

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Richard Sampson, #196319,)
)
 Appellant,)
)
 v.)
)
 South Carolina Department of Probation,)
 Parole and Pardon Services,)
)
 Respondent.)
)

Docket No. 21-ALJ-15-0002-AP

ORDER

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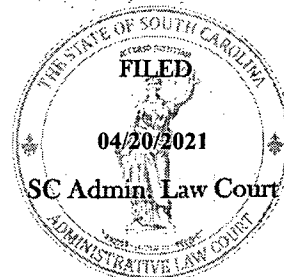
MAY 08 2021

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal by Richard Sampson (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. By letter dated January 14, 2021, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) denied him parole. Thereafter, on January 27, 2021, Appellant filed a Notice of Appeal with the Court seeking judicial review of the Board's denial of parole. Appellant argues the Board's repeated denial of his parole based upon the nature and seriousness of his offense violates his due process rights.

FACTUAL HISTORY

On March 25, 1993, Appellant pled guilty to murder and was sentenced to life imprisonment. Appellant became eligible for parole in October 2011 and since that time has had five parole review hearings. The most recent hearing, which is the subject of this appeal, took place on January 13, 2021. The Board voted 4-2 to reject Appellant for parole. In the Board's letter denying Appellant parole, the Board stated it considered "(1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record." The Board also specifically stated it considered the factors outlined in section 24-21-640 of the South Carolina Code, the factors published in Department Form 1212, and the actuarial risk and needs assessment factors pursuant to section 24-21-10(F)(1) of the South Carolina Code. The Board stated its findings of fact upon which it rested its decision included: the nature and seriousness of current offense.



STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003) and *Cooper v. South Carolina Department of Probation, Parole and Pardon Services*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008). When reviewing the Department's decisions in inmate parole matters, the ALC sits in an appellate capacity. *Furtick*, 352 S.C. at 599; 576 S.E.2d at 149; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2020) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380 of the South Carolina Code). Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2020). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless the record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly arbitrary or affected by an error of law. *See Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). Finally, "when appealing an agency's decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced . . ." *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008).

DISCUSSION

The United States Supreme Court has held that "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz v. Neb. Penal-Inmates*, 442 U.S. 1, 7 (1979). In other words, "given a valid conviction, the criminal defendant has been constitutionally deprived of his liberty." *Meachum v. Fano*, 427 U.S. 215, 224 (1976). Thus, if Appellant has a liberty interest in parole, then it must emanate from state law. *See Ellis v. Dist. of Columbia*, 84 F.3d 1413, 1415 (D.C. Cir. 1996).

"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." S.C. Code Ann. § 1-23-600. Nevertheless, in *Furtick*, the South Carolina Supreme Court held that "the permanent denial of parole eligibility implicates a liberty interest sufficient to require at least

minimal due process.” *Furtick v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003). However, the South Carolina Supreme Court made clear that “[a]lthough [section 24-21-620] creates a liberty interest in parole eligibility, it does not create a liberty interest in parole.” *Id.* at 598 n. 4, 576 S.E.2d at 149 n. 4. Therefore, while the permanent denial of parole eligibility constitutes a liberty interest that is reviewable by this Court, the routine denial of parole is, generally, not a sufficient liberty interest to grant parole.

In *Cooper*, the Supreme Court further explained that, if, in denying parole, the Department fails to follow the statutorily required parole criteria, “it essentially abrogates an inmate’s right to parole eligibility and, thus, infringes on a state-created liberty interest.” *See Cooper*, 377 S.C. at 498, 661 S.E.2d at 111; *see also Sullivan v. S.C. Dep’t of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (holding “[t]he only way for the [ALC] to obtain subject matter jurisdiction over [inmate] claim[s] is if it implicates a state-created liberty interest.”). 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.” *Cooper*, 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.”¹ *Id.*

In this appeal, Appellant argues the Board’s repeated denial of his parole violates his due process rights. Appellant further argues the nature and seriousness of his offense cannot be changed but that “prisoners can only change what’s inside his or herself.” More particularly, Appellant contends that the Board is not following the parole policy guidelines and that “over the years, he has worked tirelessly at correcting his behavior” and is “grasping the ‘rehabilitative tools’ provided and set forth by the (Board).”²

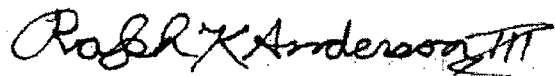
¹ The parole form referenced in *Cooper* is Form 1212, which now includes the actuarial risk and needs assessment referenced by the Board in its rejection of Appellant’s parole. *See also Compton v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009) (holding “if the Parole 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 Form 1212, and that if the Parole Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC will have limited authority to review the decision”).

² Appellant also contends he met the criteria set forth in the Offender Management System, section 24-22-30 of the South Carolina Code (1976); however, that program was terminated effective July 1, 1995. Additionally, even if it were still in place, Appellant would not have qualified for it because “qualified prisoners must not be convicted of a violent crime and must be serving a sentence of five years or less. S.C. Code Ann. § 24-22-30. The Offender

As Appellant acknowledges in his brief, this was a routine denial of parole. Therefore, it is not subject to administrative review unless Appellant can show the Department failed to follow the statutorily required parole criteria and this failure rendered its decision tantamount to a permanent denial of parole eligibility. *See Cooper*, 377 S.C. at 502, 661 S.E.2d at 113. The Department's denial letter clearly shows it complied with the procedural requirements of *Cooper* by considering section 24-21-640, the Department's fifteen factor criteria for parole, and the actuarial risk and needs assessment outlined in section 24-21-10(F)(1). Moreover, the Department's decision included findings of fact and conclusions of law in compliance with *Cooper*. *Id.* at 500, 661 S.E.2d at 112 (noting a final agency decision "shall include findings of fact and conclusions of law, separately stated").³ Therefore, I find the Department's decision complied with *Cooper*, and the law was properly followed in Appellant's case. Because the Board's decision complies with *Cooper*, I find the Department's decision must be affirmed. *See id.* at 500, 661 S.E.2d at 112 ("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.").

Based upon the foregoing, the decision of the Department is **AFFIRMED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

April 20, 2021
Columbia, South Carolina

Management System also does not give a prisoner in the program a liberty interest: "[t]he enactment of this legislation shall not create a 'liberty interest' or an 'expectancy of release' in any offender now incarcerated or in any offender who is incarcerated in the future." S.C. Code Ann. § 24-22-140 (1976). Thus, this contention is irrelevant and without merit.

³ It is notable that the Supreme Court in *Cooper* found that the ALC could consider whether the Parole Board's decision "constitutes an infringement of a state-created liberty interest." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112. However, since the date of that decision, the General Assembly amended section 1-23-600(D) of the South Carolina Code (Supp. 2020) to provide the ALC does not hear appeals "involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services."

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, 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, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Michelle Perez
Judicial Law Clerk

April 20, 2021
Columbia, South Carolina