim's family; the Lexington County Sheriff's department; and, the Eleventh Circuit Solicitor. Pursuant to South Carolina law victims, law enforcement, and the prosecuting agency must be notified as to the scheduling of a parole hearing.² Notice gives them an opportunity to voice their opinion regarding an inmate's release

¹ The board must establish written, specific criteria for the granting of parole and provisional parole. 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 (Supp. 2012).

² The director must give a thirty-day written notice of any board hearing during which the board will consider parole for a prisoner to the following persons:

- (1) Any victim of the crime who suffered damage to his person as a result thereof or if such victim is deceased, to members of his immediate family to the extent practicable;
- (2) The solicitor who prosecuted the prisoner or his successor in the jurisdiction in which the crime was prosecuted; and,

on parole. The Board will not only use their opinion, but the opinion of any individual informing them of the Appellant's good character. The reasons for denial were appropriate and followed criteria. This denial of Parole cannot be considered arbitrary nor capricious.

The order released followed what is considered lawful pursuant to 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). Under Cooper the Supreme Court decided that the findings of fact were included; however, the Parole Board neither "offered an explanation nor indicated that it had considered the statutory criteria of section 24-21-640 and the fifteen criteria listed on the parole form." Cooper, at 500. Within the Cooper decision the Supreme Court established what a Parole Board order should entail. It specifically states in Cooper,

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 order given to the Appellant followed the Cooper decision. The criteria within the statute, and the mandatory policy were considered prior to the denial of parole. The final decision was in writing and included a findings of fact and conclusions of law separately stated. S.C. Code Ann. §1-23-350 (Supp. 2012). The findings of fact were the legitimate reasons for the denial of parole, and the conclusions of law were the statutory and Department criteria used to reach these findings. According to the Supreme Court if this is shown no further review by the ALC is

(3). The law enforcement agency that was responsible for the arrest of the prisoner concerned. S.C. Code Ann. §24-21-221 (Supp. 2012).

necessary. The Parole Board clearly 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).

Since the Appellant has failed to provide an error in law, the ALC was correct in affirming the denial of parole. An administrative law judge shall not hear an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services. S.C. Code Ann. §1-23-600(D)(Supp. 2012).

2. The ALC was correct in not addressing the remaining issues brought by the Appellant.

The Appellant made an FOIA request for information presented to the Board prior to his denial of parole. He also argued that the reasons given for denial were untrue making his denial unlawful.

The Respondent cannot provide any information to the Appellant due to it being considered privileged pursuant to South Carolina law. These matters were not addressed by the ALC because a resolution of this case was already made. The Respondent revealed they abided by the Cooper decision; therefore, the ALC did not have further jurisdiction to remand the decision. The Court need not address Appellant's arguments if they are either non-dispositive or manifestly without merit. Laser Supply and Services, Inc. v. Orchard Park Association, 382 S.C. 326, 676 S.E.2d 139 (S.C. App. 2009).

It is the duty of a probation agent is to investigate all cases referred to him for investigation by a judge or director and report in writing. S.C. Code Ann. §24-21-280 (Supp. 2012). One of these investigations, is the completion of a pre-parole investigation. The

information gathered during this investigation are considered privileged. The South Carolina Code of Laws specifically state:

All information and data obtained in the discharge of his official duty by a probation agent is privileged information, is not receivable as evidence in a court, and may not be disclosed directly or indirectly to anyone other than the judge or other entitled under this chapter to receive reports unless ordered by the court or the director.

S.C. Code Ann. §24-21-290 (Supp. 2012).

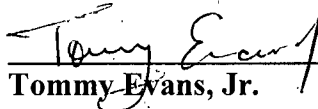
The Appellant argues that he should be allowed to view records used in determining his denial of parole. As probation hearings, parole hearings are not criminal trials, so an inmate is not entitled discovery. See, State v. Hill, 368 S.C. 649, 630 S.E.2d 274 (2006)(Criminal procedure rules governing disclosure of evidence in criminal cases do not apply to probation revocation proceedings.)The information collected by probation agents for a pre-parole investigation must not be allowed to be released. This is due to the sensitive information contained within those files. These files contain the names and addresses of each victim, law enforcement personnel, the solicitor and the sentencing judge; as well as information regarding mental health counseling or drug treatment of victims or inmates. This information must remain privileged, and closed to the public. Since it is privileged information it remains exempt from the FOIA. A public body may but is not required to exempt from disclosure matters specifically exempted from disclosure by statute or law. S.C. Code Ann. §30-4-40(a)(4). The exemption from disclosure under the FOIA does not create a duty of nondisclosure; at most these exemptions simply allow public agencies the discretion to withhold exempted materials from public disclosure. Burton v. York County Sheriff's Department, 358 S.C. 339, 594 S.E.2d 888 (2004).

The Appellant argues that the reasons used were unlawful due to it being untrue. He believes that the use of an indication of violence in this of a previous offense is incorrect due to the fact he had no convictions on his record prior to this offense. The actual reason relates to past and present offenses. The Board must look at the record of the Appellant before, during and after imprisonment. The nature and violence committed by the Appellant must be taken into consideration prior to deciding if the Appellant is a danger to society. The Board was well within their rights to use these reasons to deny the Appellant an opportunity to be released on parole.

CONCLUSION

The Appellant has not revealed an error of law in the final decision of the Parole Board. The denial of parole was proper pursuant to South Carolina law. Due to these reasons the ALC was correct in affirming the decision of the Parole Board. The Respondent respectfully requests this Honorable Court to affirm the decision of the ALC.

Respectfully submitted,



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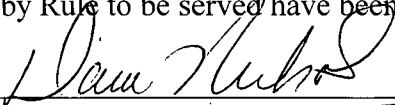
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent* dated October 11, 2013, on Appellant this 11th day of October, 2013, by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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



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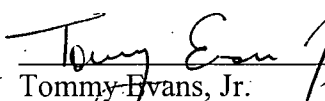
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.



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October 11, 2013