STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael J. Pettinato, #218405, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No. 19-ALJ-15-0039-AP **ORDER OF DISMISSAL**

This case is before the South Carolina Administrative Law Court (ALC) pursuant to the appeal of Michael Pettinato (Appellant), an individual incarcerated with the South Carolina Department of Corrections. Appellant was convicted on November 30, 1994, of murder and possession of a firearm during the commission of a violent crime. Appellant was sentenced to life in prison with a concurrent five-year sentence for the secondary firearm offense. At the time of his offense, South Carolina law allowed parole eligibility to prisoners serving life sentences for murder after twenty years of incarceration. Appellant appeared before the South Carolina Board of Paroles and Pardons (Board) on June 11, 2014. His parole was denied. Appellant was denied parole again on October 11, 2016. On February 27, 2019, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the Board had denied his third request for parole. Appellant sought a rehearing. On July 22, 2019, the Department notified Appellant that the Board had denied his request for a rehearing. Appellant seeks ALC review of the Board's denial of parole.

Appellant raises five issues. First, he argues the Department failed to provide him with notice of the issues involved in his parole hearing, denying him the ability to present evidence supporting his case. Second, Appellant argues the Board has effectively made him permanently ineligible for parole by basing their decision to deny parole on elements of his past that can not be changed. Third, Appellant argues the General Assembly intended the Board to operate with a presumption that parole should be granted after a prisoner serves a mandatory sentence and meets the statutory criteria. Fourth, Appellant argues the Board's Notice of Rejection letter informing him of the Board's denial of parole is invalid because it does not bear the signature of any member of the

Board. Finally, Appellant argues the Department failed to present him with an adequate statement of reasons for his denial of parole.

An individual has a right to ALC review of a final decision of the Department only when that decision affects a liberty interest for which due process is required. See Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 598, 576 S.E.2d 146, 149, (2003); see also Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review). 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, at 598, 576 S.E.2d at 149, n.4.

Appellant's first issue is that he received insufficient notice of the issues involved in his parole hearing. Appellant cites S.C. Code Ann. § 1-23-320(B)(4) (Supp. 2019), which states "The notice must include a . . . short and plain statement of the matters asserted." The statute cited applies to contested cases. A parole hearing before the Board is not a contested case and is controlled by the procedures in Title 24, Article 7 of the S.C. Code of Laws. Moreover, assuming arguendo that § 1-23-320 applies to the extent it codifies the requirements of due process, the procedure here meets that requirement. On October 5, 2018, Appellant received and signed a form from the Department outlining the criteria followed by the Board when considering inmates for parole. The form provides fifteen specific criteria the board considers and states the Board may consider other relevant factors. Additionally, the form states the parole eligible inmate has the right to appear at the parole hearing and present evidence. This Court finds Appellant received sufficient notice of the issues that would be addressed at his parole hearing.

Appellant's second issue is that the Board has effectively rendered him permanently ineligible for parole by denying him parole on the basis of factors that can no longer be changed. The statutes controlling the parole process grant broad discretion to the Parole Board while setting out certain factors that must be considered:

> 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. 2019). Additionally, "[t]he board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records." Id. Where the Parole Board clearly states "in its order denying parole that it considered the factors outlined in section 24-21-640 and the factors published in its parole form" 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." Cooper v. S.C. Dep't of Prob., Parole, and Pardon Services, 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008). The ALC can summarily dismiss the inmate's appeal in the case of such a routine denial of parole. Id.

Here, the Department clearly stated in the letter denying Appellant parole that the Board considered the § 24-21-640 factors as well as the factors published on its parole form. Therefore, this Court's review of the Board's decision is limited to whether the Board followed proper procedures. Appellant was convicted of murder, which is a violent crime under S.C. Code Ann. § 16-1-60 (Supp. 2019). Prisoners incarcerated for violent crimes must have their cases reviewed bi-annually for the purpose of determining whether to grant parole. S.C. Code Ann. § 24-21-645 (Supp. 2019). Since the Department specifically stated it followed the parole criteria and the Department has regularly reviewed Appellant's case, this Court finds that Appellant has not been rendered permanently ineligible for parole.

Appellant's third issue is that the plain language of § 24-21-640 shows the legislature intended to create a presumption that parole should be granted after the prisoner serves the mandatory sentence and meets the statutory criteria. "The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "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 met the statutory criteria]. S.C. Code Ann. § 24-21-640 (Supp. 2019). The plain language of the statute states the Board must be satisfied that the criteria have been met before the Board has the discretion to grant parole. The phrase "may be paroled" means the Board is vested with discretion to grant parole or not. This Court finds the plain language of § 24-21-640

demonstrates the legislature intended to grant the Board broad discretion. There is no indication of any intent to create a presumption that parole be granted after the prisoner serves the mandatory sentence and meets the statutory criteria.

Appellant's fourth issue is that the Board's Notice of Rejection letter is invalid because it does not meet the requirements of S.C. Code Ann. § 24-21-650 (2007), which states "The board shall issue an order authorizing the parole which must be signed by at least a majority of its members with terms and conditions, if any, but at least two-thirds of the members of the board must sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60." Appellant conflates the Board's Notice of Rejection with an order granting parole. Section 24-21-650 requires members of the board to sign an order authorizing parole. The statute does not provide requirements concerning a Notice of Rejection letter. This Court finds Appellant's fourth issue is without merit.

Appellant's fifth issue is that he received an inadequate statement from the Board explaining the reasons for the denial of parole.

> A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

S.C. Code Ann. § 1-23-350 (2005). Appellant received a written Notice of Rejection that provides separate findings of fact and conclusions of law. The findings of fact follow the language of the Board's criteria for parole consideration. Additionally, where the Parole Board clearly states "in its order denying parole that it considered the factors outlined in § 24-21-640 and the . . . factors published in its parole form" 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." Cooper, at 500, 661 S.E.2d at 112. This Court finds Appellant received a sufficient statement of the Board's final decision.

ORDER

IT IS THEREFORE ORDERED that this appeal is **DISMISSED**, with prejudice.

AND IT IS SO ORDERED.

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

March 12, 2020
Columbia, South Carolina