

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 14 2021

SC Court of Appeals

Appeal from the Administrative Law Court
The Honorable Ralph K. Anderson, III, Chief Administrative Law Judge
Docket Number 21-ALJ-15-0002-AP

Appellant Case No.: 2021-000477

RICHARD SAMPSON, #196319.....-APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
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Columbia, South Carolina 20202
(803) 734-9220**

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Did the Board properly consider all of the mandatory criteria as set forth in Cooper thereby making Appellant's denial of parole routine?

STATEMENT OF THE CASE

In the early evening hours of October 22, 1991, Victim was leaving his stepfather's residence in the Dorchester Waylyn neighborhood of North Charleston when he was approached by Appellant and three of Appellant's friends. Appellant and his friends planned to rob Victim; Victim attempted to get away, but was trapped by a fence. As Appellant and his friends began to strike Victim with their closed fists, Victim pulled out a box cutter and began to slash his attackers. Although Victim cut two of his assailants, the group continued to attack Victim using tree limbs and a board to repeatedly hit Victim in the head and body. The assailants used a fence post 6" in diameter to smash Victim's skull. Victim was left in a ditch as the assailants walked away from the scene. A neighbor came to Victim's aid after the attack and could only feel a faint pulse. Victim died a short time later as a result of his injuries. It was reported to police that, prior to the robbery, witnesses heard Appellant and his friends talking about Victim's race and how they wanted to "get him." The investigation led to the arrest of all subjects involved and it was determined that Appellant delivered the fatal blow to Victim's head with the fence post. The suspects admitted to law enforcement that they had consumed large quantities of beer prior to the attack.

On March 25, 1993, Appellant pled guilty as indicted to murder before the Honorable William L. Howard, Sr. Appellant was sentenced to life and became parole eligible in October, 2011. Since that time, Appellant has had five parole hearings with the most recent review taking place on January 13, 2021. Following Appellant's appearance, the Board rejected his request for parole citing the nature and seriousness of the offense as the reason for their rejection.

Upon being informed of his denial of parole, Appellant filed a notice of appeal before the Administrative Law Court (ALC). In his appeal, Appellant alleged he has met all of the criteria to be awarded parole and the Board failed in granting him parole thereby violating his Fifth

Amendment and Fourteenth Amendment rights. The Honorable Ralph King Anderson III affirmed the decision of the Parole Board on April 20, 2021, determining this to be a routine denial of parole and not subject to administrative review.

The Appellant now appeals Judge Anderson's decision, arguing that he had an expectancy of parole based on the parole criteria. The Respondent would submit that no inmate has a right to parole, and that the ALC correctly dismissed his appeal when it determined that the Parole Board routinely denied him parole. This brief follows.

STANDARD OF REVIEW

In an appeal from an ALC decision, the Administrative Procedures Act provides the standard of review. S.C. Code Ann. §1-23-610(B). This Court may only reverse the decision of the ALC if that decision is:

- (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. "The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact." *Id.* In determining whether the ALC's decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion

that the ALC reached. Hill v. S.C. Dep't of Health and Envtl. Control, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

ARGUMENTS

The Board properly considered the criteria set forth in Cooper in reaching their decision, thereby making this a routine denial of parole.

Appellant argues the Board violated his Fifth and Fourteenth Amendment rights by failing to grant him parole because he met the statutory criteria set forth by the Board's guidelines. Appellant further argues the Board improperly denied him parole based on the nature and seriousness of his offense because he cannot change the facts and circumstances of his conviction. Respondent would submit the ALC properly dismissed the appeal because it determined that the procedures followed by the Board in evaluating Appellant's request for parole, and the criteria considered by the Board, were proper and conformed with the South Carolina Supreme Court's holding in Cooper v. S.C. Dept. of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008). Further, the Offender Management System criteria Appellant stated he met is irrelevant to the Board's evaluation of his parole request. As such, the Board's decision to deny Appellant parole should be affirmed.

As an initial matter, Appellant's contention that he met the criteria set forth in the Offender Management System, S.C. Code Ann. §24-22-30, is irrelevant on several grounds. First, the Offender Management System was terminated effective July 1, 1995. S.C. Code Ann. §24-22-170. Because the program is no longer valid, Appellant's claim that he fit the criteria is irrelevant. Second, even if the program was still valid, Appellant does not qualify for the program. According to §24-22-20(j), qualified prisoners must not be convicted of a violent crime and must be serving

a sentence of five years or less. Here, Appellant was convicted of murder¹ and is serving a life sentence. Finally, the Offender Management System does not give any offender in their program a liberty interest. Section 24-22-140 states, “The 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). Therefore, Appellant’s claim that his liberty interest has been violated by the Board’s denial of his parole request is meritless, as is his assertion that the Offender Management System should be read in conjunction with the parole criteria.

