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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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Case No. 22-ALJ-15-0013-AP

Appellate Case No. 2023-000693

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Charles J. Madden, #00182326, Appellant,

v.

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

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# RECORD ON APPEAL

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

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July 14, 2022

Mr. Charles Madden #00182326
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

RE: NOTICE OF REJECTION

Dear Mr. Madden:

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
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Criminal Record Indicates Poor Community Adjustment
Failure To Successfully Complete A Community Supervision Program
Vote Count: 4 Rejected - 1 Parole

Sincerely,

Valerie Suber
Associate Deputy Director for Paroles, Pardons and Release Services

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | |
|---|---|
| Charles J. Madden, #00182326,<br><br>Appellant,<br><br>v.<br><br>South Carolina Department of Probation, Parole and Pardon Services,<br><br>Respondent. | Docket No. 22-ALJ-15-0013-AP<br><br>**ORDER DENYING APPELLANT'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL** |

## STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on August 23, 2022, by Charles J. Madden, #00182326 (Appellant), an inmate in the custody of the South Carolina Department of Corrections. Following his most recent parole hearing on July 13, 2022, the South Carolina Department of Probation, Parole and Pardon Services (Department or DPPPS) notified the Appellant that the Parole Board (Board) had determined that his parole should be denied. The Appellant challenges the Department's decision on the grounds that the evidence suggests the Board failed to adequately consider any factors beyond the criminal act for which the Appellant is incarcerated, in violation of the Board's policies and the Appellant's due process rights under *Cooper*.[1]

On November 4, 2022, the Appellant filed a Motion to Supplement the Record on Appeal (Motion) with additional documentation not included in the Record on Appeal (Record) filed by the Department.[2] On November 9, 2022, the Department filed a response in opposition to the Appellant's motion arguing that it included all documents in the Record required under this court's recently amended rules, and that the proposed documents go to issues outside of the scope of this appeal. On November 18, 2022, the Appellant filed a reply to the Department's response.

[1] *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008).
[2] These additional documents include: (1) a parole candidate information packet with letters of support and certificates of achievement; (2) a transcript of the Appellant's most recent parole hearing; (3) an audio recording of the Appellant's most recent parole hearing; and (4) any and all non-privileged documents the Department claims the Board reviewed and considered in reaching its decision to deny parole.

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After careful consideration of the parties' arguments, the Record, as well as the applicable law, the court finds that the Appellant has not carried his burden of establishing that the Record in this case should be supplemented. Accordingly, the Appellant's Motion is denied.

## BACKGROUND

The Department filed the Record on September 29, 2022. The Record consists of two documents: (1) the July 14, 2022, agency decision denying the Appellant parole; and (2) a DPPPS Criteria for Parole Consideration form generally explaining the process and factors to be considered by the Board. The Board's notice of rejection states that the Board rendered its decision:

> After careful consideration of: (1) the characteristics of [the Appellant's] current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record . . . ; (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.

On November 4, 2022, the Appellant filed a Motion to Supplement the Record on Appeal pursuant to Rule 68 of the Rules of Procedure for this court (SCALC Rules) and Rule 212(b) of the South Carolina Appellate Court Rules (SCACR). Specifically, the Appellant moved to supplement the Record with the following: (1) a parole candidate information packet with, among other things, letters of support and certificates of achievement submitted to the Department prior to the Appellant's most recent parole hearing; (2) a transcript of the Appellant's most recent parole hearing; (3) an audio recording of the Appellant's most recent parole hearing; and (4) any and all non-privileged documents the Department claims that the Board reviewed and considered in reaching its decision to deny parole. For the latter documents, which he asserts are in the Department's sole possession, the Appellant seeks an order compelling the Department to produce the requested documentation for inclusion in the Record.

On November 9, 2022, the Department filed a response in opposition to the Appellant's Motion arguing that the Record included all documents required under SCALC Rule 61, which was amended in 2021 to limit the contents of records on appeal in DPPPS matters. *See* SCALC Rule 61 (providing that, for DPPPS appeals, "the Department need only provide a copy of the agency decision, and where applicable, the decision following a motion for reconsideration"). The

Department further maintains that the evidence the Appellant seeks to supplement into the record only goes to the Board's decision-making process, which is beyond this court's very narrow scope of review in DPPPS cases. *See, e.g., Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 502, 661 S.E.2d 106, 113 (2008) (noting the court's limited jurisdiction in DPPPS cases involving the routine denial of parole). On November 18, 2022, the Appellant filed a reply to the Department's response.

