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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DEC 23 2019

Bernard Bagley, #175851,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Probation,)
Parole and Pardon Services)
)
Respondent.)
_____)

Docket No. 19-ALJ-1520029-App
SC Court of Appeals

**ORDER DENYING APPELLANT'S
MOTION FOR RESOLUTION
AND TO SUPPLEMENT THE
RECORD**

This matter is before the South Carolina Administrative Law Court (court or ALC) on an appeal filed by Bernard Bagley (Appellant) regarding the decision of the South Carolina Department of Probation, Parole and Pardon Services (Department or Respondent) denying his request for parole.

FACTUAL/PROCEDURAL HISTORY

The Department notified the Appellant on June 19, 2019 that his request for parole was denied. On July 18, 2019, the Appellant filed a Notice of Appeal with this court. On July 31, 2019, the Appellant filed his Appellant's Brief. On August 14, 2019, the Appellant filed a Motion for Resolution with the court asking the court for a resolution of his July 30, 2019, Motion for Declaratory Judgment or Disposition for Reconsideration and Rehearing he filed with the Department. On August 26, 2019, the court received a duplicate audio CD of the Appellant's parole hearing held on June 19, 2019 from the Department.

On September 24, 2019, the Department filed the Record on Appeal (ROA). On October 1, 2019, the Appellant filed a Motion of Objections to Respondent's Insufficient and Incomplete Record on Appeal, asking the court to order the Department to file a Supplement ROA that includes the Appellant's parole plan package; mitigating evidence; Department policy, page 40, Reconsideration of Parole Cases; the Appellant's Request for Rehearings; and the CD of the Appellant's June 19, 2019 parole hearing. On November 8, 2019, the Department filed a Motion for Extension, requesting an extension of time until December 12, 2019 to file the Respondent's Brief. On November 12, 2019, the court granted the Department's request for an extension.

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On November 14, 2019, the Department filed a Motion to Dismiss, asking the court to deny the Appellant's motion to supplement the ROA. On November 15, 2019, the Appellant filed a Motion in Objection for Extension to File Brief of Respondent and Motion for Grounds for Relief and the Relief Sought Pursuant to ALC Rule 63. On November 21, 2019, the Appellant filed the Appellant's Response to Respondent's Motion to Dismiss asking the court to deny the Department's Motion to Dismiss for untimeliness.

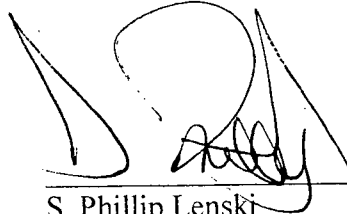
DISCUSSION

The court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003). In *Furtick*, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole eligibility pursuant to S.C. Code Ann. § 24-21-620, the statute creates no such liberty interest in the granting of parole itself. *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 n.4. Therefore, claims arising from the South Carolina Board of Pardons and Paroles' (Board) decision denying parole are not appealable to the ALC, only claims that the Board failed to consider the appropriate criteria so as to be tantamount to an abrogation of parole eligibility are. *Cooper v. S.C. Dep't. of Probation*, 377 S.C. 489, 661 S.E.2d 106 (2008).

Because the court cannot look beyond whether the Appellant was afforded the opportunity to be considered for parole, the Appellant's Motion for Resolution filed on August 14, 2019, asking the court for a resolution of his July 30, 2019, Motion for Declaratory Judgment or Disposition for Reconsideration and Rehearing filed with the Department, is not properly before this court and is therefore, **DENIED**. In response to the Appellant's October 1, 2019, Motion of Objections to Respondent's Insufficient and Incomplete Record on Appeal, ALC Rule 61 provides that the record on appeal will contain a transcript of the proceedings, "if any." In this case, the court received a duplicate audio CD of the Appellant's June 19, 2019 parole hearing from the Department, therefore, the Appellant's request to supplement the ROA with the CD of his June 19, 2019 parole hearing is **GRANTED** and all other requests from the Appellant to supplement the ROA is **DENIED**.

Finally, as the court has already granted the Department's request for an extension of time to file the Respondent's brief, the Appellant's November 15, 2019 objection to the Department's request for an extension of time and relief pursuant to ALC Rule 63 is **DENIED**.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

November 26, 2019
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).

The 26th day of November 2019

Judicial Law Clerk