

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Russell Mawyer, #139176,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Probation,)
 Parole & Pardon Services,)
)
 Respondent.)
 _____)

Docket No. 21-ALJ-15-0010-AP

ORDER OF DISMISSAL

RECEIVED

OCT 08 2021

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Russell Mawyer (Appellant) on May 13, 2021. On June 16, 2021, South Carolina Department of Probation, Parole & Pardon Services (Respondent) filed the Record on Appeal. On July 7, 2021, Appellant's Brief was filed, and on August 24, 2021, Respondent's Brief was filed. Appellant filed a Reply Brief on September 8, 2021.¹

ISSUES ON APPEAL

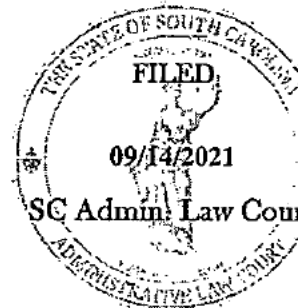
Appellant's brief argues that Respondent's Parole Board (Board) issued a decision based on findings of fact that cannot change, thereby effectively denying his eligibility for parole permanently.

He also argues that the decision did not address the evidence submitted on his behalf showing that he has reformed and, therefore, "has shown a disposition to reform," that he will obey the law, and lead a correct life. By not addressing the documents and statements submitted, the Board has issued a decision that is arbitrary and capricious and demonstrates an abuse of discretion.

ARGUMENTS

In support of his arguments, Appellant cites S.C. Code Ann. §§ 24-21-10(F)(1) and 24-21-640. He also relies on *Cooper v. S.C. Dep't Prob., Parole and Pardon Servs.*, 377 S.C. 488, 661 S.E.2d

¹ Appellant stated that he received Respondent's brief on August 30, 2021.



106 (2008). He also argues against *Compton v. Dep't Prob., Parole and Pardon Servs.*, 385 S.C. 476, 685 S.E.2d 175 (2009) asserting that the State Supreme Court

did not intend for the parole board [sic] to use this [statement in its decision] as a means to abuse its discretion, by simply stating it considered these factors, but deny parole again and again using only 'three statutorily enumerated factors, each of which was fixed as of the date of the inmate's offense and could not be affected by the inmate's actions while incarcerated . . .' in a rote fashion, 'without even addressing any of the other enumerated factors' or even stating any of them in their FINDING OF FACT [sic] as reasons for the denial of parole.

Appellant's Brief, 5.

CONCLUSION OF LAW: JURISDICTION

The jurisdiction and authority of the ALC to hear appeals from the South Carolina Department of Probation, Parole, and Pardon (Department) is limited. The legislature created the ALC as an executive branch court. As such, the jurisdiction of the ALC is limited to that granted to it by statute. *See* S.C. Code Ann. § 1-23-600 (Supp. 2020) and *S.C. Dep't of Consumer Affairs v. Foreclosure Specialists, Inc.*, 390 S.C. 182, 186-87, 700 S.E.2d 468,470 (Ct. App. 2010). (The ALC has no "authority to exceed [its] statutorily granted powers.")

The State Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999) held that an inmate is entitled to review by the ALC of a decision depriving an inmate of protected liberty interests represented by the potential loss of sentence-related credits (good time credits). Subsequently, in an appeal from the Board, the Supreme Court discussed two ways these issues could arise:

- (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.

Furtick, 352 S.C. at 598, 576 S.E.2d at 148-49 (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E. 2d at 750).

The Supreme Court concluded that *Furtick* raised an issue arising in the second manner. Specifically, the Board determined that the inmate was not eligible to be considered for parole. However, the Supreme Court decided that "the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process." *Id.* at 598, 576 S.E.2d at 149. If

the Department determined that an applicant was ineligible for parole, the applicant would have “the same right to review as the inmate in *Al-Shabazz*.” *Id.* at 599, 576 S.E.2d at 149.

In *Cooper*, the Supreme Court appeared to expand the scope of review available. To clarify what it perceived as a misinterpretation, the court, in *Compton*, held that the Board need only state,

in its order denying parole that it considered the factors outlined in Section 24-21-640 and the fifteen factors published in Form 1212,² 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.

In the instant case, the Parole Board clearly stated in its notice of rejection that it considered the statutory criteria and the criteria set forth in Form 1212, which is sufficient under *Cooper*.

Compton, 385 S.C. at 479, 685 S.E.2d at 177 (2009).

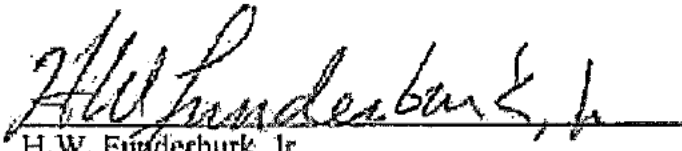
As an executive branch court created by the General Assembly, the ALC’s jurisdiction is statutorily limited. Moreover, in its consideration of an appeal from a Parole Board decision, the ALC is specifically limited by S.C. Code Ann. § 1-23-600(D) which provides that an

administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections . . . involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.³

The decisions in *Furtick* and *Compton*, read in combination with the amended statute, make it clear that the ALC has no authority to review or reverse a “routine” decision denying parole to a potentially eligible inmate.

Since this is a case in which Appellant has been considered for parole and, barring something unforeseen, will be considered again, this Court has no jurisdiction to entertain this appeal. The appeal is, therefore, **DISMISSED**.

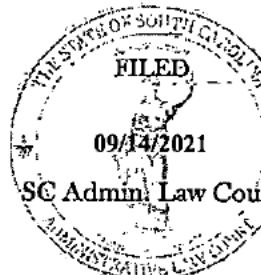
AND IT IS SO ORDERED.


H.W. Funderburk, Jr.
Administrative Law Judge

September 14, 2021
Columbia, South Carolina

² Form 1212 contains sixteen (16) factors if the offense occurred on or after January 1, 2011.

³ This subsection was amended to add this provision by Act 334, which went into effect June 16, 2008.



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CERTIFICATE OF SERVICE

I, Elizabeth A. Perkins, hereby certify that I have this date served this **Order of Dismissal** upon all parties to this case 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).

Russell Mawyer
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Counsel for Respondent

September 14, 2021
Columbia, South Carolina

Elizabeth A. Perkins
Elizabeth A. Perkins
Judicial Law Clerk