Appellant also claims the Board violated his rights and liberty interest by rejecting his parole request despite meeting all of the criteria set forth in Form 1212, and §24-21-645. However, the notice of rejection from the Board shows the Board properly considered all of the statutorily required criteria and followed the proper procedure as set forth in Cooper in arriving at their decision to deny Appellant parole, thereby making Appellant’s denial of parole routine.

In Cooper, the Board denied Cooper’s parole based on the following three reasons: “1) the nature and seriousness of the current offense; 2) an indication of violence in this or previous offense; and 3) the use of a deadly weapon in this or a previous offense.” Cooper, 377 S.C. at 499, 661 S.E.2d at 111. The Court found the Board, “failed to consider the requisite statutory criteria in rendering its decision” and “only considered the nature of Cooper’s crime when it rejected his request based on three limited reasons.” Id. at 500, 661 S.E.2d at 112. However, the Court went on to state:

We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it 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. If the

¹ Murder (§16-3-10) is defined as a violent crime under S.C. Code Ann. §16-1-60 (1986).

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.

Id.

Here, on January 14, 2021, the Board issued a rejection letter enumerating the following factors it carefully considered in arriving at their decision to deny Appellant parole: 1) the characteristics of your current offense(s), prior offenses(s), prior supervision history, prison disciplinary record, and/or criminal record, as described in the findings of facts 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 reviews all of the information presented to make a determination as to whether an inmate will be granted parole. The Board's decision to deny parole based on the nature and seriousness of the offense is not unlawful nor does it preclude Appellant from successfully obtaining parole in the future as that is only one factor among many other issues considered by the Board in their evaluation. The Board citing Appellant's previous offense as justification for denying Appellant parole is proper and cannot be considered an error of law; especially since the Board considered all the factors as set forth in Cooper in reaching their decision.

Further, the Board does not have to provide a rationale as to its reasons for denying Appellant parole. At no point does Cooper require the Board to explain its reasoning, and, even if the Board did provide a detailed analysis of its decision-making process, §1-23-380(5) states, "The 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) (2008). It is clear by the letter of rejection that the Board considered all of the mandatory criteria as set forth in Cooper and placed their

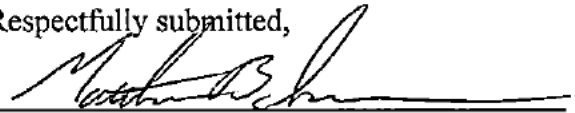
reasons for denial in writing. This is all that must be provided for this Court to affirm the decision of the Board. Since the Board's order clearly states a lawful reason for denial, the criteria within the statute, and that mandatory policies were considered prior to the denial, no further action by the ALC is necessary.² Therefore, this Court should affirm the decision of the Board.

CONCLUSION

Appellant has failed to show a valid reason this Court should grant him a new parole hearing. Appellant's claim that the Board's decision violates his Fifth and Fourteenth Amendment rights is meritless. It is clear from the notice of rejection that the Board's decision properly complied with the South Carolina Supreme Court's holding in Cooper, thereby creating a routine denial of parole. Therefore, based on the foregoing reasons, this Court should affirm the final decision of the Board.

Based on the forgoing reasons the Respondent respectfully requests the ALC's ruling be affirmed and the Appellant's appeal be dismissed.

Respectfully submitted,



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(803) 734-9220

Columbia, South Carolina
June 10, 2021

² The Parole Board stated in its notice of rejection that it considered the statutory criteria and the criteria set forth in Department Form 1212 which is sufficient under Cooper. Compton v. S.C. Dept. of Probation, Parole and Pardon Services, 385 S.C. 476, 685 S.E.2d 175 (2009).

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RICHARD SAMPSON, #196319.....APPELLANT

v.

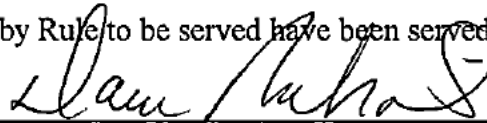
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within
Initial Brief of Respondent and Designation of Matter, on Appellant this 10th day of June, 2021,
by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Richard Sampson, #196319
Perry Correctional Institution
430 Oaklawn Road
Pelzer, S.C. 29669

I further certify that all parties required by Rule to be served have been served.



Dawn K. Nichols
Executive Assistant
South Carolina Department of Probation,
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SC Court of Appeals

June 10, 2021

The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: Richard Sampson v. SCDPPPS
21-000477

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter dated June 10, 2021, along with proof of service in the above referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan", written over a horizontal line.

Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures

cc: Richard Sampson, #196319

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