## STANDARD OF REVIEW

SCALC Rule 68 provides that an Administrative Law Judge may apply the SCACR to resolve questions not addressed by the SCALC Rules. While the SCALC Rules address the composition of the record on appeal in DPPPS matters, they do not address supplementation of a record on appeal. Rule 212(b) of the SCACR discusses the procedures for supplementing a record. Specifically, it provides that, "[w]ith the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences." Rule 212(b), SCACR. However, without that consent, "a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so." *Id.* The Department has not consented to supplement the Record in this case; therefore, the court must decide whether there is sufficient justification to do so.

## DISCUSSION

The Appellant acknowledges that SCALC Rule 61 governs the contents of the record on appeal in "Special Appeals," which provides that:

> The record on appeal shall consist of the transcript of the proceedings before the agency, if any, and the record of the contested case as described by Rule 58. **In appeals from decisions of the Probation, Pardon and Parole Board, the Department need only provide a copy of the agency decision, and where applicable, the decision following a motion for reconsideration.**

(emphasis added). The Appellant does not dispute that the Record submitted by the Department in this case complies with SCALC Rule 61. To that end, the court finds that the Record contains the Department's decision and, therefore, plainly complies with SCALC Rule 61. Rather, the Appellant argues that a strict construction of SCALC Rule 61 limiting

the record on appeal to only those provided by the Department would prevent him from fulfilling his obligation to present a sufficient record for appellate review. He contends that, without the supplemental documentation, he would be unable to show that the Board violated his due process rights by failing to adequately review and deliberate on the record before it. While the court acknowledges that a strict construction of SCALC Rule 61 would limit its ability to conduct a comprehensive review of the Board's substantive decision to deny parole, the Appellant has not articulated how it would hamper this court's review within the context of the narrow jurisdiction this court is endowed with in DPPPS matters.

The South Carolina Code provides that "[a]n 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(D) (Supp. 2022). That notwithstanding, the South Carolina Supreme Court has 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). Importantly, "[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, 576 S.E.2d at 149 n.4. "In simple terms, this means that an inmate has a right of review by the [ALC] after a *final* decision that he is *ineligible* for parole, but that a parole-eligible inmate does not have the same right of review after a decision denying parole. . . ." *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 n.4 (2003). 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 liberty interest subject to review.

The South Carolina Supreme Court has nonetheless recognized that review of the Department's routine denial of parole can rise to a reviewable liberty interest under very specific circumstances. *See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 502, 661 S.E.2d 106, 113 (2008) ("If a Parole Board fails to consider and apply the statutorily-created parole criteria, it has the effect of rendering an inmate parole ineligible, which under *Furtick* warrants review by the ALC."). If 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. Crucially, in *Compton v. South Carolina Department or Probation,*

*Parole & Pardon Services*, the South Carolina Supreme Court clarified that "if 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 Form 1212 . . . ," its decision is sufficient under *Cooper*.[3] *Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). Thus, this court's review is limited to ascertaining whether the Board considered, or stated that it considered, the relevant criteria. *See id.*; *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112. If the court determines that the Board considered, or stated that it considered, the relevant criteria, pursuant to *Cooper* and *Compton*, the inquiry ends there.

The Appellant essentially argues that this court's inquiry should not end simply because the Board certified that it considered the requisite criteria because there is insufficient evidence that it actually did. He contends that the evidence he is seeking to append to the Record would show that the Board did not adequately consider the criteria and information that it said it had.[4] Included among that evidence is the audio recording from the Appellant's parole hearing, which indicates that the Board rendered its decision following the hearing after only a short deliberation with no substantive discussion, as well as certain documentation supporting the Appellant's parole request. However, the *Compton* court did not provide for a case-by-case review of the Board's certification, or otherwise condition its holding that a certification from the Board that it considered the relevant criteria is sufficient under *Cooper*.[5] There are similarly no requirements regarding the breadth and duration of the Board's deliberation in a particular case, only that the required information must be considered. Therefore, absent some allegation of fraud in the certification or evidence suggesting that the Board failed to conduct *any* review, supplemental evidence regarding the adequacy of the Board's review is tantamount to challenging the

