STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James New, 214761, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	))))))))))	Docket No.: 20-ALJ-15-0012-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by James New (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 17, 2020, Appellant filed a Notice of Appeal with the Court seeking 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). 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

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SC ADMIN LAW COURT

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

In *Al-Shabazz v. State*, the South Carolina Supreme Court held inmates have a right to administrative review in the following instances: "(1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). The second factor includes the permanent denial of parole eligibility pursuant to section 24-21-640 of the South Carolina Code. *See Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003) ("[T]he *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process."). However, this statute creates no such liberty interest in the routine denial or granting of parole. *Id.* at 598 n.4, 576 S.E.2d at 149 n.4.

Although, when the Department fails to follow statutorily required parole criteria and this failure renders its decision equivalent to the permanent denial of parole eligibility, review jurisdiction may be bestowed on this court. *See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 502, 661 S.E.2d 106, 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. 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.

Appellant contends the Board abused its authority by issuing form rejection letters, and that these letters do not provide proof of the Board's compliance with the factors outlined in section 24-21-640. Specifically, Appellant contends that the Board's decision is arbitrary and capricious and an abuse of authority because the reasons for his parole denial[1] are impractical and

[1] The Board's finding of fact includes: nature and seriousness of current offense, indication of violence in this or previous offense, use of deadly weapon in this or previous offense, criminal record indicates poor community

unreasonable. Appellant argues he will never be able to present evidence to refute many of the criteria and therefore contends he is being denied a realistic opportunity to be granted parole. He further argues that if the Board truly considered the required parole criteria, the outcome of his parole hearing would have been different.

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 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). Also, in *Cooper*, our Supreme Court held that if 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.*; *See Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 478, 685 S.E.2d 175, 176 (2009) (reiterating the holding in *Cooper*).

In this instance, the Board's denial notice shows that 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 notice 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..." Based on the foregoing, I find that the Board's decision is consistent with the requirements of *Cooper* and constitutes a routine parole denial. *See Cooper*, 377 S.C. at 499, 661 S.E.2d at 112.

Lastly, Appellant argues that he was denied procedural due process because his parole hearings have not been scheduled in accordance with S.C. Code Ann. § 24-21-650 which requires the Board to review his case every two years. Appellant concedes that he receives his parole hearings but contends that under the Department's current scheduling method the hearings are not conducted timely. The Department's brief indicates that Appellant has been afforded biannual parole hearings since becoming parole eligible in July 2013, and further explains that there are

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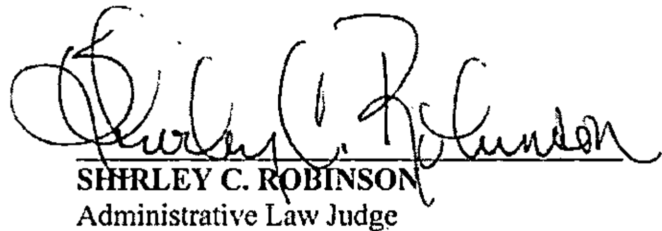
adjustment, and vote count: unanimous to reject.

instances that are beyond the Board's control where hearings must be scheduled or rescheduled to accommodate the availability of victims, law enforcement, or solicitors who wish to be present. Relying on *City of Columbia v. Am. Civil Liberties Union of S.C. Inc*,[2] Appellant argues that the rules of statutory construction demand that the statute be strictly interpreted and applied, which means the Board must review his case every two years. However, this Court finds no violation of Appellant's right to due process inasmuch as he receives parole review biannually as required by S.C. Code Ann. § 24-21-650.

ORDER

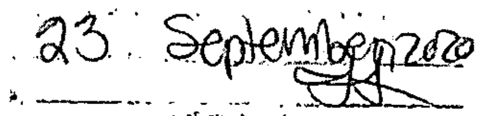
Based upon the foregoing, IT IS HERRBY ORDERED that the Board's decision is **AFFIRMED.**

AND IT IS SO ORDERED.



SHIRLEY C. ROBINSON
Administrative Law Judge

September 23, 2020
Columbia, South Carolina



[2] 323 S.C. 384, 475 S.E.2d 747 (1996).