

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the Administrative Law Court
The Honorable Deborah Brooks Durden, Administrative Law Judge
Case No. 19-ALJ- 15-0004-AP

LYNN JEFFERY CHRONISTER, #189827.....APPELLANT

v.

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

INITIAL BRIEF OF RESPONDENT

Tommy Evans, Jr.
Assistant General Counsel

**South Carolina Department of Probation,
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ATTORNEY FOR THE RESPONDENT

TABLE OF CONTENTS

Table of authorities.....ii

Statement of issues on appeal.....iii

Statement of the case.....1

Arguments

 1. The ALC was correct in dismissing this notice of appeal due to this being a routine denial of parole.....2

 2. The Appellant provided the Court questions of fact that are decided by the Parole Board and not the courts.....5

 3. The Appellant has revealed no substantial evidence revealing that the decision of the board was arbitrary or capricious7

Conclusion.....9

TABLE OF AUTHORITIES

CASES

Compton v. S.C. Dept. of Probation, Parole and Pardon Services, 385 S.C. 475, 685 S.E.2d 175 (2008).....4

Cooper v. S.C. Dept. of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008).....3,4

Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100 (1979).....6

Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981).....7

Leventis v. South Carolina Department of Health and Environmental Control, 340 S.C. 118, 530 S.E.2d 643 (2000).....8

State v. Franks, 276 S.C. 636, 281 S.E.2d 227 (1981).....6

Summersell v. S.C. Dept. of Public Safety, 334 S.C. 357, 513 S.E.2d 619 (1999).....8

STATUTES

S.C. Code Ann. §1-23-350(2018).....3

S.C. Code Ann. §1-23-380(2018).....5

S.C. Code Ann. §1-23-600(2018).....4

S.C. Code Ann. §1-23-610(2018).....3

S.C. Code Ann. §24-21-640(2018).....5

STATEMENT OF ISSUES ON APPEAL

1. Was the decision of the Administrative Law Judge to dismiss the Appellant's notice of appeal in error were the notice of appeal raises a violation of due process, and a deviation from the presentation of material evidence on relevant factors at his parole hearing?

STATEMENT OF THE CASE

On February 14, 1992, witnesses heard five gunshots from inside Duke Power in York County. They then witnessed the Appellant walk thru the parking lot carrying a rifle. Inside his wife was shot five times, and pronounced dead at the scene. The Appellant was immediately arrested for the crime of murder and possession of a firearm during the commission of a violent crime.

On September 22, 1992, the Appellant appeared before the Honorable Don Rushing for these offenses. Upon the conclusion of this appearance the Court sentenced the Appellant to a term of incarceration for the remainder of his natural life for the offense of murder, and five years for the firearm offense. The Court ordered these offenses are to be served consecutively. Pursuant to South Carolina law existing at the time the Appellant committed this offense, an individual serving a life sentence for murder becomes eligible for parole upon the service of twenty years.

On June 13, 2012, the Appellant made his initial appearance before the Parole Board. At the conclusion of this hearing the Board decided to deny the Appellant an opportunity for parole. Since this initial hearing the Appellant has appeared an additional three times. The most recent appearance occurring on January 23, 2019, parole was denied due to: 1) the nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; and, 3) the use of a deadly weapon in this or a previous offense. Upon receiving the denial of parole the Appellant filed a notice of appeal before Administrative Law Court (ALC).

Within this appeal the Appellant argued that he was not given the proper opportunity to present mitigating evidence during his parole hearing denying him the right to due process. He further argued that the decision of the board was arbitrary and capricious. The ALC made the determination that the Parole Board revealed that the mandatory criteria and the risk assessment

was considered prior to denial. Since this is a routine denial of parole, the ALC decided she did not have the ability to remand the decision to the Parole Board pursuant to *Cooper*.

The Respondent will argue that the ALC was correct in the dismissal of this appeal. The ALC correctly found that the Respondent showed that the mandatory criteria was considered prior to the decision of the Parole Board. The minimal ability of the ALC to rule on the decision of the Parole Board was satisfied. The decision of the Board was correct and lawful, this Court should affirm the decision of the ALC. The brief of the Respondent supporting these defenses follows.

ARGUMENTS

1. The ALC was correct in dismissing this notice of appeal due to this being a routine denial of parole.

The Appellant argues that the ALC was incorrect in affirming the Parole Board's denial of his parole. The Respondent argues that the Board followed all of the mandatory criteria so this must be considered a routine denial of parole. The ALC cannot remand a lawful routine denial of parole. The ALC was correct in finding that the Board followed the mandatory criteria, and applied the risk assessment as proscribed pursuant to South Carolina law. The decision to dismiss this appeal was lawful and should be upheld.

