STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Richard Coleman, #186795, Appellant, v. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No. 19-ALJ-15-0021-AP ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) in its appellate capacity pursuant to subsection 1-23-600(D) of the South Carolina Code (Supp. 2019). In the case *sub judice*, Richard Coleman (Coleman or Appellant) seeks judicial review of a decision issued by the South Carolina Parole Board (Board). Specifically, on March 21, 2019, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Coleman that the Board denied him parole. After careful consideration of the Record on Appeal (Record), arguments raised in the parties' briefs, and the applicable law, the Court affirms the Board's decision.

BACKGROUND

On or about August 7, 1991, Coleman, who was fifteen years old at that time,[1] committed various offenses that led to his arrest. Coleman was charged with the offenses of murder, first-degree burglary, and first-degree criminal sexual conduct. Thereafter, Coleman was convicted on all charges and, as to the murder offense, he was sentenced to incarceration for the remainder of his natural life with the possibility of parole after the service of twenty years' imprisonment.[2] *See*

[1] Although there is nothing in the Record to substantiate Appellant's age at the time of the offenses, each of the parties' briefs references this age in the "Statement of the Case." The Court, therefore, accepts this information as binding. *See* SCALC Rule 60(B)(2) ("Any matters stated or alleged in a party's statement [of the case] shall be binding on that party.").

[2] Coleman was also sentenced to life imprisonment for first-degree burglary and thirty years imprisonment for first-degree criminal sexual conduct.

S.C. Code Ann. § 16-3-20(A) (Supp. 1991) ("A person who is convicted of or pleads guilty to murder must be punished by death or by imprisonment for life and is not eligible for parole until the service of twenty years[.]").

After becoming parole eligible, Coleman last appeared before the Board on March 20, 2019,[3] where the Board voted unanimously to deny his parole. In reaching its determination, the Board provided the following factual reasons for rejection: (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. The Board also stated that it carefully considered "(1) the characteristics of [his] current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record . . . ." Additionally, the Board specified that it reviewed the criteria outlined in section 24-21-640 of the South Carolina Code, the factors published in Department Form 1212, and the actuarial risk and needs assessment factors pursuant to subsection 24-21-10(F)(1) of the South Carolina Code.

Subsequently, on March 26, 2019, Coleman submitted a letter to the Board essentially requesting it to reconsider the rejection of his parole. On April 4, 2019, a Board Support Services member, Nettie Jacobs, responded to Coleman's submission and noted that although his file had been reviewed, the Board would undertake no further action on his request. She reasoned that "there is no rehearing/appeal process for the routine denial of parole[.]" Coleman then filed his Notice of Appeal with the Court on April 11, 2019. This matter was assigned to the undersigned on April 18, 2019. Coleman filed his brief on May 17, 2019. The Department filed the Record on June 18, 2019, and its brief on September 3, 2019. Coleman filed a reply brief on September 9, 2019.

ISSUES ON APPEAL

I. **Whether the Board violated the Eighth Amendment of the United States Constitution by failing to provide Coleman with a meaningful opportunity to obtain release?**

II. **Whether Coleman was unconstitutionally denied parole because the Board did not consider the fact that he was a juvenile at the time of his offense.**

III. **Whether the Board erred in relying on erroneous information?**

[3] According to the parties in each of their briefs' "Statement of the Case," Coleman made his initial appearance before the Board several years earlier, on September 12, 2012.

JURISDICTION/STANDARD OF REVIEW

The Court's jurisdiction to review parole decisions is derived from the confluence of several decisions of the South Carolina Supreme Court. Initially, in *Al-Shabazz v. State*, our Supreme Court held that the ALC's jurisdiction in inmate appeals is limited to non-collateral or administrative matters[4] typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). Importantly, the court stressed the caveat that not all provisions of the Administrative Procedures Act (APA)[5] apply to the internal prison disciplinary or decision-making process. *Id.* Rather, procedural due process is guaranteed only when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property. *See id.* (quoting *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701 (1972)).

