

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Ricky Brown, 211789,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services.

Respondent.

Docket No.: 20-ALJ-15-0045-AP

ORDER

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SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Ricky Brown (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On October 28, 2020, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) denied him parole. Appellant subsequently appealed the denial on November 9, 2020. On November 17, 2020, the Department's Board Support Services notified Appellant that no further action would be taken because there is no appeal process for the routine denial of parole. Appellant received the letter on November 20, 2020. On December 8, 2020, Appellant filed a Notice of Appeal with the ALC seeking judicial 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

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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 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, the 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. 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 warrant review.

Nonetheless, a routine denial of parole can bestow jurisdiction on this Court if, in denying parole, the Department fails to follow the statutorily required parole criteria, and this failure renders its decision tantamount to a permanent denial of parole eligibility. *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 arbitrarily rendered its final decision without ruling on each proposed finding of fact submitted at the parole hearing in violation of the Fourteenth Amendment of the South Carolina Constitution and S.C. Code Ann. § 1-23-350.¹ Thus, Appellant contends his substantial rights have been prejudiced because the Board's decision violates constitutional or statutory provisions, exceeds its authority, and was not made upon lawful procedure. See S.C. Code Ann. § 1-23-380(5) (a-c).

However, in *Cooper* our Supreme Court held that it is only necessary that 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." See *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112. Subsequently, in *Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, the Court clarified *Cooper* and reiterated 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 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." 385 S.C. 476, 478, 685 S.E.2d 175, 176 (2009) (reversing and remanding an ALC decision that found the Board failed to include any findings of fact and conclusions of law, even though the Board indicated it complied with its own factors and statutory requirements).

In this instance, the Board's decision states that it considered: (1) the factors published in Department Form 1212 (Criteria for Parole Consideration); (2) 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. The decision further states that the Board carefully considered "the characteristics of (Appellant's) current offense(s), prior offense(s) . . . and/or prior criminal record..." Because the Board's decision is consistent with the requirements stated in *Cooper* and reiterated in *Compton*, I find the decision constitutes a routine denial of parole and this Court has limited authority to review the decision. See *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; See also *Compton*, 385 S.C. at 478, 685 S.E.2d at 176.

Additionally, Appellant contends the Board's decision is affected by other errors of law in violation of his substantial rights because it failed to provide this Court with a proper record on

¹ This only applies to final decisions or orders in contested cases.

appeal as required by SCALC Rule 58. *See* S.C. Code Ann. § 1-23-380(5) (d). Specifically, Appellant contends the record fails to include any factual evidence to support its parole denial. However, as Appellant acknowledged, the record includes the Board's notice of rejection, Appellant's petition for rehearing, the Board's letter informing Appellant no action would be taken on his petition, and Form 1212, which is all the relevant procedural criterion the agency is mandated to follow while making its final decision. In this instance, this Court has limited authority to review the decision.

Next, Appellant contends that the Board's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record because the Board failed to maintain adequate records of his prior consideration of parole pursuant to S.C. Code Ann. § 24-21-40. *See* S.C. Code Ann. § 1-23-380(5) (e). In this instance, Appellant has presented no evidence that the Board failed to maintain adequate records of his prior considerations for parole. Also, Appellant's prior denials of parole are irrelevant to his denial presently before this court.

Lastly, Appellant contends the Board's decision is arbitrary because his October 2018 parole hearing resulted in a 3 to 3 vote and this parole hearing resulted in a unanimous vote to reject even though only one board member has been replaced since October 2018. *See* S.C. Code Ann. § 1-23-380(5) (f). Appellant explains that between October 2018 and October 2020 he did not receive any violations or infractions that would negatively affect his prison record and because only one board member was replaced, he should have received at least 2 votes to grant parole. However, 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).

ORDER

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

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

April 23rd, 2021
Columbia, South Carolina

CERTIFICATE OF SERVICE
I, the undersigned, hereby certify that the foregoing has been served on the parties to the above-captioned case, and that the same has been filed with the Clerk of the Court in the United States District Court for the District of Columbia. Service is hereby made on the parties to the case.
23 April 2021
Shirley C. Robinson