The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision of the substantive rights of the petitioner have been prejudiced because the finding, conclusion or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;

- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. §1-23-610(B)(a-f)(2018).

The Appellant has failed to provide substantial evidence that any of the above referenced criteria allowing a reversal exist. The decision of the ALC was lawful and should be affirmed by this Court.

A final decision shall include a findings of fact and conclusion of law separately stated. S.C. Code Ann. §1-23-350 (2018). In the final order of denial the Board followed South Carolina law. A finding of fact are the reasons for denial, and a conclusion of law, consist of the criteria and risk assessment. The order revealed that the criteria found in South Carolina law and Department policy, as well as the risk assessment was considered. The order also revealed the lawful reasons as to why parole was denied. This is considered a routine denial of parole per South Carolina law so the ALC made the correct decision.

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), a finding of fact was included; however, the Court determined that the Parole Board neither, offered an explanation, nor indicated they considered the statutory criteria of section 24-21-640, or 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-related parole criteria, it has the effect of rendering an inmate parole ineligible, which warrants review by the ALC. *Id.*, at 502. In *Cooper*, the Supreme 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.

In the case at bar, the order of denial conformed with the *Cooper* decision. The findings of fact were the nature, seriousness, violence and weapon used in the commission of this offense. The conclusion of law was the statutory and department criteria, as well as the risk assessment considered prior to the final decision. This must be considered a routine denial of parole which according to *Cooper*, gives the ALC limited authority to review the decision and make a determination as to whether the Board properly considered the criteria prior to denial. According to the Supreme Court, if it is shown that the proper criteria was considered no further review by the ALC is necessary.¹ This was a routine denial of parole. The ALC made the proper decision to not remand this decision back to the Parole Board., which was the only remedy available to the ALC. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections 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 (2018). Since this was a routine denial of parole, the ALC made the proper decision. The ALC's decision was lawful and should be affirmed by this Court.

¹ 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).

2. The Appellant provided the Court with questions of fact that which are decided by the Parole Board.

The Appellant list mitigating evidence that are considered questions of fact. Within his brief the Appellant list many determinations made about his mental state during the commission of the crime. These are criteria considered by the Board; however, the Board determines weight applied to all questions of fact. The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann. §1-23-380 (2018). The Board has shown they have considered all of the evidence presented. The weight given to some evidence against others is strictly left up the Parole Board. The mitigating evidence was considered as part of the mandatory criteria considered by the Parole Board.

The mandatory criteria found within South Carolina Code of Laws specifically states:

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, the suitable employment has been secured for him.

S.C. Code Ann. §24-21-640 (2018)

Pursuant to South Carolina law the Board must consider the record of the prisoner before, during and after imprisonment. The facts of the crime as well as other information regarding his mental state if presented will be considered.

The Appellant also argues that he had only eight minutes to present his case. A parole or probation hearing is never considered a criminal trial. A revocation proceeding is not a criminal trial of charges but a more informal proceeding with respect to notice and proof of alleged violations. *See, State v. Franks*, 276 S.C. 636, 281 S.E.2d 227 (1981). Due to the voluminous

amount of hearings, an inmate has only a limited amount of time to present their case. There is not an infinite amount of time to present their mitigating evidence.

The Appellant argues that being only allowed eight minutes to present his mitigation violates due process. However, there was never a denial of due process. The Appellant was allowed to appear before the Parole Board and present any mitigating evidence in support of him being awarded parole. He was certainly allowed to provide any information to the board prior to his hearing and allowed to speak regarding the crime and his mental state during its occurrence. An individual appearing before the Board does have minimal due process rights but it is not equivalent to a person being accused of a crime. It is not even equivalent to a person having his parole revoked. In *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 99 S.Ct. 2100 (1979) the United States Supreme Court determined there is a distinction between a person currently on parole and a person seeking parole.² The court also ruled in *Greenholtz* that there is no constitutional or inherent right of a convicted person to be conditionally release before the expiration of a valid sentence. *Greenholtz*, at 2014. The Appellant was never denied due process. It is the duty of the Board to inquire as to why an inmate should be granted parole. The questioning of the Appellant is necessary and cannot equate to a denial of due process. He was allowed to appear and present mitigating evidence on his behalf so he was not denied due process, this argument has no merit.