Following *Al-Shabazz* and its progeny, South Carolina jurisprudence has found that the ALC's jurisdiction is properly vested where an inmate's appeal implicates a state-created liberty or property interest. *See, e.g., Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012); *see also Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (recognizing another limited ALC jurisdictional exception where inmate claims deprivation of a property interest). In that regard, a state statute may create a liberty interest in parole where it uses mandatory language. *See, e.g., Bd. of Pardons v. Allen*, 482 U.S. 369, 107 S.Ct. 2415 (1987); *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 99 S.Ct. 2100 (1979). Such an instance was found in *Furtick v. South Carolina Department of Probation, Parole & Pardon Services*, where the court held that section 24-21-620 of the South Carolina Code creates a liberty interest in parole eligibility. *Id.*, 352 S.C. 594, 598 n.4, 576 S.E.2d 146, 149 n.4 (2003). That same statute, however, does not create a liberty interest in parole. *Id.* The court explained "the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process," and, consequently, review by the ALC. *See id.* at 598, 576 S.E.2d at 149. In *Sullivan v. South Carolina Department of Corrections*, the South Carolina Supreme Court

[4] A non-collateral or administrative matter is "one in which an inmate does not challenge the validity of a conviction or sentence." *Al-Shabazz*, 338 S.C. at 368, 527 S.E.2d at 749.

[5] The APA is found at S.C. Code Ann. §§ 1-23-10 to 680 (2005 & Supp. 2019).

succinctly expounded on the distinction it recognized in *Furtick* as it relates to the ALC's jurisdiction:

> In simple terms, [the distinction drawn in *Furtick*] means that an inmate has a right of review by the AL[C] after a *final decision* that he *is ineligible for parole, but that a parole-eligible inmate does not have the same right of review after a decision denying parole*; the parole board is, however, required to review an inmate's case every twelve months after a negative parole determination. This distinction stems from the fact that parole is a privilege, not a right.

Id., 355 S.C. 437, 443 n.4, 586 S.E.2d 124, 127 n.4 (2003) (citation omitted) (emphasis added).

Still, "[t]he use of the word *permanent* in *Sullivan* and *Furtick* does not mean that there must be a permanent denial of parole eligibility before a sufficient liberty interest is involved. It is merely one of the ways that a sufficient liberty interest may be involved." *Steele v. Benjamin*, 362 S.C. 66, 72, 606 S.E.2d 499, 502 (Ct. App. 2004). That is to say, the Board's parole-related decisions can, even when not permanently denying parole, impinge upon a state-created liberty interest. For instance, the appellate courts of this State have held that a state-created liberty interest is implicated by, *inter alia*, the Board's failure to follow proper procedure in rendering its decision to deny parole. *E.g., Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 499 661 S.E.2d 106, 111 (2008) ("If [the Board] deviates from or renders its decision without consideration of the appropriate criteria [criteria found in section 24–21–640 and factors established by the Board], we believe it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest."). Notwithstanding, the *Cooper* court provided the Board with guidance in issuing parole decisions:

> 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.

Id. 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) (holding the ALC erred in remanding the case to the Board when "the [] Board clearly stated in its notice of rejection that it considered the statutory

criteria [outlined in section 24–21–640] and the criteria set forth in Form 1212, which is sufficient under *Cooper*.").

When reviewing the Department's final decision in a non-collateral or administrative matter, the Court sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 376-77, 527 S.E.2d at 754. The Court's standard of review, after an exhaustion of administrative remedies, is governed by section 1–23–380 of the South Carolina Code (Supp. 2019). *See* S.C. Code Ann. § 1-23-600(E) (Supp. 2019) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Pursuant to this standard, the Court "may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." *Id.* § 1-23-380(5) (Supp. 2019). Although the Court may affirm the agency's decision or remand for additional proceedings, the Court's review in determining whether to reverse or modify an agency decision is circumscribed to the following:

> The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative 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. § 1-23-380(5)(a)-(f) (Supp. 2010). Additionally, in reviewing, the Court is generally confined to the record presented. *Id.* § 1-23-380(4) (Supp. 2019).

DISCUSSION

Although Coleman set forth three issues on appeal, his assignments of error relating to the Board's decision that can be distilled to the following: (1) the denial of his parole violated the Eighth Amendment of the United States Constitution; and (2) the Board relied on erroneous information in denying parole.[6] The Court will address each alleged error.

