

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

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Appeal from the Administrative Law Court  
The Honorable S. Phillip Lenski, Administrative Law Judge  
Appellant Case No. 2020-000004

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JEROME SCOTT, #153381.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND  
PARDON SERVICES,.....RESPONDENT

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**RESPONDENT'S INITIAL BRIEF**

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**Janell H. Gregory**  
**Legal Counsel**

**South Carolina Department of Probation,  
Parole and Pardon Services  
P.O. Box 207  
Columbia, South Carolina 29202**

**ATTORNEY FOR THE RESPONDENT**

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**TABLE OF AUTHORITIES**

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**STATUTES**

S.C. Code Ann. §24-21-640 (2018).....2, 4

**STATEMENT OF ISSUES ON APPEAL**

- 1. Did the Board properly consider the nature and seriousness of Appellant's offense prior to denying Appellant parole?**
- 2. Did the Board properly consider all of the mandatory criteria as set forth in Cooper prior to denying Appellant parole?**

## STATEMENT OF THE CASE

On May 7, 1988, Appellant got into an argument with Victim at the Westside Club located on Highway 6 in Moncks Corner, South Carolina. During the argument, Appellant pulled a knife on Victim which led to a physical altercation where Victim was able to take the knife from Appellant. Appellant then convinced another person at the club to give him a ride home. Once he arrived at his residence, Appellant retrieved a sawed-off shotgun and a butcher knife and then returned to the club. Appellant met Victim's cousin outside of the club and shot him in the arm before entering the building. Once inside, Appellant beat Victim with the sawed-off shotgun and proceeded to stab him eleven times. Appellant then fled the scene through the back door. Victim died at the scene from his injuries. Appellant turned himself in to the authorities and was charged with murder and assault and battery with intent to kill (ABIK).

On September 19, 1988, Appellant appeared before the Honorable William Howard and pled guilty to murder.<sup>1</sup> Judge Howard sentenced Appellant to life imprisonment. At that time, South Carolina law allowed an inmate serving a life sentence for murder to become parole eligible upon the service of twenty years.

Appellant's first appearance before the Parole Board (Board) was on May 7, 2008. At the conclusion of that hearing, Appellant's parole was denied. Appellant has appeared before the Board an additional four times since that initial appearance each resulting in a denial of parole.<sup>2</sup> Appellant's last appearance occurred on June 19, 2019. At the conclusion of this hearing, the Board denied parole unanimously due to the nature and seriousness of Appellant's offense.

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<sup>1</sup> The offense of ABIK was later nolle prossed.

<sup>2</sup> Appellant waived his March 15, 2007 appearance.

After being informed of this denial of parole, Appellant filed a notice of appeal before the Administrative Law Court (ALC) arguing the final decision of the Board was arbitrary and capricious and made in violation of this constitutional rights. Respondent argued the Board reached their unanimous decision after considering all of the mandatory criteria. Further, Respondent argued the mitigating evidence Appellant presented may only be considered by the Board, not by a reviewing court pursuant to South Carolina law.

The Honorable S. Phillip Lenski issued his order on December 4, 2019, affirming the Board's decision to deny Appellant parole. Thereafter, Appellant filed a notice of appeal and submitted his appellate brief to this Court. This brief follows.

### ARGUMENTS

**1. The Board properly considered the nature and seriousness of Appellant's offense in evaluating Appellant's request for parole.**

Appellant argues the Board's denial of parole was improper because the Board stated the reason for rejecting his request for parole was based on an unchangeable event in the past. However, the Board is not only allowed, but mandated to consider the facts of Appellant's offense when evaluating his request for parole. In its final order, the ALC found the Board considered all of the appropriate factors prior to denying Appellant's parole. As such, this Court should affirm the decision of the ALC.

In support of Appellant's claim, Appellant states he has utilized rehabilitation courses available to him through the South Carolina Department of Corrections (SCDC), and has "changed the Nature and Seriousness of the Offense that lived inside of [Appellant] over 30 plus years ago." However, the efforts Appellant has taken through the SCDC courses is just one of many factors the Board is mandated to consider in evaluating Appellant's parole request. Parole criteria is set forth in S.C. Code Ann. §24-21-640, and the General Assembly has also made the Board

responsible for the establishment of written, specific criteria for granting parole and provisional parole. This criteria includes, “the nature and seriousness of the inmate’s offense, the circumstances surrounding the offense, and the inmate’s attitude toward it.” Therefore, Appellant’s offense must be considered by the Board in their evaluation of Appellant’s parole request.

