

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 25 2021

SC Court of Appeals

Appeal from the Administrative Law Court
The Honorable Shirley C. Robinson, Administrative Law Judge
Docket Number 20-ALJ-15-0045-AP

Appellant Case No.: 2021-000533

RICKY BROWN, #211789.....APPELLANT

v.

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

BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

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Parole and Pardon Services**
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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Did the ALC err when it determined 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

On November 20, 1993, Victim, an elderly woman living on her own in Darlington County, was away from her residence when Appellant broke one of her windows and entered her home. Appellant stayed in Victim's residence waiting for her to return. When Victim came home, Appellant grabbed her from behind and beat her in the face and head with an instrument. During the assault, Appellant told Victim if she did not comply he would kill her. Appellant then raped and robbed Victim taking money, jewelry, and blank checks from her residence. After the incident, Victim contacted police and identified Appellant as her assailant stating she knew it was him by his voice. Victim reported Appellant had done some work for her in the past, and had been at her house earlier that day looking for work. During the investigation, DNA tests were performed on several items including Victim's pantyhose and underwear, and all DNA results matched Appellant's DNA. On November 21, 1993, Appellant was arrested and one of Victim's blank checks was found on his person along with a letter to Victim, which contained her name and phone number. Jewelry belonging to Victim was also recovered at Appellant's residence.

On May 4, 1994, Appellant pled guilty as indicted before the Honorable Paul M. Burch. Appellant was sentenced to two consecutive life sentences for his offenses. Appellant became eligible for parole in December 2001. Since that time, Appellant has had ten parole hearings with the most recent review taking place on October 28, 2020. Following Appellant's appearance, the Board unanimously rejected his request for parole citing the nature and seriousness of the offense, indication of violence in this or previous offense, and criminal record indicates poor community adjustment as the reasons 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 the Board violated his

Fourteenth Amendment rights by failing to provide a ruling on each fact submitted by Appellant during his hearing in violation of S.C. Code Ann. §1-23-350 and asked to reverse the decision of the Board. The Honorable Shirley C. Robinson declined, ruling that the ALC had limited authority to review the Board's routine denial of parole.

The Appellant now appeals Judge Robinson's decision, arguing that the ALC erred when it declined to rule that the Board could not deny parole unless it ruled on each submitted finding of fact under S.C. Code § 1-23-350. In response, the Respondent will argue 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 criminal cases the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. When reviewing a parole case, the ALC sits in an appellate capacity. Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2004). Under the appellate standard of the Administrative Procedures Act, the ALC's review is limited to the record, absent irregularities in the procedure of the agency. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but 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).

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 Env'tl. Control, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

ARGUMENTS

- 1. The Board properly considered the criteria set forth in Cooper in reaching their decision, thereby making this a routine denial of parole.¹**

Appellant argues that the Board failed to rule on his proposed findings of fact that he submitted in advance of his parole hearing. He asserts that S.C. Code § 1-23-350 requires the

¹ This argument addresses all the sub-parts of Appellant's argument.

Board to have included rulings upon each proposed finding of fact submitted by each party in a contested case. He alleges that the Board did not do so, and therefore argues the ALC erred when it did not reverse the Board's denial of parole.

The Respondent submits 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).

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. Furthermore, S.C. Code §1-23-350 applies to *contested* cases. Respondent submits that parole consideration hearings are not contested cases, as the inmate does not have a right to parole, only parole consideration,² and the Board grants or denies parole in its absolute discretion.³ The ALC determined the Board followed the requirements in Cooper, and therefore properly dismissed the appeal.

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

² Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 443 n. 4, 586 S.E.2d 124, 127 N. 4 (2003).

³ "[N]o such prisoner may be paroled until it appears to the satisfaction of the board..." S.C. Code 24-21-640.

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 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 October 28, 2020, 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. R. *

The rejection letter then listed the Board’s findings of fact, which were the nature and seriousness of the offense, indication of violence in this or previous offense, and criminal record indicates poor community adjustment. The vote to deny parole was unanimous. R. *

The Respondent submits the Board does not have to provide a separate and distinct reply to each proposed finding of fact by the inmate. Any inmate would unsurprisingly suggest that he is deserving of parole, and has merited a lessening of his sentence. The Board’s denial of parole is a clear refutation of those proposed findings. Addressing each one point-by-point is unnecessary when the Board follows the requirements laid out in Cooper.

“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. Thus, the ALC properly affirmed the decision of the Board. Since the Board’s order clearly stated 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 was necessary.⁴ Therefore, this Court should affirm the decision of the ALC.

Appellant, while claiming that he is not appealing the denial of parole,⁵ argues that the ALC erred for not reversing the agency’s decision. In addition to arguing that the Board failed to address each proposed finding of fact, he also claims that the Board violated his rights by not providing the ALC with a proper record on appeal – specifically showing no facts in support of his denial of parole.

This, however, fails to account for the specific reasons for denial listed in the notice of rejection letter provided to Appellant on October 28, 2020. R. *. Furthermore, as the ALC correctly held, the record included the relevant procedural information mandated by Cooper. The ALC has limited authority to review anything further when the Board follows that procedure. See also, Compton, 385 S.C. at 479, 685 S.E. 2d at 177.

Lastly, Appellant argues that the Board abused its discretion by denying his parole with a unanimous vote when his prior hearing in 2018 he received three votes in favor and three votes against. This argument fails, as neither vote count would grant him parole. Therefore, overturning the Board’s decision to deny him parole, when even by Appellant’s own insistence that he should

⁴ 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).

⁵ Appellant’s Brief, P. 7.

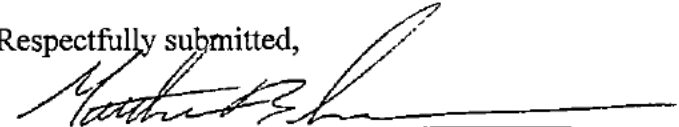
have received only two votes in favor of parole, would be ludicrous. As a body of independent voters, the Parole Board's decisions come from counting votes from the members either in favor or against parole. To argue that the Board as a whole acted arbitrarily and capriciously ignores the fundamental nature of the Board itself. Individual Board members are free to vote as their consciences dictate, provided they review the required criteria. The Respondent submits that the ALC was correct when it determined the substantive decision about parole lies with the Board and not the ALC.

CONCLUSION

Appellant's claim that the Board should have made proper factual findings is meritless when it followed the requirements set forth in Cooper. 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. The ALC did not err when it dismissed his appeal as being a routine denial of parole.

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

Respectfully submitted,



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Columbia, South Carolina
August 23, 2021

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Docket Number 20-ALJ-15-0045-AP

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v.

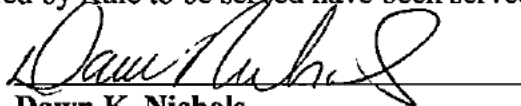
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

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 23rd day of August,
2021, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Ricky Brown, #211789
Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210

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



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August 23, 2021

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

Re: Ricky Brown v. SCDPPPS
21-000533

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SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter dated August 23, 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: Ricky Brown

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