

SUPREME COURT OF SOUTH CAROLINA

Compton v. South Carolina Department of Probation, Parole & Pardon Services, 385 S.C. 476

685 S.E.2d 175 (2009) · No. No. 26730 · Decided October 12, 2009

SUMMARY

The Supreme Court of South Carolina held that an order of the Administrative Law Court remanding a parole matter to the Parole Board was not directly appealable because review of the final agency decision would provide an adequate remedy. Exercising certiorari jurisdiction, the court concluded that the Parole Board's amended notice sufficiently stated that it had considered the statutory and regulatory parole criteria, as required by Cooper. The court reversed the Administrative Law Court's remand order and remanded with instructions to issue an order consistent with its opinion.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Justice Waller; Justice Pleicones; Justice Beatty; Justice Kittredge
JURISDICTION	South Carolina
DECIDED	October 12, 2009
DOCKET	No. 26730
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Department petitioned for a writ of certiorari to review the Court of Appeals' dismissal of its appeal from an Administrative Law Court remand order. The Supreme Court denied certiorari as to the direct appeal because the ALC order was not directly appealable, but issued a writ under Rule 245, SCACR, to review the ALC's decision.
STANDARD OF REVIEW	An intermediate or procedural ALC order is not directly appealable when review of the final agency decision would provide an adequate remedy. On certiorari review, the Supreme Court determined whether the Parole Board complied with the requirements stated in Cooper.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of South Carolina; binding state precedent.

PARTIES

South Carolina Department of Probation, Parole and Pardon Services
v. James Compton

TOPICS

writ of certiorari appellate jurisdiction judicial review of agency action administrative law
agency adjudication

PRACTICE AREAS

Administrative law Appellate procedure Parole

QUESTIONS PRESENTED

1. Whether the ALC's remand order was directly appealable.
2. Whether the Parole Board's amended notice of rejection complied with Cooper by stating that it considered the statutory and Form 1212 parole criteria.
3. Whether the ALC erred by remanding the matter to the Parole Board for additional findings of fact and conclusions of law.

HOLDINGS

1. The ALC's preliminary, procedural, or intermediate remand order was not directly appealable because review of the final agency decision would provide an adequate remedy.
2. The Parole Board complied with Cooper by clearly stating that it had considered the statutory criteria in section 24-21-640 and the fifteen factors published in Form 1212, while also identifying the reasons for denying parole.

KEY QUOTATIONS

“a preliminary, procedural, or intermediate action or ruling in an administrative proceeding is immediately reviewable only if review of the final agency decision would not provide an adequate remedy” (385 S.C. at 478)

“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.” (385 S.C. at 479)

FACTUAL BACKGROUND

Compton appeared before the Parole Board on January 24, 2007, and was denied parole. The Board's amended notice stated that it had considered the statutory criteria in S.C. Code Ann. § 24-21-640 and the factors in Form 1212, and identified the nature and seriousness of the offense, violence in the current or a prior offense, and use of a deadly weapon as reasons for denial. The ALC concluded that the Board had not separately stated findings of fact and conclusions of law and ordered another remand.

PROCEDURAL HISTORY

The Parole Board denied Compton parole after a January 24, 2007 hearing. After rehearing was denied, Compton appealed to the Administrative Law Court, which remanded the matter to the Parole Board for a decision conforming to *Cooper v. S.C. Department of Probation, Parole and Pardon Services*. The Board issued an amended notice stating that it had considered the statutory criteria and Form 1212 factors and identifying three reasons for denying parole. The ALC nevertheless found only partial compliance and remanded again, after which the Court of Appeals dismissed the Department's appeal. The Supreme Court reversed the ALC's second remand and remanded for an order consistent with its opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Administrative Law Court with instructions to issue an order in compliance with the Supreme Court's opinion.

CASES CITED

- *Leviner v. Sonoco Products Co.*, 339 S.C. 492, 530 S.E.2d 127 (2000)
- *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008)
- *Ex parte Gregory*, 58 S.C. 114, 36 S.E. 433 (1900)

OPINION

PER CURIAM.

