

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ronald Tate, #114188,

Docket No. 19-ALJ-15-0034-AP

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

FINAL ORDER
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SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a notice of appeal filed by Ronald Tate (Appellant), an inmate 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 Parole Board (Board) had determined that his parole must be denied. The Appellant challenges the Board's denial of parole on the basis, generally, that it was violative of the constitution. After careful consideration of the parties' arguments, the Department's determination is affirmed.

BACKGROUND

On December 18, 1982, the Appellant was sentenced to life in prison for the murder of a motel clerk during a botched armed robbery attempt.¹ At the time, State law granted parole eligibility to a person serving a life sentence for murder upon the service of twenty (20) years. The Appellant first appeared before the Board for a parole hearing on April 1, 1998. The Board denied the Appellant parole following that hearing, as well as on eighteen subsequent occasions. On June 19, 2019, following his most recent parole eligibility hearing, the Board voted unanimously to deny the Appellant parole due to: (a) the nature and seriousness of his current offense, and (b) his use of a deadly weapon in this or a previous offense. On July 22, 2019, the Appellant timely appealed the Board's decision to this court alleging that the standards used to determine his parole

¹ In connection with the events surrounding the murder, the Appellant was also convicted of and sentenced to twenty years for attempted armed robbery, twenty years for assault and battery with intent to kill (ABIK), ten years for grand larceny, and five years for housebreaking.

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eligibility were violative of his due process rights.² Specifically, the Appellant claims that: (a) the record is incomplete and devoid of a factual basis for the Board's denial of parole; (b) the Board's written decision lacks sufficient specificity to enable review; (c) the Board failed to use the COMPAS risk assessment tool, as required by law; and (d) there is no evidence in his pre- or post-incarceration history and/or his current demeanor and mental state indicative of a continuing threat to public safety.

ISSUE ON APPEAL

Whether the Department violated the Appellant's due process rights in denying him parole.

STANDARD OF REVIEW

The court's jurisdiction to review this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz* and *Furtick*. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals); see also *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). As explained by the *Al-Shabazz* Court, "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).

Since parole is a privilege, not a right, the routine denial of parole does not constitute such a liberty interest. See *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 495-96, 661 S.E.2d 106, 109-10 (2008) (citation omitted). If, however, the Board "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." *Id.* at 499, 661 S.E.2d at 111. Thus, this court may review decisions from the Department for violations of statutory procedure or procedural due process only, but may not review the Board's substantive decision to deny an appellant parole.

² The Appellant also alleged violations of both the State and federal ex post facto clauses in his notice of appeal, however, he abandoned this issue by failing to argue it in his brief. See SCALC Rule 60(B) ("The brief shall be divided into as many parts as there are issues to be argued, and each such part shall bear an appropriate caption, followed by a discussion and citation of authority."); *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 270, 818 S.E.2d 447, 455 (2018) (citation omitted) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.").

In reviewing such matters, the court sits in its appellate capacity. *See id.* at 497, 661 S.E.2d at 110 (citation omitted); *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754 (citation omitted). Under the Administrative Procedures Act, the court's review in appellate matters is confined to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2019). The court may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2019). Substantial rights of the appellant are prejudiced when the agency's findings, inferences, conclusions, or decisions are: (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. *Id.*

DISCUSSION

As stated *supra*, parole is not a right, but a privilege. *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, 586 S.E.2d 124, 127 n.4 (2003)). The discretion to grant parole lies solely with the Board. *Id.* 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, then its decision will constitute a routine denial of parole and summary dismissal of the case would be appropriate. *See Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; *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 for the Board to follow includes considering the factors outlined in Section 24-21-640 of the South Carolina Code, as well as those listed in the Department's parole form. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; *Compton*, 385 S.C. at 479, 685 S.E.2d at 177; *see also* S.C. Code Ann. § 24-21-640 (Supp. 2019) (setting forth the statutory factors warranting parole). Additionally, the Board must utilize an actuarial risk and needs assessment tool, known as COMPAS, in making its parole determinations. *See* S.C. Code Ann. § 24-21-10(F) (Supp. 2019).

If the Board fails to follow proper procedure, giving due consideration to the specified factors, an appellant is denied his liberty interest in parole eligibility. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. If, however, the Board adheres to procedure and considers all the requisite factors, the appellant's liberty interest is protected, and the Board has the discretion to deny parole

based on any of the factors found in Section 24-21-640 or its own criteria. *See id.* at 499, 661 S.E.2d at 111-12.

Here, the Board's order plainly reflects that it considered all the appropriate factors – including those set forth in Section 24-21-640, the Department's own criteria for parole consideration, and an actuarial risk and needs assessment – before making its decision to deny the Appellant parole. Thus, as a routine denial of parole, the court's ability to further review this matter is limited:

[T]he [] Board may avoid [reversal of its parole determinations] if it clearly states in its order denying parole that it considered the factors outlined in [S]ection 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.

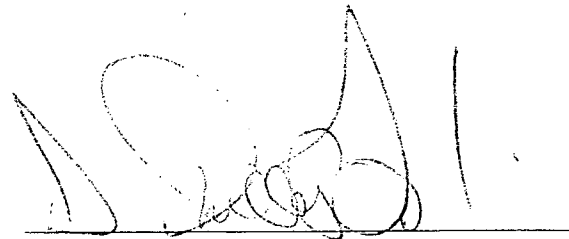
Cooper, 377 S.C. at 500, 661 S.E.2d at 112; *see Compton*, 385 S.C. at 479, 685 S.E.2d at 177. Consequently, because the record reflects that the Board routinely denied the Appellant parole after complying with the necessary procedure, the court may not interfere with the Department's determination.

ORDER

THEREFORE, for the foregoing reasons, the Department's decision denying the Appellant parole is hereby **AFFIRMED**.

AND IT IS SO ORDERED.

January 3, 2020
Columbia, South Carolina



S. Phillip Lenski
S.C. Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the 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 Emergency Mail Service addressed to the party(ies) or their attorney(s).

This 3rd day of January, 2020

Judicial Law Clerk