

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charles Williams, #086721,)
)
 Appellant,)
)
 v.)
)
 South Carolina Department of Probation,)
 Parole and Pardon Services,)
)
 Respondent.)
 _____)

Docket No. 21-ALJ-15-0007-AP

FINAL ORDER

RECEIVED
OCT 07 2021
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed on April 20, 2021, by Charles Williams (Appellant), an inmate in the custody of the South Carolina Department of Corrections (SCDC). On March 24, 2021, the South Carolina Department of Probation, Parole and Pardon Services (Department or Respondent) notified the Appellant of the South Carolina Parole Board's (Board) unanimous decision deny the Appellant parole. The Appellant challenges the Board's denial of parole on the basis that the Department's application of Form 1212 constituted an ex post facto violation of the U.S. Constitution. After careful consideration of the parties' briefs, the Department's determination is affirmed.

BACKGROUND

On April 16, 1976, the Appellant was sentenced to death by electrocution for the murder of three (3) females. On April 14, 1977, the South Carolina Supreme Court vacated the Appellant's death sentence and remanded his case for resentencing. On April 20, 1977, the Appellant was sentenced to three (3) consecutive life sentences. On March 24, 2021, following his most recent parole eligibility hearing, the Board voted unanimously to deny the Appellant parole due to the nature and seriousness of the Appellant's offense. On April 20, 2021, the Appellant timely appealed the Board's decision to this court arguing that the Department's application of Form 1212 constituted an ex post facto violation of the U.S. Constitution, and that the Department determined its findings of fact upon unlawful procedure.

The State of South Carolina
FILED
SEP 02 2021
Administrative Law Court

ISSUE ON APPEAL

Whether the Department violated the Appellant's due process rights in denying him parole?

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) (citation omitted).

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) (citation omitted). 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 decisions from the Department for violations of statutory procedure or procedural due process only, but may not review 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 (citation omitted); *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754 (citation omitted). 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). 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). 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

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. *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. 2019) (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. 2019).

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. Here, 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, and an actuarial risk and needs assessment – before making its decision to deny the Appellant parole. Thus, as a routine denial of parole, the court's ability to further review this matter is limited:

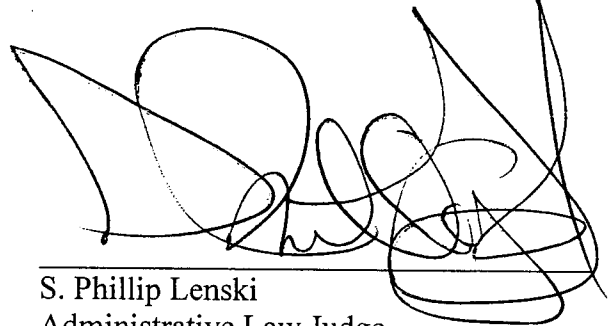
[T]he [] Board may avoid [reversal of its parole determinations] if it clearly states in its order denying parole that it considered the factors outlined in [S]ection 24-21-640 and the fifteen factors published in its parole form. If the Board complies with this procedure, the decision will constitute 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. Consequently, because the record reflects that the Board routinely denied the Appellant parole after complying with the necessary procedure, the court may not interfere with the Department's determination.

ORDER

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

AND IT IS SO ORDERED.



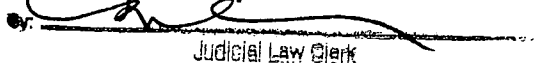
S. Phillip Lenski
Administrative Law Judge

September 2, 2021
Columbia, South Carolina

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 2nd day of September 2021


Judicial Law Clerk

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JERRY B. ADGER
Director
RECEIVED

APR 20 2021

BRCI
MAILROOM

293 Greystone Boulevard
Post Office Box 207
Columbia, South Carolina 29202
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

March 24, 2021

Mr. Charles Williams #00086721
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Williams:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior 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 Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Vote Count: Unanimous To Reject

Sincerely,

A handwritten signature in cursive script, appearing to read "Nettie C. Jacobs".

Nettie C. Jacobs
Board Support Services

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RECEIVED

APR 20 2021

BRCI
MAILROOM

Charles Williams-086721,)

Appellant,)

vs.)

South Carolina Department of Probation,)
Parole and Pardon Services.)

NOTICE OF APPEAL

DOCKET NO -ALJ-15- -

Notice is hereby given that Charles Williams-086721 does hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated March 24-21 and received on March 26-21, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

(1) The SCDPPPS' Application of Department Form 1212 Constituted an Ex Post Facto violation of The U.S. Constitution

(2) The SCDPPPS determined its Findings of Fact upon unlawful procedure

Charles Williams-086721

Appellant's Name
Broad River CI, GRN 2104.
4460 Broad River Rd.

Mailing Address

Columbia, SC 29210

City, State, Zip Code

Charles Williams
Signed

April 16-21
Dated

CERTIFICATE OF SERVICE

I hereby certify that I, Charles Williams (your name), on the 16 day of April, 2021 in Columbia (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Name of person/Agency served: S.C. Dept. of Probation, Parole and Pardon Services

Address: 293 Greystone Boulevard, PO Box 207

City, State, Zip Code: Columbia, SC 29202

Charles Williams

Print your name

(See reverse side for instructions)

Charles Williams
Sign your name