

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Jerome Scott, #153381,

Appellant.

vs.

South Carolina Department of Probation,  
Parole and Pardon Services,

Respondent.

Docket No. 19-ALJ-15-0033-AP

FINAL ORDER

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SC Court of Appeals

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC or court) pursuant to the appeal of Jerome Scott (Appellant), an individual in the custody of the South Carolina Department of Corrections. On June 19, 2019, the South Carolina Department of Probation, Parole and Pardon Services (Department or Respondent) notified the Appellant that the South Carolina Parole Board (Board) had rejected him for parole. The Appellant challenges the Board's denial of parole on the grounds that the Department's decision was in violation of constitutional or statutory provisions, and arbitrary and capricious.

ISSUE ON APPEAL

1. Whether the Department complied with procedural due process requirements when denying the Appellant parole.

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 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*

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*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). The court may modify or reverse the decision of the agency only when substantial rights of the appellant have been prejudiced. 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. *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 sufficiency of the Board's decision denial of his parole on the grounds that the Board failed to consider the mitigating evidence the Appellant submitted, which included the Appellant's prison record and his remorse for the offense he committed. The Appellant also argues that the Board's use of the Nature and Seriousness of Current Offense in denying him parole is unfair because he cannot change the record of his conviction. However, the ALC's review in a routine denial of parole is limited:

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. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

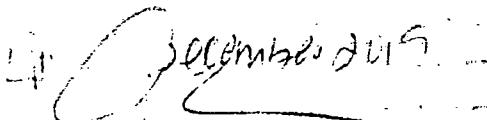
*Cooper*, 377 S.C. at 500, 661 S.E.2d at 112. As long as the Board considers all of the factors required by statute, it has protected the inmate's liberty interest in parole eligibility and has the discretion to deny parole based on any of the factors found in § 24-21-640 or its own criteria. *Id.* The Board's decision reflects that it considered all the appropriate factors before making its decision to deny the Appellant parole. therefore, the court cannot grant relief to the Appellant.

**ORDER**

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

  
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S. Phillip Lenski  
Administrative Law Court

December 4, 2019  
Columbia, South Carolina

  
December 2019