[6] Coleman further contends that the Board, in its April 4, 2019, reconsideration decision, provided him with incorrect information regarding rehearing requests and should have taken further action on his appeal of its initial decision. Despite his assertions, Coleman's argument is conclusory and cites no supporting authority. As such, the Court deems this issue abandoned. *See Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 506, 812 S.E.2d 438, 441 (Ct. App. 2018) ("When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue.") (citation omitted);

I. Eighth Amendment

Coleman asserts that the Board's denial of his parole violated the prohibition against cruel and unusual punishments under the Eighth Amendment of the United States Constitution. Specifically, he contends that the Board is denying him a "meaningful opportunity to obtain release" since it continues to reject his parole based exclusively on unchangeable factors related to his offense.[7] He also asserts that he was unconstitutionally denied parole because the Board failed to consider his age or youth at the time of his offense, a criterion Coleman posits should be mandatory when reviewing a juvenile offender's parole. For the reasons that follow, the Court disagrees.

Regarding the former, Coleman likens the Board's practice of continuing to reject his parole based on immutable factors to permanent parole rejection and insists that such a process runs afoul of the "meaningful opportunity to obtain release" requirement prescribed in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455 (2012). Because the factors cited by the Board will not change no matter his level of effort or rehabilitation, Coleman contends the Board's denial of parole violates the Eighth Amendment.

The Eighth Amendment of the United States Constitution, which is applicable to the States by virtue of the Due Process Clause of the Fourteenth Amendment, *see State v. Harrison*, 402 S.C. 288, 293, 741 S.E.2d 727, 729 (2013), provides: "Excessive bail shall not be required, nor excessive fines imposed, nor *cruel and unusual punishments inflicted*." U.S. Const. amend. VIII. (emphasis added). "The Eighth Amendment's prohibition of cruel and unusual punishment 'guarantees individuals the right not to be subjected to excessive sanctions.'" *Miller*, 567 U.S. at 469 (quoting *Roper v. Simmons*, 543 U.S. 551, 560, 125 S.Ct. 1183 (2005)). "The right flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.'" *Roper*, 543 U.S. at 560 (quoting *Atkins v. Virginia*, 536 U.S. 304, 311, 122 S.Ct. 2242 (2002)) (alteration in original); *see also Graham*, 560 U.S. at 59 ("The concept of proportionality is central to the Eighth Amendment.").

Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

[7] Coleman alleges that, on four prior occasions to this appeal, the Board had previously denied his parole based on the same unchangeable reasons. It bears mentioning, however, that the Board's previous decisions and the contents therein are not subject to this appeal.

In a series of recent decisions, the United States Supreme Court has developed juvenile-sentencing mandates in response to challenges regarding whether certain juvenile sentencing practices violate the Eighth Amendment's prohibition of cruel and unusual punishment. As the South Carolina Court of Appeals has recently recognized, the United States Supreme Court has applied the proportionality principle to juvenile offenders and "has incrementally established parameters to ensure proportional juvenile sentences." *State v. Finley*, 427 S.C. 419, 424, 831 S.E.2d 158, 161 (Ct. App. 2019), *reh'g denied* (Aug. 22, 2019). To wit, in *Graham*, the Supreme Court imposed a categorical bar for the punishment of certain juvenile offenders as it held that the Eighth Amendment "prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." *Id.* at 82. The *Graham* court further held:

> *A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.* It bears emphasis, however, that while the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does prohibit States from making the judgment at the outset that those offenders never will be fit to reenter society.

Id. at 75 (emphasis added). Later, in *Miller*, the Supreme Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id.* at 479. The Court reasoned that "[b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence," mandatory life without parole "poses too great a risk of disproportionate punishment." *Id.* Although *Miller* did not adopt "a categorical bar on life without parole for juveniles," *id.*, it reserved the possibility that such a severe sentence could be appropriately imposed on "the rare juvenile offender whose crime reflects irreparable corruption," *id.* at 479–80, 132 (quoting *Roper*, 543 U.S. at 573). In that vein, the Court "require[d the sentencer] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480. Subsequently, the Supreme Court further defined the scope of the Eighth Amendment's protection regarding juvenile

sentencing in *Montgomery v. Louisiana*, holding that *Miller* announced a new "substantive rule" of constitutional law that applies retroactively "to juvenile offenders whose convictions and sentences were final when *Miller* was decided." — U.S. —, 136 S.Ct. 718, 725 (2016).

