

RECEIVED

MAR 01 2021

SC Court of Appeals

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Terry Moore, #132079,

Docket No. 20-ALJ-15-0021-AP

Appellant,

vs.

FINAL ORDER

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a notice of appeal filed by Terry Moore (Appellant), an inmate in the custody of the South Carolina Department of Corrections. On March 18, 2020, the South Carolina Department of Probation, Parole and Pardon Services (Department or Respondent) notified the Appellant that the Parole Board (Board) denied him parole. The Appellant challenges the Board's denial of parole on a couple of grounds. These grounds include: (1) that the decision was arbitrary because Appellant did not know which serious offense the Board considered in denying him parole; and (2) that the hearing was unfair because the Board did allow Appellant to present testimony on one of the factors to be considered. After careful consideration of the parties' arguments, the Department's determination is affirmed.

BACKGROUND

In 1986, the Appellant was sentenced to life in prison for kidnapping, ten years for strong arm robbery, 10 years for assault of a high and aggravated nature, and thirty years for first degree criminal sexual assault. All of these convictions arose from an event that occurred in 1985.¹ Appellant first appeared before the Board in December 1993 and has been denied parole twenty-three times. On March 18, 2020, following his most recent parole eligibility hearing, the Board unanimously voted to deny the Appellant parole due to: (a) the nature and seriousness of his current offense and (b) his criminal record indicates poor community adjustment. Appellant then appealed

¹ The Court is relying on the briefs in setting forth the background in this appeal. There are no documents in the Record on Appeal to indicate the date Appellant was convicted or the offenses for which Appellant was convicted and sentenced.

FILED

FEB 8 2021

SC ADMIN. LAW COURT

the denial of parole to the South Carolina Supreme Court (Supreme Court). The Supreme Court transferred the case to the ALC by Order dated April 15, 2020. Appellant's Notice of Appeal asserts that the Board did not grant him a full review

ISSUES ON APPEAL

1. Whether the Department's decision to deny Appellant parole was arbitrary because the Board did not explain which of his criminal convictions it relied upon in denying parole
2. Whether Appellant had a right to present testimony at the parole hearing regarding his attitude towards his family, the victim, and authority in general.

STANDARD OF REVIEW

The court's jurisdiction to review this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz* and *Furtick*. 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. Dep't 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 by the *Al-Shabazz* Court, "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).

Since parole is a privilege, 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, 495-96, 661 S.E.2d 106, 109-10 (2008) (citation omitted). If, however, the Board "deviates from or renders its decision without consideration of the appropriate [statutory] criteria, . . . it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest." *Id.* at 499, 661 S.E.2d at 111. Thus, this court may review decisions from the Department for violations of statutory procedure or procedural due process only, but may not review the Board's substantive decision to deny an appellant parole.

In reviewing such matters, the court sits in its appellate capacity. See *id.* at 497, 661 S.E.2d at 110 (citation omitted); *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754 (citation omitted). Under the Administrative Procedures Act, the court's review in appellate matters is confined to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2019). The court may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-

23-380(5) (Supp. 2019). Substantial rights of the appellant are prejudiced when the agency's 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.*

DISCUSSION

Whether the decision of the Board was Arbitrary.

As stated *supra*, parole is not a right, but a privilege. *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 104 (2008) (citing *Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 n.4 (2003)). The discretion to grant parole lies solely with the Board. *Id.* at 649, 659 S.E.2d at 104-05 (citing *State v. McKay*, 300 S.C. 113, 115, 386 S.E.2d 623, 623-24 (1989)). If, in denying parole, the Board follows proper procedure, then its decision will constitute a routine denial of parole and summary dismissal of the case would be appropriate. *See Cooper*, 377 S.C. 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). The proper procedure for the Board to follow includes considering the factors outlined in Section 24-21-640 of the South Carolina Code, as well as those listed in the Department's parole form. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; *Compton*, 385 S.C. at 479, 685 S.E.2d at 177; *see also* S.C. Code Ann. § 24-21-640 (Supp. 2019) (setting forth the statutory factors warranting parole). Additionally, the Board must utilize an actuarial risk and needs assessment tool, known as COMPAS, in making its parole determinations. *See* S.C. Code Ann. § 24-21-10(F) (Supp. 2019).

If the Board fails to follow proper procedure, giving due consideration to the specified factors, an appellant is denied his liberty interest in parole eligibility. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. If, however, the Board adheres to procedure and considers all the requisite factors, the appellant's liberty interest is protected, and the Board has the discretion to deny parole based on any of the factors found in Section 24-21-640 or its own criteria. *See id.* at 499, 661 S.E.2d at 111-12 (emphasis added).

In this instance, the denial letter reports that the Board carefully considered the factors published in Department Form 1212, the criteria outlined in § 24-21-640, and the actuarial risk

and needs assessment factors pursuant to S.C. Code § 24-21-10 (F). Further, in providing the factual finding made in deciding to deny parole (the nature and seriousness of the current offense and criminal record indicates poor community adjustment), the Board followed the procedure laid out by the Supreme Court. *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 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 v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009) (holding the Board's decision sufficient under *Cooper* when "the Parole Board clearly stated in its notice of rejection that it considered the statutory criteria [of § 24-21-640] and the criteria set forth in Form 1212 . . .").

Appellant asserts that he does not know which crime the Board considered in denying him parole. Because Appellant was convicted of several crimes that he committed within a one day period (kidnapping, armed robbery, assault and battery of a high and aggravated nature and first-degree criminal assault); the offenses are considered one offense pursuant to SC Code section 24-21-640. There was no need for the Board to state what offense they were considering because all of Appellant's offenses are considered one crime.

Whether Appellant has a right to present testimony at the parole hearing

As to the issue of whether Appellant has a right to present testimony regarding his attitude towards his family, the victim, and authority in general, the Board was mandated to consider this factor under Department Form 1212 and stated such in the letter denying parole. While permitting the Appellant to testify concerning those views would be a method of discerning, the Court is not prepared to find that simply because Appellant was not permitted to testify means that the Board did not consider this factor. The Board has absolute discretion in how it considers the factors and these fact that the Board affirmed that it had done so in its decision leads this Court to conclude that it has done so. Consequently, given the nature of the Court's circumscribed review in determining whether the Board followed proper procedure, the Court finds no error in the Board's decision as it amounts to a routine denial of parole in accordance with the procedure and requirements set forth in *Cooper* and *Compton*.


Because the denial letter represents that the Board considered the factors published in Department Form 1212, the criteria outlined in § 24-21-640, and the risk assessment factors pursuant to § 24-21-10 (F) in accordance with the procedure set forth in *Cooper* and *Compton*, and given the nature of the Court's limited review in determining whether the Board followed proper procedure, the Court must affirm the Board's decision in this matter as a routine denial of parole

ORDER

THEREFORE, for the foregoing reasons, the Department's decision denying the Appellant parole is hereby **AFFIRMED**.

AND IT IS SO ORDERED.

February 8, 2021
Columbia, South Carolina



S. Phillip Lenski
S.C. Administrative Law Judge

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 (and/or their attorney) at this 8th day of February, 2021.
L. Habun-Jane
Judicial Law Clerk