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SEP 14 2020

SC Court of Appeals

The South Carolina Court of Appeals

Omar Williams, 322531; Pro/se

Vs.

SC Dept of probation, parole, and pardon services
Respondent

Appellant Case No 2020-001025

Dear, Miss Jenny Abbott Kitchings, Clerk

Miss Kitchings here is a copy of the order that I am appealing from A.L.C. dated 6-30-2020. Here also is a copy of the envelope that the order came in. On the envelope you see the Received 7-2-2020 stamp from Goodman C.I mail room. So you see I received that order on 7-2-2020.

C.C. Matthew C. Buchanan, Esquire

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Omar Williams, #322531,

Docket No. 20-ALJ-15-0001-AP

Appellant,

vs.

ORDER

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

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This matter is before the Administrative Law Court (ALC) pursuant to the appeal of Omar Williams (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. Appellant seeks review of Respondent South Carolina Department of Probation, Parole and Pardon Services' (Department) January 13, 2020 decision denying Appellant's request to be released on parole pursuant to S.C. Code of Regulations 130-10 promulgated under the authority of the Prison Overcrowding Act.

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, such as the permanent denial of eligibility for parole. See Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 598, 576 S.E.2d 146, 149, 150 (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). S.C. Code Ann. § 1-23-600(D) (Supp. 2019) provides, "An administrative law judge shall not hear . . . an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services." Thus, this Court's authority to review a decision of the Board is limited to determining if the Board followed the proper procedure and considered the relevant factors. Compton v. S.C. Dept. of Probation, Pardon and Parole Services, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). If that procedure was followed, any decision of the Board constitutes a routine denial of parole which this Court has no jurisdiction to hear. Id.

Here, the decision of the Department was not made by the Board, but in a letter from the Department's attorney. Therefore, this is not a routine denial of parole, but an appeal from the Department's decision denying eligibility for a parole determination pursuant to Regulation 130-10. Since Appellant's eligibility for parole on the grounds raised by Appellant was permanently denied, the Department's decision affects a liberty interest for which due process is required and Appellant has a right to ALC review of that decision.

FILED

June 30, 2020

SC ADMIN. LAW COURT

Appellant argues that Regulation 130-10 applies to him because he qualifies as non-violent offender under the regulation. Appellant was convicted of assault and battery of a high and aggravated nature on January 23, 2019. The regulation, in relevant part, states:

A. Upon a declaration by the Governor of a prison system overcrowding state of emergency as set forth in § 24-3-1160, Code of Laws of South Carolina, 1976, as amended June 3, 1986, the Board of Probation, Parole and Pardon Services is charged with the responsibility of determining which qualified prisoners are to be released.

B. A qualified prisoner, for purposes of this regulation, means: (1) an individual convicted of a non-violent offense; (2) incarcerated in an institution or designated facility of the South Carolina Department of Corrections; (3) is an individual over whom the Department of Probation, Parole and Pardon Services may assume jurisdiction; and (4) if serving a sentence of two years or more must have met their first parole eligibility date without benefit of earned credits that may have reduced such eligibility.

C. Prisoners are not qualified to be released if:

(1) They are serving a sentence for commission of a violent crime. Violent crimes, for purposes of this regulation, are:

A. Murder

B. Armed Robbery

C. Criminal Sexual Conduct in the First or Second Degree

D. Assault and Battery with Intent to Kill

E. Kidnapping

F. Burglary in the First Degree, or Burglary in the Second Degree under § 16-11-312 (B)

G. Arson in the First Degree

H. Drug Trafficking as contained in § 44-53-370 (e)

I. Voluntary Manslaughter

J. Violation of the Habitual Offender Act as contained in § 17-25-45

K. Accessory Before the Fact of any of the above offenses.

S.C. Code Ann. Regs. 130-10.

Appellant's reliance on the regulation is erroneous for two reasons. First, S.C. Code Ann. § 24-3-1160 was repealed in 1992. See South Carolina Dept. of Natural Resources v. McDonald, 367 S.C. 531, 535, 626 S.E.2d 816, 818 (Ct. App. 2006) ("The general rule is that the repeal of a statute operates retrospectively, and has the effect of blotting it out as completely as if it had never existed and of putting an end to all proceedings under it.") Regulation 130-10 is conditioned on the Governor declaring a "prison system overcrowding state of emergency as set forth in § 24-3-1160." Without § 24-3-1160, there is currently no way to trigger Regulation 130-10. Second, even if § 24-3-1160 had not been repealed, the Governor has not declared a "prison system overcrowding state of

emergency." Therefore, Appellant cannot rely on Regulation 130-10 and the Department properly denied Appellant's request for release on parole.

IT IS THEREFORE ORDERED that the Final Decision of the South Carolina Department of Probation, Parole and Pardon Services is **AFFIRMED**.

AND IT IS SO ORDERED.

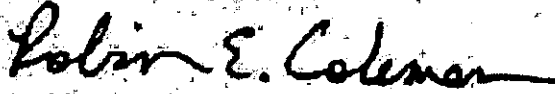


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

June 30, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

June 30, 2020
Columbia, South Carolina -

FILED


June 30, 2020

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
Administrative Law Court
EDGAR A. BROWN BUILDING
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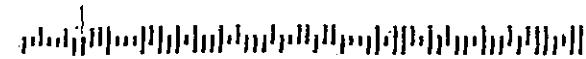
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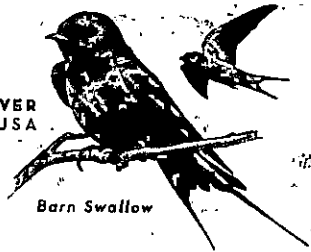
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SC Court of Appeals

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South Carolina Court of Appeals
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