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[3] Additionally, after *Cooper*, the Department established a "validated actuarial risk and needs assessment tool" to be used when evaluating parole. S.C. Code Ann. § 24-21-10(F) (Supp. 2022). This risk assessment tool, which is known as COMPAS, has been incorporated into the Board's written criteria and must be considered by the Board in addition to the other aforementioned statutory criteria. *See Cooper*, 377 S.C. at 499, 661 S.E.2d at 112 (holding "the apparent failure by the [] Board to consider the requisite statutory criteria in rendering its decision constitutes an infringement of a state-created liberty interest and, thus, warrants minimal due process procedures."); *see also Ruff v. S.C. Dep't of Prob.*, No. 2015-UP-309 (S.C. Ct. App. dated June 24, 2015) (holding the actuarial risk and needs assessment is one of the statutory criteria to which the Board must adhere).

[4] The Appellant's argument could also be characterized as suggesting that, because there was ample evidence presented to the Board from which it could have found that granting parole is appropriate, the Board must not have adequately considered that evidence when it voted against granting parole. However, the weight afforded to evidence is within the Board's sole discretion. *See State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 104-05 (2008) (citing *State v. McKay*, 300 S.C. 113, 115, 386 S.E.2d 623, 623-24 (1989)).

[5] While the Appellant may disagree with the Board's ability to satisfy due process concerns by clearly stating in its order that it considered the requisite criteria, that is precisely what *Compton* allows.

sufficiency of the evidence supporting its decision, which is outside the scope of this court's jurisdiction.[6]

Even assuming, *arguendo*, that the Board hadn't attested to its consideration of the requisite criteria and that the Appellant's supplemental evidence regarding the adequacy of the Board's review is not outside the scope of this court's jurisdiction, the proposed evidence does not support the Appellant's argument that the Board did not adequately consider the record in his case. While the audio recording shows that the Board rendered its decision without any substantive post-hearing deliberation together, it does not indicate that the Board failed to consider the Appellant's record or the relevant parole eligibility criteria. As previously stated, apart from requiring consideration of the requisite criteria, there are no restrictions governing the method and adequacy of the Board's review in an individual case. The Board is not required to wait until after a parole hearing to begin considering a parole applicant's record and the relavant parole eligibility factors. There is similarly no requirment that the Board deliberate as a group following a parole hearing. Thus, the mere fact that the Board did not substatively deliberate as a group following the Appellant's parole hearing does not suggest a wholesale failure by the Board to consider the Appellant's case and the requisite eligibility criteria.

To the contrary, the audio recording inidcates that the Board reviewed the Appellant's packet of information and documentation supporting his parole request prior to the hearing, and was generally familiar with the Appellant.[7] During the hearing, the Board heard the Appellant's statements about his crime, his religious activities, and efforts to save money in preparation for parole. He was questioned regarding his offense, rehabilitation programs he had taken part in, and his support system. The Board also heard from the Appellant's attorney about the circumstances surrounding his crime, various details of his rehabilitation and betterment efforts, and his own opinion regarding the Appellant's readiness for parole. Thus, the proposed evidence does not support the Appellant's suggestion that the Board failed to conduct a meaningful review of his case.

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[6] Allowing DPPPS appellants to submit supplemental evidence attacking the method and/or adequacy of the Board's susbtantive review, thereby requiring a case-by-case analysis of the evidence weighing in favor of and against the Board's decision, would defeat the purpose of this court's well-established extraordinarily limited scope of review in DPPPS matters.

[7] The Board even noted that the Appellant's packet had "a lot of good information" about his church involement and community support.

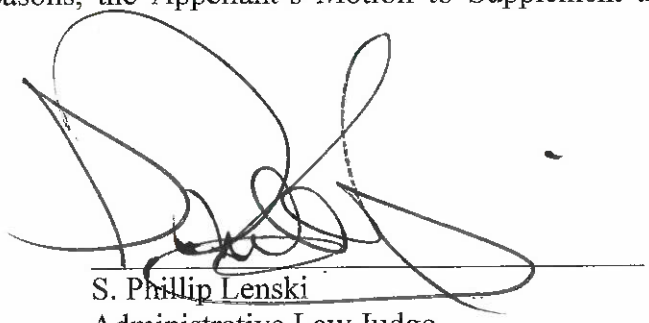
## CONCLUSION

The Appellant's extensive rehabilitation efforts and lack of prison disciplinary history are certainly worthy of commendation. However, this court is not permitted to second guess the Department's decisions regaring parole eligibility and the Appellant has not established that the proposed supplemental evidence concerning the adequacy of the Board's review falls within the very limited scope of this court's review. Thus, the Appellant has not carried his burden of showing that including the supplemental evidence in the Record is appropriate.[8]

