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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC Court of Appeals

Willie Franklin, #142180,

Docket No. 20-ALJ-15-0042-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 Willie Franklin (Appellant), an inmate in the custody of the South Carolina Department of Corrections. Following his most recent parole hearing on September 30, 2020, the South Carolina Department of Probation, Parole, and Pardon Services (Department or Respondent) notified the Appellant that the Parole Board (Board) had determined that his parole should be denied. The Appellant challenges the Department's decision on the grounds that it considered factors beyond the scope of the criteria set forth in the provisions of South Carolina Code Section 24-21-640, that the reasons the Board articulated for the Appellant's denial of parole in the Notice of Rejection, dated October 1, 2020, were arbitrary and capricious, and that the Department failed to hold parole hearings in a timely manner in accordance with Section 24-21-640(D).

After careful consideration of the briefs of the parties, the record, as well as the applicable law, the court finds no error in the Board's decision. Accordingly, the Department's decision is affirmed.

BACKGROUND

According to the Department's recitation of background facts, on July 13, 1987, the Appellant strangled the Victim to death using his hands and arms. On that same date, the Appellant committed second degree burglary and grand larceny at the Holiday Inn in Aiken County when he took a cash register, and its contents, from the business. According to the Department, due to the

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SC ADMIN. LAW COURT

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).

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). 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 the Board's decisions only for violations of statutory procedure or procedural due process, not 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; *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754. 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. 2020). 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. 2020). 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

age of the offenses, no incident reports are available, and it is unknown if the homicide was related to the burglary and grand larceny.

According to the Department in its brief, the Appellant became eligible for parole in July 2007, and has received seven (7) parole hearings, the most recent of which was held on September 30, 2020. Following Appellant's appearance, on October 1, 2020, the Board unanimously rejected his request for parole citing the following Findings of Fact: 1) the nature and seriousness of the offense, and 2) the use of a deadly weapon in this or previous offense.

On November 10, 2020, the Appellant filed a Notice of Appeal with this court, and the case was assigned on November 20, 2020. The Appellant filed a brief with this court on January 1, 2021. On appeal, the Appellant asserts: 1) the Board considered matters beyond the scope of the criteria set forth in the provisions of Section 24-21-640; 2) the Board's reasons listed in the Notice of Rejection dated October 1, 2020, were arbitrary and capricious; 3) the Appellant was denied fundamental fairness and equal protection of law by having his parole denied for reasons based on criteria beyond the scope of § S.C. Code Ann. 24-21-640 (Supp. 2020) and 4) The Department abused its discretion by repeatedly denying the Appellant parole based on the impractical and unreasonable findings of fact cited in their notice or rejection. Although not listed in the Issues on Appeal, the Appellant also argues that he did not receive a parole hearing "every two years" as required under S.C. Code Ann. § 24-21-650 (Supp. 2020), and that the Department *intentionally* delayed his parole hearings beyond two years by holding an unspecified number of the hearings beyond the two-year mark.

ISSUES ON APPEAL

Did the Board properly consider the criteria set forth in *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008), in reaching its decision to deny the Appellant parole, thereby making it a routine denial of parole?

Did the Department abuse its discretion by basing its Notice of Rejection on "impractical and unreasonable" findings of fact?

Was the Appellant deprived of due process because he was not provided regular parole hearings before the Board as required by state law?

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 1212. *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. 2020) (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. 2020).

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.

In this case, the Board's rejection letter, dated October 1, 2020, enumerated the following factors it considered in arriving at its unanimous decision to deny the Appellant parole: 1) the characteristics of your current offense(s), prior offenses, prior supervision history, prison disciplinary record, and/or criminal record, as described in the findings of fact below; 2) the factors published in Department Form 1212 (Criteria for Parole Consideration); 3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws; and 4) actuarial risk and needs assessment factors pursuant to Section 24-21-10(F)(1) of the South Carolina Code of Laws. The Board also identified two Findings of Fact that led it to unanimously reject Appellant's parole: 1) the nature and seriousness of the Appellant's current offense and 2) the use of a deadly weapon in this or a previous offense.

Appellant's case, this was just one factor the Board considered when making its determination. In the Appellant's Reply Brief, filed on February 16, 2021, the Appellant appears to argue, for the first time, that the Board made an erroneous Finding of Fact regarding its second finding of "Use of Deadly Weapon in This or Previous Offense." (See ROA, Page 1 of 2). The Appellant noted that his murder victim died "not by the use of a deadly weapon." The Department, in its brief, enumerated the "Appellant strangled Victim to death using his hands and arms" on July 13, 1987. In *State v. Bennett*, 328 S.C. 251, 493 S.E. 2d 845 (SC 1997), the Court held that, "though it had not specifically addressed whether a hand or fist may be considered a deadly weapon for purposes of armed robbery, we have held, in the context of murder, that a hand or fist may be considered a deadly weapon depending on the factual circumstances." "Whether an object has been utilized as a deadly weapon depends upon the facts and circumstances of each case." *State v. Davis*, 309 S.C. 326, 422 S.E. 2d 133 (1992). The Board is not required to provide a detailed analysis of its decision-making process, and Section 1-23-380(5) states, "[t]he court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." S.C. Code § 1-23-380(5).

