

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Carl Chisolm, 185789,)
) Docket No.: 20-ALJ-15-0010-AP
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Probation,)
 Parole and Pardon Services,)
)
 Respondent.)

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OCT 09 2020
ORDER SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Carl Chisolm (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On February 20, 2020, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) denied him parole. On March 16, 2020, Appellant filed a Notice of Appeal with the Court seeking judicial review of the Board's denial of parole. Upon careful consideration of the record on appeal and briefs of the parties, the Department's decision is affirmed.

STANDARD OF REVIEW

The court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz v. State* and *Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs.* 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. Dept. 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 in the *Al-Shabazz* decision "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). Because parole is a privilege and 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, 496, 661 S.E.2d 106, 110 (2008) (citation omitted).

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When reviewing a decision of the Department, the ALC sits in an appellate capacity. *See Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754; *See also Furtick*, 352 S.C. at 599, 576 S.E.2d at 149. Under the appellate standard of the Administrative Procedures Act, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4). The court may modify or reverse the decision of the agency when substantial rights of Appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). Substantial rights of Appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

Appellant argues he was prejudiced by the Board's erroneous reliance on false facts when it denied his parole request. He further contends that pursuant to the Fifth Amendment of the U.S. Constitution, the Board's action created a liberty interest that is reviewable by this court. Appellant is requesting that this court either grant his parole request or direct the Board to conduct a new hearing. However, the substantive decision of whether Appellant should be granted parole does not fall to this Court, but rather is the province of the Parole Board. *See James v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 376 S.C. 392, 395-396, 656 S.E.2d 399, 401-402 (Ct. App. 2008) (explaining that the ALC only reviews inmate cases implicating a liberty interest; and because parole is a privilege, not a right, the grant or denial of parole does not implicate a liberty interest).

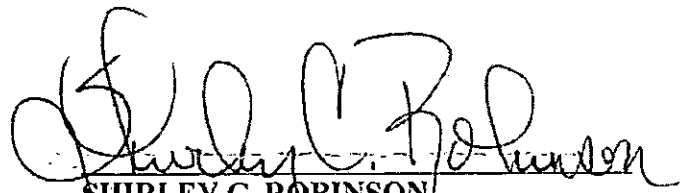
Nonetheless, the routine denial of parole can bestow jurisdiction on this Court if, in denying parole, the Department fails to follow the statutorily required parole criteria, and this failure renders its decision tantamount to a permanent denial of parole eligibility. *See Cooper*, 377 S.C. at 502, 661 S.E.2d at 113 (2008) ("If a Parole Board fails to consider and apply the statutorily-created parole criteria, it has the effect of rendering an inmate parole ineligible, which under *Furtick* warrants review by the ALC."). The "criteria" referenced in *Cooper* are "the factors outlined in section 24-21-640 and the fifteen factors published in [the Department's] parole form." 377 S.C. at 500, 661 S.E.2d at 112. Under *Cooper*, as long as the Board "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 . . . 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.* Since the *Cooper* decision, the General Assembly added an additional requirement that the Department develop a plan that includes the adoption of a validated actuarial risk and needs assessment tool which the Board must use when making parole decisions.

After carefully reviewing the Record and briefs filed by the parties, I find no error in the Board’s decision. The Board’s letter denying parole “clearly” stated the Board considered: (1) the factors published in Department Form 1212 (Criteria for Parole Consideration); (2) the factors outlined in section 24-21-640 of the South Carolina Code of Laws; and (3) the actuarial risk and needs assessment factors required by section 24-21-10(F)(1) of the South Carolina Code of Laws. Additionally, the denial letter stated the Board carefully considered “the characteristics of (Appellant’s) current offense(s), prior offense(s), prior supervision history, prison disciplinary record . . . and/or prior criminal record . . .” There is also ample evidence in the Record that supports the Board’s findings. Therefore, I find that the Board appropriately provided Appellant with a meaningful review process and the Board’s decision is consistent with the requirements of *Cooper*. See *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Board’s decision is **AFFIRMED**.
AND IT IS SO ORDERED.

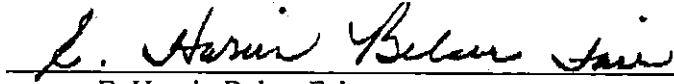

SHIRLEY C. ROBINSON
Administrative Law Judge

August
July 4th, 2020
Columbia, South Carolina

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contact the Department of Corrections at
(803) 733-2000.
The date of this document is 4 August 7, 2020
by [Signature]

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, 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).



E. Harvin Belser Fair
Judicial Law Clerk

June 27, 2016
Columbia, South Carolina

South Carolina Court of Appeals

To: Honorable Clerk of Court
Post Office Box 11629
Columbia, S.C. 29211

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SC Court of Appeals

RE: Appellate Case No. 2020-001219
Lower Court Docket No.: 20-ALJ-15-0010-AP

Dear Honorable Clerk;

Please be advised that I received the enclosed Admin. Order handed down by the honorable judge Shirley C. Robinson between the Sixth or Seventh of Aug. 2020 while at her Conn. Inst. F. 5 undergoing Covid-19 treatment. The Order was signed July 4, 2020 then mailed out on Aug. 4, 2020 by the Admin. Law Court. The enclosed copy is my original of said Order. Due to the rise in Covid-19 cases again here at Perry normal copying is on hold. Therefore, please return enclosed copy back to me for my own record. Thank you.

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P.C.I. MAILROOM

Respectfully,
Arnell Christa

Carl F. Whitson, 785789
Perry Conn. Inst, Q2A-111
430 Oaklawn Rd.
Pelzer, S.C. 29669

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Honorable Penny H. Arterbury, Clerk
Post Office Box 11629
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