In summary, *Graham* and *Miller* were focused on sentencing, and, more precisely, about whether a sentence of life imprisonment without parole for juvenile offenders violated the Eighth Amendment's cruel and unusual punishment prohibition. *See Miller*, 567 U.S. at 479 (holding "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders."); *Graham*, 560 U.S. at 82 ("The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.").

At the outset, the Court observes that Coleman's assertion—that the Board is denying him a "meaningful opportunity to obtain release"—is predicated on the notion that *Graham* and *Miller* extend to juvenile homicide offenders sentenced to life imprisonment *with* the possibility of parole and, further, that these decisions extend to the *parole* context. While neither the Supreme Court nor the appellate courts of this State have addressed whether the reach of *Graham* and *Miller* extend beyond sentencing to parole or to juvenile homicide offenders sentenced to life imprisonment *with* the possibility of parole, these decisions explain that a State must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." However, a State need not guarantee freedom to the juvenile offender. *Miller*, 567 U.S. at 479 (quoting *Graham*, 560 U.S. at 75); *see also Graham*, 560 U.S. at 82 ("A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term."). Significantly, "the Supreme Court did not identify a specific method or methods that would provide [a] 'meaningful opportunity' for release . . . ." *Angel v. Commonwealth*, 281 Va. 248, 275, 704 S.E.2d 386, 402 (2011); *see also Holly v. State*, 241 Md. App. 349, 358, 211 A.3d 496, 502 (2019) (finding that "*Graham* established the meaningful opportunity requirement, but was silent as to its requirements" and "the Supreme Court [did not] explicate the meaningful opportunity requirement in *Miller* or *Montgomery*.").

Turning to the instant matter, the cases Coleman cites in support of his position—*Graham* and *Miller*—are inapposite in that he is not a member of the class of offenders contemplated by

said precedent.[8] *Graham* and *Miller* dealt with the application of the Eighth Amendment's prohibition again cruel and unusual punishments in the context of sentencing a juvenile offender to life *without* the possibility of parole. Coleman, unlike the juvenile offenders at issue in *Graham* and *Miller*, did not receive a life without the possibility of parole sentence. To the contrary and as he acknowledges, despite receiving a life sentence for murder as a juvenile offender, the sentence afforded Coleman parole eligibility after the service of twenty years' imprisonment. *See* S.C. Code Ann. § 16-3-20(A) (Supp. 1991). To date, Coleman has since become parole eligible and most recently appeared before the Board on March 21, 2019.[9] Accordingly, while Coleman is correct that he, like the individuals in the cases in which he relies, was a juvenile when his crimes were committed, in the absence of binding precedent to the contrary,[10] it is doubtful that the juvenile-specific Eighth Amendment protections of *Graham* and *Miller* are applicable given that he did not receive a sentence of life without the possibility of parole. *See Bowling v. Dir., Virginia Dep't of Corr.*, 920 F.3d 192 (4th Cir. 2019) (holding that juvenile-specific Eighth Amendment protections do not apply to juveniles sentenced to life with parole) *petition for cert. docketed* (No. 19-6710) (Nov 21, 2019); *cf. Finley*, 427 S.C. at 428, 831 S.E.2d at 162- 63 (holding a juvenile offender who received a life sentence but was eligible for parole was not among the class of juvenile offenders entitled to resentencing under *Miller* and its progeny).

Moreover, even if the juvenile-specific Eighth Amendment protections identified in *Graham* and *Miller* are applicable to juvenile homicide offenders sentenced to life with parole, the balance of Coleman's argument is premised on the rationale that these protections extend beyond

[8] Albeit it in a different context, the South Carolina Court of Appeals' recent holding in *Finley*—that a juvenile offender is not entitled to resentencing pursuant to *Miller* and *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) when his sentence afforded him parole eligibility—underscores the distinction between certain classes of juvenile offenders and those falling within the ambit of *Graham* and *Miller*. In that regard, the *Finley* court emphasized that the juvenile offender's sentence at issue—life imprisonment with the possibility of parole after the service of thirty years' imprisonment—"differs *significantly* from those at issue in *Graham*, *Miller*, and *Byars* in which the juvenile offenders received sentences of life imprisonment without the possibility for parole." *Id.* at 427, 831 S.E.2d at 162 (emphasis added).

