

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Terrance Wright, #256699,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 21-ALJ-15-0020-AP

ORDER

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JAN 27 2022

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal by Terrance Wright (Appellant), an inmate incarcerated with the North Carolina Department of Corrections. By letter dated July 29, 2021, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) denied him parole. Thereafter, on August 11, 2021, Appellant filed a Notice of Appeal with the Court seeking judicial review of the Board's denial of parole. Appellant argues the Board's decision was in error because the Board violated his (1) Fourteenth Amendment right to an accurate assessment; (2) Fourteenth Amendment due process right to review all information used in the Board's decision-making; (3) Ninth Amendment right to know the law being applied to him; and (4) Eighth Amendment right against cruel and unusual punishment while violating his Sixth Amendment right to confront his accusers and review documents.

FACTUAL HISTORY

On March 4, 1999, Appellant pled guilty to crimes he committed in South Carolina in August of 1993, including: murder, criminal sexual conduct in the first degree, kidnapping, burglary in the first degree, and larceny between \$1,000 and \$5,000 as a lesser included offense of grand larceny of a motor vehicle. He was sentenced to life imprisonment. Appellant has also been convicted of other crimes in other states, and before he pled guilty in South Carolina, he was convicted in North Carolina where he remains imprisoned.

Appellant became eligible for parole in South Carolina in April 2019 and, since that time, has had two parole review hearings. The most recent hearing, which is the subject of this appeal,



took place on July 29, 2021. The Board voted unanimously to reject Appellant for parole. In the Board's letter denying Appellant parole, the Board stated it considered "(1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record." The Board also specifically stated it considered the factors outlined in section 24-21-640 of the South Carolina Code, the factors published in Department Form 1212, and the actuarial risk and needs assessment factors pursuant to section 24-21-10(F)(1) of the South Carolina Code. The Board stated its findings of fact upon which it rested its decision included: the nature and seriousness of current offense, indication of violence in this or previous offense, use of deadly weapon in this or previous offense, and his criminal record indicates poor community adjustment.

After the Board denied Appellant parole on July 29, 2021, he timely filed this appeal with the Court. The Department filed the Record on Appeal on October 21, 2021. On November 22, 2021, Appellant filed his brief. The Department filed its brief on December 13, 2021.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003) and *Cooper v. South Carolina Department of Probation, Parole and Pardon Services*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008). When reviewing the Department's decisions in inmate parole matters, the ALC sits in an appellate capacity. *Furtick*, 352 S.C. at 599; 576 S.E.2d at 149; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2020) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380 of the South Carolina Code). Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2020). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless the record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly arbitrary or affected by an error of law. *See Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). Finally, "when appealing an agency's decision, the burden rests squarely on the appellant to prove that substantive rights were

prejudiced . . .” *S.C. Dep’t of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008).

DISCUSSION

The United States Supreme Court has held that “[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence.” *Greenholtz v. Neb. Penal Inmates*, 442 U.S. 1, 7 (1979). In other words, “given a valid conviction, the criminal defendant has been constitutionally deprived of his liberty.” *Meachum v. Fano*, 427 U.S. 215, 224 (1976). Thus, if Appellant has a liberty interest in parole, then it must emanate from state law. See *Ellis v. Dist. of Columbia*, 84 F.3d 1413, 1415 (D.C. Cir. 1996).

“An administrative law judge shall not hear . . . an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.” S.C. Code Ann. § 1-23-600. Nevertheless, in *Furtick*, the South Carolina Supreme Court held that “the permanent denial of parole eligibility implicates a liberty interest sufficient to require at least minimal due process.” *Furtick v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003). However, the South Carolina Supreme Court made clear that “[a]lthough [section 24-21-620] creates a liberty interest in parole eligibility, it does not create a liberty interest in 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 grant parole.

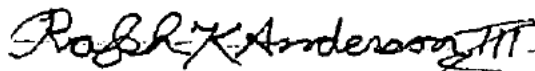
In *Cooper*, the Supreme Court further explained that, if, in denying parole, the Department fails to follow the statutorily required parole criteria, “it essentially abrogates an inmate’s right to parole eligibility and, thus, infringes on a state-created liberty interest.” See *Cooper*, 377 S.C. at 498, 661 S.E.2d at 111; see also *Sullivan v. S.C. Dep’t of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (holding “[t]he only way for the [ALC] to obtain subject matter jurisdiction over [inmate] claim[s] is if it implicates a state-created liberty interest.”). 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.” *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112. Under *Cooper*, as long as 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.”¹ *Id.*

Here, Appellant argues the Board’s decision was in error because the Board violated (1) his Fourteenth Amendment right to an accurate assessment; (2) his Fourteenth Amendment due process right to review all information used in the Board’s decision-making; (3) his Ninth Amendment right to know the law being applied to him; and (4) his Eighth Amendment right against cruel and unusual punishment while also violating his Sixth Amendment right to confront his accusers and review documents. Thus, Appellant alleges several errors, but this Court’s review of parole matters is limited under *Cooper* to a determination of whether the Board followed the proper procedure by evaluating the statutorily required parole criteria. *See Cooper*, 377 S.C. at 498, 661 S.E.2d at 111. Appellant has failed to show how the Board did not adhere to the requirements of *Cooper* or otherwise engages in actions that constituted the permanent denial of parole eligibility. Specifically, the Board’s decision letter states it considered the factors outlined in section 24-21-640, the factors published in Department Form 1212, and the actuarial risk and needs assessment factors pursuant to section 24-21-10(F)(1). Therefore, the Board did not violate *Cooper*, and this was a routine denial of parole and must be affirmed. *Id.* at 500, 661 S.E.2d at 112 (holding that if the ALC determines the Board followed the proper procedure by considering the statutory factors for a parole review, then “the ALC can summarily dismiss the inmate’s appeal.”).

ORDER

IT IS THEREFORE ORDERED that this matter is **DISMISSED WITH PREJUDICE**.
AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 31, 2021
Columbia, South Carolina

¹ The parole form referenced in *Cooper* is Form 1212, which now includes the actuarial risk and needs assessment referenced by the Board in its rejection of Appellant’s parole. *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) (holding “if the Parole 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”).

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause 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).



Stephanie Perez
Judicial Law Clerk

December 31, 2021
Columbia, South Carolina