385 S.C. 476 (2009) 685 S.E.2d 175 James COMPTON, Respondent, v. SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, Petitioner. No. 26730. Supreme Court of South Carolina. Submitted September 15, 2009. Decided October 12, 2009. Rehearing Denied December 2, 2009. *477 Deputy Director for Legal Services, Teresa A. Knox, Assistant Chief Legal Counsel, J. Benjamin Aplin, Legal Counsel, Tommy Evans, Jr., of S.C.

Department of Probation, Parole and Pardon Services, of Columbia, for Petitioner. Kenneth Hanson, of Hanson Law Firm, P.A., of Columbia, and Scott Franklin Talley, of Scott F. Talley, P.A., of Spartanburg, for Respondent. PER CURIAM: Petitioner has filed a petition for a writ of certiorari pursuant to Rule 242, SCACR, to review an order of the Court of Appeals dismissing its appeal.

We deny the petition for a writ of certiorari to the Court of Appeals because we find the Court of Appeals correctly determined the order of the Administrative Law Court (ALC) in this matter is not directly appealable. See S.C.Code Ann. § 1-23-380 (Supp.2008) (a *478 preliminary, procedural, or intermediate action or ruling in an administrative proceeding is immediately

reviewable only if review of the final agency decision would not provide an adequate remedy); *Leviner v. Sonoco Products, Co.*, 339 S.C.

492, 530 S.E.2d 127 (2000) (finding an order remanding a case for additional proceedings before an administrative agency is not directly appealable). However, because our opinion in *Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008), is being misinterpreted, we hereby issue a writ of certiorari pursuant to Rule 245, SCACR, and Article V, Section 5 of the South Carolina Constitution to review the decision of the ALC in this matter.

Ex parte Gregory, 58 S.C. 114, 36 S.E. 433 (1900) (writ of certiorari will not be allowed where remedy by appeal is available unless exceptional circumstances exist). Respondent appeared before the Parole Board on January 24, 2007, for a parole hearing.

The Parole Board denied respondent parole. After the denial of respondent's request for rehearing, respondent appealed the Parole Board's decision to the ALC. The Parole Board filed a motion to dismiss the appeal. The ALC issued an order remanding the matter to the Parole Board for it to issue a decision in conformity with *Cooper*.

On remand, the Parole Board issued an "Amended Notice of Rejection" to respondent, which stated: After considering all of the factors published within Department [Form] 1212 (criteria for parole consideration), as well as the factors outlined in [S.C.Code Ann. § 24-21-640 (2007)], the Parole Board has decided to deny parole due to the following reason(s) listed below.

The Parole Board denied respondent parole due to: (1) the nature and seriousness of the current offense; (2) an indication of violence in this or a previous offense; and (3) the use of a deadly weapon in this or a previous offense. Respondent filed a "Notice of Motion and Motion for Contempt and Ancillary Relief" with the ALC.

The Parole Board filed a motion to dismiss, arguing the amended notice of rejection was in conformity with the ALC's remand order. The ALC denied respondent's motion for contempt and ancillary relief, but remanded the matter to the Parole Board. Specifically, the ALC found the Parole Board had "partially complied" with the original remand order.

The ALC found the Parole Board included appropriate language indicating it complied with its own factors and section 24-21-640, but failed to include any "findings of fact and conclusions of law, separately stated," as required by *Cooper*. Thereafter, the ALC ordered the Parole Board to issue an amended decision in conformity with *Cooper*.

In *Cooper*, we held that if the Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate's right to parole eligibility and infringes on a state-created liberty interest, warranting minimal due process protection.

Because the Parole Board in Cooper neither offered an explanation nor indicated it had considered the statutory criteria or the criteria set forth in Form 1212, we had no other choice but to determine the order was defective and the decision was arbitrary and capricious.

We emphasized that this result could be avoided in the future 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.

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. Accordingly, the ALC erred in remanding the matter to the Parole Board.

We, therefore, remand this case to the ALC with instructions to issue an order in compliance with this opinion. REVERSED AND REMANDED. TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.