[9] Although there is no evidence in the Record regarding when Coleman first became eligible for parole, the parties' stated that he made his initial appearance before the Board on September 12, 2012. Since that time, as both parties acknowledge, Coleman has appeared before the Board on numerous occasions, one of which includes this instant matter.

[10] Neither the United States Supreme Court nor the appellate courts of this State have resolved whether *Graham* and *Miller's* holdings apply to sentences of life imprisonment *with* the possibility of parole.

criminal sentencing, to parole proceedings.[11] Assuming *arguendo* that *Graham* and *Miller* require parole proceedings to provide juveniles a meaningful opportunity to obtain release after sentencing, Coleman's most recent proceeding did not fall below that standard.[12]

Here, in denying his parole, Coleman is correct that the Board relied on three immutable facts related to his underlying offense: (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. Coleman fails to acknowledge, however, the remainder of the decision wherein the Board explicitly recited that it carefully considered the factors published in Department Form 1212 and the criteria outlined in section 24-21-640.[13] Crucially, *Cooper* does not prohibit the Board from relying on immutable factors related to Coleman's underlying offense in denying parole so long as the Board's order plainly reflects that it considered the statutory criteria found in section 24-21-640 and the fifteen criteria listed in Form 1212 when rendering a decision. *See Cooper*, 377 S.C. at 499 n.5, 661 S.E.2d at 111 n.5 (observing that the following reasons—(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—"would be sufficient to

[11] As noted *supra*, neither the United States Supreme Court nor the appellate courts of this State have addressed whether *Graham* and *Miller's* reach extends beyond sentencing to the parole stage. Federal Courts addressing the issue remain split on its application. *Compare, e.g., Brown v. Precythe*, 2018 WL 4956519, at *5–7 (W.D. Mo. Oct 12, 2018) (applying *Graham*, *Miller*, and *Montgomery* to parole determinations) *and Greiman v. Hodges*, 79 F. Supp. 3d 933, 943 (S.D. Iowa 2015) ("The Court disagrees with Defendants that *Graham* has no applicability outside the context of a juvenile's initial sentencing."), *with Bowling*, 920 F.3d at 197–99 ("[W]e are satisfied that th[e] protections [recognized in *Miller* and its lineage] have not yet reached a juvenile offender who has and will continue to receive parole consideration.").

[12] Coleman's parole eligibility, itself, arguably presents a meaningful opportunity for release in that he has received, and will continue to receive, regular opportunities to obtain early release in his lifetime based on demonstrated maturity and rehabilitation. In fact, the United States Supreme Court has permitted States to remedy *Miller* violations by, *inter alia*, "permitting juvenile homicide offenders to be considered for parole," a process which "ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." *Montgomery*, —— U.S. ——, 136 S.Ct. 718; *see also Finley*, 427 S.C. at 428, 831 S.E.2d at 163 ("As Finley's sentence afforded him parole eligibility, we find any potential Eighth Amendment violation was cured."). Coleman has precisely received this remedy through his sentence.

[13] Notably, the Board also considered and evaluated Coleman's risk using the Department's adopted assessment tool in reaching its decision to deny his parole. *See* S.C. Code Ann. § 24–21–10(F)(1) (Supp. 2019) (requiring the Department to develop a plan for the "establishment of a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, *which the parole board shall use in making parole decisions . . .*") (emphasis added).

deny parole in the Board's discretion, if the Board's decision evinced consideration of section 24–21–640 and its own criteria."); *see also Compton*, 385 S.C. at 479, 685 S.E.2d at 177 (holding Board's decision sufficient under *Cooper* when "the [Board] clearly stated in its notice of rejection that it considered the statutory criteria [outlined in section 24-21-640] and the criteria set forth in Form 1212 . . . ."). It follows, therefore, that the Board followed proper procedure and met the constitutional due process requirements outlined in *Cooper* in denying Coleman's parole.