Further, based on the statutory language, the appellate courts of South Carolina cannot prohibit the Board’s consideration or use of the facts and circumstances of the offense – which are always unchangeable events in the past – in its denials of parole. To rule otherwise – that the Board must carefully consider the inmate’s record but somehow may not rely upon that record when it declines to award parole – would impose an impossible mental exercise upon the members of the Board. The ALC properly upheld the Board’s decision to deny Appellant parole since the Board properly considered all of the mandatory criteria in reaching their decision. As such, this Court should affirm the decision of the ALC.

**2. The order of denial showed the Board considered all of the mandatory criteria as set forth in Cooper, therefore the denial of parole was lawful.**

Appellant argues he is continually denied parole despite his claim that he meets all of the criteria set forth in the Offender Management System and Department Form 1212. Appellant claims the Board failed to take into consideration all of the courses he has taken through SCDC in evaluating his request for parole. However, as Judge Lenski found in his order affirming the Board’s decision, the Board properly considered all of the factors required by statute in evaluating Appellant’s request for parole, therefore, Appellant’s liberty interest in parole eligibility was protected. Further, parole is a privilege, not a right and the discretion to grant parole lies solely with the Board. State v. Dingle, 376 S.C. 643, 649, 659 S.E.2d 101, 104 (2008) (internal citations omitted).

The Board is obligated to consider the criteria mandated pursuant to South Carolina law and Board policy. The Board's order clearly states the criteria within the statute and mandatory policies were considered prior to the denial. The Board's order followed South Carolina law and the mandates proscribed in the South Carolina Supreme Court decision of Cooper v. S.C. Dept. of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008).

In Cooper, the Court found the Board, "failed to consider the requisite statutory criteria in rendering its decision" and "only considered the nature of Cooper's crime when it rejected his request based on three limited reasons." Id. at 500, 661 S.E.2d at 112. The Court went on to state:

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.

Id.

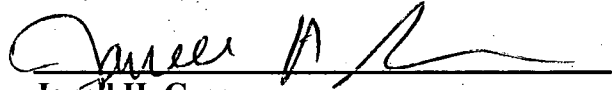
Here, the order denying Appellant parole conformed with the Court's holding in Cooper as the order specifically stated the Board considered the factors outlined in S.C. Code Ann. §24-21-640 and the factors listed in Department Form 1212. In Cooper, the Supreme Court established the ALC has a very narrow ability to review the process conducted by the Board. Since the Board complied with the procedure set forth in Cooper, the Board's decision was a routine denial of parole and the ALC does not have any further ability to review the Board's decision. Id.

As such, the Department respectfully submits that the ALC properly followed Cooper and found the Board's decision was simply a routine denial of parole. Therefore, this Court should uphold the decision of the ALC.

**CONCLUSION**

Based on the foregoing reasons, the Department submits that the ALC correctly concluded that the Board properly considered Appellant's offense and followed its procedures under Cooper, which resulted in a routine denial of parole. Therefore, it correctly declined to rule on anything outside its limited scope. The Department would respectfully request this Court affirm the decision of the ALC.

Respectfully submitted,



**Janell H. Gregory**  
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Columbia, South Carolina  
May 11, 2020

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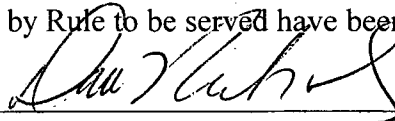
S.C. DEPARTMENT OF PROBATION, PAROLE AND  
PARDON SERVICES,.....RESPONDENT

**CERTIFICATE OF SERVICE**

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within  
*Initial Brief of Respondent and Designation of Matter*, on Appellant this 11<sup>th</sup> day of May, 2020,  
by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Jerome Scott, #153381  
Allendale Correctional Institution  
PO Box 1151, Highway 47  
Fairfax, South Carolina 29827

I further certify that all parties required by Rule to be served have been served.



**Dawn K. Nichols**  
**Executive Assistant**  
South Carolina Department of Probation,  
Parole, and Pardon Services  
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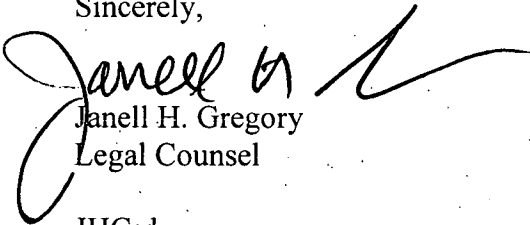
The Honorable Jenny Kitchings  
Clerk of the S.C. Court of Appeals  
P. O. Box 11629  
Columbia, South Carolina 29211

Re: Jerome Scott v. SCDPPPS  
20-000004

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter dated May 11, 2020, along with proof of service in the above referenced case.

Sincerely,

  
Janell H. Gregory  
Legal Counsel

JHG:dn

Enclosures

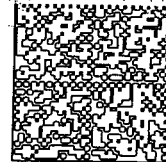
cc: Jerome Scott, #153381

State of South Carolina

Department of Probation, Parole, and Pardon Services

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