Lastly, the Appellant also claims that the Board's "intentional delay and extension of Appellant's additional review beyond the two-year (24 months) period" is a violation of the South Carolina law. Sections 24-21-645(D) and 24-21-650 of the South Carolina Code require that, upon a negative determination of parole, prisoners, such as Appellant, who are in confinement for a violent crime as defined in S.C. Code Ann. § 16-1-60, must have their cases reviewed every two years for the purpose of a determination of parole. The Department alleges in its brief that "[s]ince becoming parole eligible in July 2007, Appellant has appeared before the Board seven times" with a hearing occurring biannually.¹ The Department argues that the Appellant's "expectation that his parole hearing will be held at exactly the same time every year is unrealistic due to the large amount of hearings the Board must conduct on a weekly basis" and scheduling issues beyond the Board's control involving witnesses or participants, such as victims, law enforcement, or the solicitor who may wish to be present that may delay matters.

¹ The Department listed in its brief that the Appellant's 2011 parole hearing occurred on November 9, 2011, and his next hearing was held on January 8, 2014. Neither the Appellant nor the Department provide any other exact dates of the Appellant's other parole hearing.

Without articulating which criteria he is referring to, the Appellant contends that at least eight (8) criteria listed on Form 1212 are “unreasonable and impractical” as well as “arbitrary and capricious” because they offer potential parolees “no ability to influence a favorable decision.” He also argues that the Board’s “repeated use, time and time again, of the very same reasons for rejection as an excuse to deny parole clearly demonstrates a flagrant abuse of discretionary authority.” The Appellant also alleges, again, without any details, that the Board “disregarded the statutory criteria set forth in Section 24-21-640 in favor of their own internally created criteria when deliberating parole consideration, this creates a disadvantage completely unfair to the Appellant because half (50%) of Respondent’s criteria considerations are arbitrary and capricious.”

This court disagrees. The Board’s substantive decision to deny the Appellant parole is outside of the limited scope of this court’s review. *See Cooper*, 377 S.C. at 495-96, 661 S.E.2d at 109-10. This court may review the Board’s decisions only to ensure that it has complied with the necessary procedures. *Id.* at 499, 661 S.E.2d at 111-12. In this case, the Board’s order plainly reflects that it considered all the appropriate factors – including those set forth in Section 24-21-640, the Department’s own criteria for parole consideration listed on Form 1212, and an actuarial risk and needs assessment – before making its decision to deny the Appellant parole. There is also no evidence that the Board internally created criteria or abused its discretionary authority, as the Appellant has alleged. Thus, as a routine denial of parole, the court’s ability to further review this matter is limited:

[T]he [] Board may avoid [reversal of its parole determinations] if it clearly states in its order denying parole that it considered the factors outlined in [S]ection 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. Under that scenario, the ALC can summarily dismiss the inmate’s appeal.

Cooper, 377 S.C. at 500, 661 S.E.2d at 112; *see Compton*, 385 S.C. at 479, 685 S.E.2d at 177.

The Appellant argues, secondly, that the Board’s findings of fact are impractical and unreasonable. The Board identified as Findings of Fact in its Notice of Rejection dated October 1, 2020, the nature and seriousness of the offense and the use of a deadly weapon in this or a previous offense. Though clearly the Board considered the “nature and seriousness of the offense” in the

The present appeal is from the Board's 2020 decision to deny the Appellant parole. The Appellant avers in his brief that he came before the Board in 2007 and 2009, but that "all of [his] subsequent reviews have always occurred several months past the statutory required time period for additional reviews." The Appellant also alleges that these delays have been "intentional." Though it is unclear why the Appellant may not have received prior parole hearings precisely at the two-year mark, that issue is not before the court at this time. *See Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E. 2d 713, 715 (1973) ("[An issue] becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing court to grant effectual relief."). Therefore, the court cannot grant relief to the Appellate.²

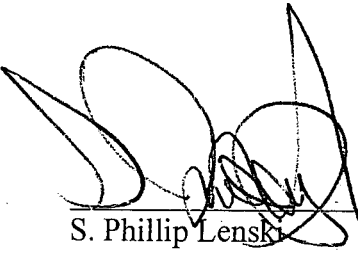
Consequently, because the Appellant has not shown a due process violation and the record reflects that the Board routinely denied the Appellant parole after complying with the necessary procedure and considering the appropriate factors, the court may not interfere with the Department's determination.

ORDER

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

AND IT IS SO ORDERED.

March 11, 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(ies) or their attorney(s).
This 11th day of March 2021
by: E. Harri Jan
Judicial Law Clerk

² It appears to this court that the Appellant has received seven (7) parole hearings since 2007. This court has no evidence before it of the exact dates of all prior Board hearings because neither party provided affidavits or any other evidence of those prior hearing dates. This court finds that the Appellant has presented no evidence that the Department or the Board delayed this 2020 Board hearing intentionally or otherwise in bad faith.