Furthermore, aside from complying with *Cooper*, Coleman's mere frustration with the Board's continued reliance on immutable facts related to his offense as a basis for denying parole, *ipso facto*, is simply not tantamount to the conclusion that he has been denied a "meaningful opportunity to obtain release." Section 24-21-640 of the South Carolina Code (Supp. 2019) outlines the criteria to be considered by the Board in determining whether an inmate is suitable for parole and provides, in relevant part:

> 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.
>
> The 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. The criteria must be made available to all prisoners at the time of their incarceration and the general public. [14]

[14] The "written, specific criteria" made available to prisoners and contained on Department Form 1212, reads as follows:

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;

Significantly, as part of its criteria listed in Form 1212 and the plain and unambiguous language of section 24-21-640, the Board considers, *inter alia*: the record of the prisoner before, during, and after imprisonment; the inmate's attitude towards his offense; the inmate's attitude towards his family, the victim, and authority in general; the inmate's adjustment while in confinement, including his progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself; and the inmate's efforts to solve his problems, such as seeking treatment for substance abuse, enrolling in academic and vocational educational courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems. Consideration of these factors provides a juvenile offender with a meaningful opportunity to obtain release in light of his demonstrated maturity and rehabilitation during the juvenile offender's lifetime. *Cf. Virginia v. LeBlanc*, — U.S. —, 137 S.Ct. 1726, 1729 (2017) (holding "it was not objectively unreasonable for the state court to conclude that, because [Virginia's] geriatric release program employed normal parole factors, it satisfied *Graham*'s requirement that juveniles convicted of a nonhomicide crime have a meaningful opportunity to receive parole."). Therefore, the Board provided Coleman with a meaningful opportunity to obtain release and, as a result, his claim must fail as the Eighth Amendment promises Coleman no further protections than that which he already received.

9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational educational courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. The actuarial risk and needs assessment outline in section 24-21-10(F)(1) of the S.C. Code of laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.
16. Other factors considered relevant in a particular case by the Board.

Next, Coleman, relying on *Miller*, contends that the Board erred by failing to consider his age—fifteen years old—or the characteristics of his youth at the time he committed the underlying offense in rendering its decision. In that regard, he suggests that, in considering juvenile offenders for parole, the Board's criteria must account for the juvenile offender's age and the characteristics of his youth at the time of the commission of the offense.

Coleman's reliance on *Miller* is misplaced as, although the Court therein did require a *sentencer* to consider a juvenile offender's age and other features of youth in relation to the underlying offense, *see Montgomery*, 136 S.Ct. at 734 ("*Miller* requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence."), it did not expressly extend this requirement to parole proceedings.[15] Indeed, despite holding that "[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them," *Montgomery* did not prescribe any particular features for parole review. *See id.*, 126 S.Ct. at 736.

Recently, the Fourth Circuit Court of Appeals addressed an analogous argument in *Bowling*, a case in which a juvenile homicide offender appealed the Virginia parole board's repeated denials of his parole. In rejecting the juvenile offender's argument, the court held that the Eighth Amendment's prohibition against cruel and unusual punishment did not require the Virginia parole board to specifically consider age-related mitigating characteristics as a separate factor in determining whether to grant parole. *See id.* at 197.[16] The Court finds the reasoning of *Bowling* persuasive in this instance. Consequently, Coleman's contention is without merit as the Board is not obligated to consider Coleman's age or youth and its attendant circumstances at the time of the

[15] In *Aiken v. Byars*, the South Carolina Supreme Court followed *Miller* by recognizing that "*Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored." *Id.*, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014). The *Aiken* court, however, did not broach the issue of whether *Miller* extends to parole proceedings. Coleman has not pointed to a decision of the United States Supreme Court or any South Carolina authority which requires the Board to consider when reviewing a juvenile offender's parole, his age or the characteristics of his youth at the time of the offense. The Court has further found no such authority.