² There is a crucial distinction between being denied a conditional liberty one has, as in parole and being denied a conditional liberty that one desires. The parolees in *Morrissey* (and probationers in *Gagnon*) were at liberty and as such could "be gainfully" employed and [were] free to be with family and friends and to form other enduring attachments to normal life." 408 U.S. at 482, 92 S.Ct. at 2600. The inmates here on the other hand, are confined and thus subject to all of the necessary restraints that inhere in a prison. *Greenholtz*, at 2105.

3. The Appellant has presented no substantial evidence revealing that the decision of the board was arbitrary or capricious.

The Appellant argues that his mitigating evidence was not considered so this denial of parole should be considered arbitrary and capricious. He questions the ALC's decision and request this Court to remand this decision back to the Board. The Board have shown they did consider all of the evidence presented and made a decision after considering the mandatory criteria. The Appellant presumes that the Board failed to consider his mitigating evidence and made an arbitrary decision due to the fact he was denied parole. This is just an assumption, the Appellant has failed to present any evidence revealing this as fact.

For an accusation to be considered by the ALC substantial evidence must have been presented that proves the Appellant accusations. Substantial evidence is evidence which considering the record as a whole would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action. *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 304 (1981). The Appellant failed to present any substantial evidence revealing that the board failed to consider his mitigating evidence. The final order of denial did reveal that all of the criteria was considered, and the reasons for denial followed this criteria. Since no substantial evidence was presented proving the decision was made without consideration of the Appellant's mitigating evidence, this decision was not arbitrarily nor capriciously made. The ALC was correct in deciding that this appeal had no merit and affirmed the decision of the Parole Board.

The burden of proof fell upon the Appellant to prove to the ALC that his denial of parole was arbitrary and capricious. In administrative proceedings the general rule is that an Appellant for relief, or a privilege has the burden of proof and the burden of proof test upon one who files a claim with an administrative agency to establish that required conditions of eligibility have been met. *Leventis v. South Carolina Department of Health and Environmental Control*, 340 S.C. 118,

530 S.E.2d 643 (2000). The Appellant had failed to provide any evidence that his denial of parole was made arbitrarily or capriciously. Substantial evidence was provided revealing that the all of the mandatory criteria and risk assessment was considered.

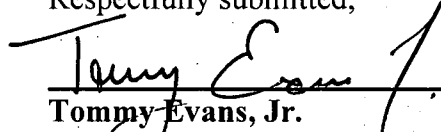
The Appellant was denied parole due to the seriousness and violence in the commission of this offense. The reasons for denial are valid and follows South Carolina law. Since the denial is supported by substantial evidence it should not be subject to remand. The findings of an administrative agency are presumed correct and will be set aside only if supported by substantial evidence. *Summersell v. S.C. Dept. of Public Safety*, 334 S.C. 357, 513 S.E.2d 619 (1999).

The Appellant failed to present any evidence revealing that the decision to deny parole was arbitrary. The Respondent has revealed ample evidence that all of the mandatory criteria was considered. It is reasonable that a man who have committed murder not be released on parole if Board has shown they have considered all of the criteria and decided that the evidence presented does not warrant a granting of parole. The ALC correctly determined that this was a routine denial of parole so she was correct in affirming the decision of the Parole Board. Due to the amount of substantial evidence presented the Respondent request this Court affirm the decision of the ALC.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests the final decision of the ALC be affirmed.

Respectfully submitted,



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May 22, 2019

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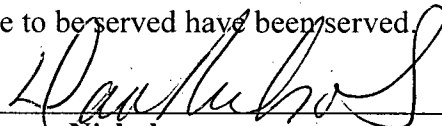
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES.....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within Initial Brief and Designation of Matter dated May 22, 2019, on Appellant this 22nd day of May, 2019, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Lynn Jeffrey Chronister, #189827
Kirkland Correctional Institution-B-II, 63
4344 Broad River Road
Columbia, S.C. 29210

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


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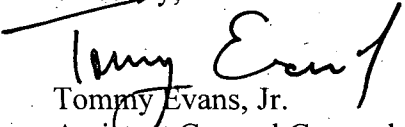
The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: Lynn Jeffery Chronister v. SCDPPPS

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter dated May 22, 2019, along with proof of service in the above referenced case.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures

cc: Lynn Jeffery Chronister

State of South Carolina

Department of Probation, Parole, and Pardon Services

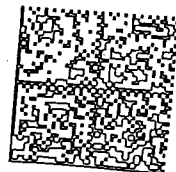
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