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# Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

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CR-21-0324

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Alabama Board of Pardons and Paroles

v.

William David Abbott

Appeal from Montgomery Circuit Court  
(CV-20-901545)

WINDOM, Presiding Judge.

The Alabama Board of Pardons and Paroles ("the Board") appeals an order of the Montgomery Circuit Court granting William David Abbott's petition for a writ of certiorari and reinstating his parole.

Abbott alleged in his petition that in 2012 he was convicted of trafficking methamphetamine, unlawful possession of a controlled substance, and unlawful possession of marijuana, and was sentenced to life in prison for each conviction. On January 29, 2018, Abbott was placed on parole. On September 15, 2020, Abbott was arrested for domestic violence by strangulation, see § 13A-6-138, Ala. Code 1975. As a result of his arrest, the Board declared Abbott delinquent on September 24, 2020, and parole-revocation proceedings were initiated.

The Board held a revocation hearing on October 7, 2020, at which Abbott was represented by counsel. Abbott's parole officer submitted the parole-violation report detailing the new offense. Based on the lack of direct testimony regarding the offense, the hearing officer found insufficient evidence to revoke Abbott's parole and recommended that he be reinstated to parole. The Board reviewed the hearing report and ordered that revocation proceedings be continued so that additional testimony from the arresting officers, the victim's mother, and the victim could be presented to the hearing officer for review.

On November 4, 2020, a second revocation hearing was held. After hearing from Abbott's parole officer, the officer who responded to the

alleged domestic-violence disturbance, an investigator, and Abbott, the hearing officer found Abbott guilty of the charged parole violation. He recommended that Abbott's parole be revoked for a period of 24 months. After reviewing the hearing officer's report, the Board revoked Abbott's parole and ordered that Abbott be given parole consideration in November 2022.

On December 30, 2020, Abbott filed a petition for a writ of certiorari in the Montgomery Circuit Court challenging the Board's revocation of his parole. In his petition, Abbott alleged that his revocation was invalid because, he said, the Board had violated §15-22-31, Ala. Code 1975, by failing to serve him timely with a warrant and because, he said, the Board had violated § 15-22-32(a), Ala. Code 1975, by failing to conduct a timely parole-revocation hearing. Abbott also argued that his parole should not have been revoked because the victim did not testify at the parole-revocation hearing. The Board moved to dismiss the petition, arguing that Abbott's claims were without merit. Abbott filed a response in which he claimed that the domestic-violence charge that led to his parole revocation had been no-billed by a grand jury.

The circuit court held a virtual hearing on Abbott's petition on June 1, 2021. At the conclusion of the proceedings, the circuit court stated that it would render its decision by order. On October 19, 2021, Abbott filed a motion requesting a ruling by the circuit court. On November 2, 2021, the circuit court issued the following order reinstating Abbott's parole:

"A Writ of Certiorari having been filed by [Abbott] for the purpose of reviewing the Parole Revocation Hearing held by the [Board], and hearing being held for the Writ of Certiorari on June 1, 2021, and after the Court considering the same:

"IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- "1. That Writ of Certiorari filed by [Abbott] is hereby granted due to [Abbott] having been No Billed on the charge that resulted in his parole revocation and [Abbott] having a perfect parole record before said charge.
- "2. [Abbott] is to be immediately released from the Alabama Department of Corrections and shall immediately report to the [Board] upon his release to complete his parole sentence."

(C. 56.)

The Board filed a motion to reconsider or, in the alternative, to stay enforcement of the order. The circuit court issued an order staying its judgment and setting the matter for a hearing. On December 13, 2021,

the circuit court held a hearing on the Board's motion to reconsider. The Board's motion was subsequently denied by operation of law. The Board filed a motion to stay enforcement of the order pending appeal, which the circuit court granted.

On appeal, the Board argues that the circuit court erred in granting Abbott's petition and in ordering that Abbott be reinstated to parole. Specifically, the Board contends that the circuit court exceeded its authority by reinstating Abbott to parole.

Judicial review of actions taken by the Board is limited. This Court has stated:

"On petition for writ of certiorari the circuit court is, as is the appellate court, limited in its review of quasi-judicial acts of administrative officers and boards. The limited function of that review is to determine whether the act in question was supported by any substantial evidence, or whether findings and conclusions are contrary to uncontradicted evidence, or whether there was an improper application of the findings viewed in a legal sense. Sanders v. Broadwater, 402 So. 2d 1035 (Ala. Civ. App. 1981). Judicial review of administrative acts and decisions is limited in scope, and ordinarily the courts will only pass on the question of whether the administrative agency has acted within its constitutional or statutory powers, whether its order or determination is supported by substantial evidence, and whether its action is reasonable and not arbitrary. Little

Caesar's, Inc. v. Alabama Alcoholic Beverage Control Bd., 386 So. 2d 224 (Ala. Civ. App. 1979).'"

Alabama Bd. of Pardons & Paroles v. Williams, 935 So. 2d 478, 484 (Ala. Crim. App. 2005) (quoting Ellard v. State, 474 So. 2d 743 (Ala. Crim. App. 1984)).

"A court may not set aside an order of a fact-finding administrative body, acting within the field of its designated powers, unless the order is illegal, capricious, or unsupported by substantial evidence. Little Caesar's, Inc. v. Alabama Alcoholic Beverage Control Bd., [386 So. 2d 224 (Ala. Civ. App. 1979)]; Alabama Electric Cooperative v. Alabama Power Co., 278 Ala. 123, 176 So. 2d 483 (1965); 73 C.J.S. Public Administrative Law and Procedure, § 202 et seq. (1951). 'Substantial evidence' means legal evidence. Little Caesar's, Inc. v. Alabama Alcoholic Beverage Control Bd., supra; Eagle Motor Lines, Inc. v. Alabama Public Service Commission, 343 So. 2d 767 (Ala. 1977)."

Ellard, 474 So. 2d at 750.

The circuit court exceeded its limited scope of review in reinstating Abbott to parole. Abbott was not entitled to relief on the basis that he had been a good parolee or that the domestic-violence charge had been no-billed. The Board may revoke parole if it is reasonably satisfied from the evidence that the parolee has committed a criminal offense, and because the level of evidence needed to revoke parole is less than that needed for a conviction, this remains true even if criminal charges for

that offense are dismissed or even if a trial on the charges ultimately results in an acquittal. See Crowe v. State, 671 So. 2d 112 (Ala. Crim. App. 1995). The circuit court cannot substitute its judgment for that of the Board.

Accordingly, the circuit court's judgment reinstating Abbott's parole is reversed, and the case is remanded for proceedings consistent with this opinion.

**REVERSED AND REMANDED.**

Kellum, McCool, Cole, and Minor, JJ., concur.