[16] In doing so, the *Bowling* court specifically noted that the "[United States Supreme] Court has not yet gone so far as to require that juvenile offenders be released from prison during their lifetime." *Id.* This is significant inasmuch as the imposition of a requirement that age-related factors be specifically considered at parole proceedings would perhaps suggest that a juvenile offender has the right to release at a later time. Moreover, in the absence of statutory change or precedential legal decision, this Court has no authority to extend such protections to parole hearings.

commission of the crime before making a parole determination, and the Court declines to impose such a requirement.[17]

II. Reliance on Erroneous Information

Coleman next maintains that in rejecting his parole, the Board relied on inaccurate information. To that point, he asserts that the Board erroneously considered, and based its decision on, a 2018 disciplinary conviction for the possession of contraband (Contraband Conviction), a conviction he claims he did not receive. Coleman's contention is grounded in a conversation that allegedly transpired between him and the Chairman of the Board during his parole hearing. Specifically, Coleman alleges that the Chairman inquired, "what's the deal with the disciplinary conviction for contraband back in 2018" to which he responded, "I do not have no [sic] disciplinary." In addition, he claims that "Ms. Williams [classification caseworker] checked [his] disciplinary record and it reveal[ed] [that] the record befor [sic] [the Board] was in conflict with the record of SCDC."

Despite Coleman's argument, the Record is devoid of any evidence substantiating his assertion that the Board considered, much less relied, on the Contraband Conviction in denying his parole. The Court recognizes that the Board is statutorily charged under section 24-21-640 with considering, *inter alia,* the record of the prisoner during imprisonment and that the Board's written, specific criteria for granting parole must "include a review of a prisoner's disciplinary and other records". Here, the Board complied with this procedure by stating that it carefully considered Coleman's prison disciplinary record. The Board did not, however, specify what prison disciplinary records it considered and the Court is not allowed to speculate. At any rate, even

[17] Neither the Record nor the Board's written determination reflects that the Board considered specifically Coleman's age or youth and its attendant characteristics in relationship to the commission of his underlying crime. Nevertheless, as stated earlier, consideration of the required parole evaluative criteria - the inmate's attitude towards his offense; the inmate's attitude towards his family, the victim, and authority in general; the inmate's adjustment while in confinement, including his progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself; and the inmate's efforts to solve his problems, such as seeking treatment for substance abuse, enrolling in academic and vocational educational courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems - provides a juvenile offender with a meaningful opportunity to obtain release in light of his demonstrated maturity and rehabilitation during the juvenile offender's lifetime. *See Bowling*, 920 F.3d at 198 ("The existing factors, therefore, allowed the Parole Board to fully consider the inmate's age at the time of the offense, as well as any evidence submitted to demonstrate his maturation since then, and account for the concern at the heart of *Graham* and *Miller*: 'that children who commit even heinous crimes are capable of change.'").

assuming Coleman's allegation that the Board wrongfully considering the Contraband Conviction is true, the Board did not use it as a basis for denying his parole. Indeed, though the Board's decision evinced consideration of Coleman's "prison disciplinary record", the Board rejected Coleman's parole for three limited reasons: (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. Therefore, the Court finds any error in the Board's consideration of the Contraband Conviction to be harmless as Coleman has failed to demonstrate any resulting prejudice therefrom.[18] *See Sanders v. Wal-Mart Stores, Inc.*, 379 S.C. 554, 562, 666 S.E.2d 297, 301 (Ct. App. 2008) ("An error not shown to be prejudicial does not constitute grounds for reversal.") (quoting *JKT Co. v. Hardwick*, 274 S.C. 413, 419, 265 S.E.2d 510, 513 (1980)); *see generally S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008) ("[W]hen appealing an agency's decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced based on one of six statutory criteria listed [in section 1-23-380(5)].").

ORDER

IT IS HEREBY ORDERED that, based on the foregoing, the Board's decision is **AFFIRMED.**[19]

AND IT IS SO ORDERED.

April 16, 2020
Columbia, S.C.

Milton G. Kimpson, Judge
South Carolina Administrative Law Court

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).

This 16 day of April, 2020

By: A. Bell
Judicial Law Clerk

[18] Of course, the Court by no means condones the Board considering erroneous information if it is indeed doing so, to include an inmate's prison disciplinary record. Notwithstanding, since there is no indication that Coleman's parole was denied because of the Contraband Conviction, reversal is unwarranted as he has failed to show resulting prejudice.

[19] Despite the Court's disposition of this matter, Appellant is to be commended for his excellent presentation of written legal arguments.