## ORDER

**THEREFORE**, for the foregoing reasons, the Appellant's Motion to Supplement the Record on Appeal is hereby **DENIED.**[9]

**AND IT IS SO ORDERED.**



December 7, 2022
Columbia, South Carolina

S. Phillip Lenski
Administrative Law Judge

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 1st day of December 2022
Judicial Law Clerk

[8] Nothing in this order should be construed as limiting the Appellant's ability to challenge the Board's compliance with *Cooper*, *Compton*, or other matters within this court's limited jurisdiction. The Appellant may fully discuss any perceived errors and supporting authority in his brief to this court. Thus, while the court does not find that it would be appropriate to supplement the Record in this instance, this decision in no way prejudices the Appellant from fully arguing his case to this court within the bounds of this court's scope of review in DPPPS matters.

[9] In accordance with the Appellant's Motion for Extension of Time to File Briefs, which the court granted on November 8, 2022, the Appellant shall have fifteen (15) days from the date of this order to file his brief.

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Charles J. Madden, #00182326,<br><br>Appellant,<br><br>v.<br><br>South Carolina Department of Probation, Parole and Pardon Services,<br><br>Respondent. | Docket No. 22-ALJ-15-0013-AP<br><br>**ORDER OF REMAND** |

## STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on August 23, 2022, by Charles J. Madden, #00182326 (Appellant), an inmate in the custody of the South Carolina Department of Corrections. Following his most recent parole hearing on July 13, 2022, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified the Appellant that the Parole Board (Board) had determined that his parole should be denied. The Appellant challenges the Department's decision on several grounds,[1] all of which rest upon the argument that the Board's decision is supported in part by an inapplicable requirement unlawfully imposed on the Appellant.

After careful consideration of the briefs of the parties, the record, as well as the applicable law, the court finds that it cannot determine if the Board erred due to imprecise wording in its order denying parole. Therefore, the court is remanding the matter back to the Department for clarification.

## BACKGROUND

The Appellant is serving a life sentence for a 1991 murder conviction. According to the Department, the Appellant killed his father during the commission of an armed robbery that was committed while he was out on bond for other offenses. The Appellant is 59 years old and has remained continuously incarcerated during the 31 years since his conviction. He became parole

[1] More specifically, the Appellant asserts, among other things, that: 1) the Board erred by basing its decision upon a clearly erroneous finding of fact; 2) the Board violated his due process rights by establishing a de facto permanent denial of parole eligibility; and 3) the Board's decision violates federal and state ex post facto clauses.

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eligible in 2011 and had his most recent parole hearing on July 13, 2022. Following that hearing, the Board voted four to one to reject the Appellant's request for parole based on the following reasons: 1) the nature and seriousness of current offense; 2) indication of violence in this or previous offense; 3) the use of deadly weapon in this or previous offense; 4) the criminal record indicates poor community adjustment; and 5) the "Failure To Successfully Complete A Community Supervision Program." The latter finding of fact is at the heart of the Appellant's case.

Thereafter, on August 23, 2022, the Appellant filed a notice of appeal with this court.

On November 4, 2022, the Appellant filed a Motion to Supplement the Record on Appeal with additional documentation not included in the Record on Appeal (Record) submitted by the Department, which the court denied by order dated December 7, 2022.

## ISSUES ON APPEAL

1. Did the Board err in basing its decision to deny the Appellant parole, in part, on his "Failure To Successfully Complete A Community Supervision Program"?
    a. Did the Board err in basing its decision on a clearly erroneous finding of fact?
    b. Did the Board violate the Appellant's due process rights by establishing a de facto permanent denial of parole eligibility?
    c. Did the Board's decision violate federal and state ex post facto clauses?

## 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). 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 the Board's decisions only for violations of statutory procedure or procedural due process, not 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 (citations 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) (Supp. 2022). 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) (Supp. 2022). 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

This matter centers around the propriety of the Board's finding that the Appellant "Fail[ed] To Successfully Complete A Community Supervision Program." Before the court can address that issue, however, it must determine what, specifically, the Board meant by "community supervision program."

The Appellant asserts that "community supervision program" is a statutorily defined term with statutorily defined parameters. He contends that the governing statutes are prospective in nature and were enacted years after his sentencing and conviction, so the provisions mandating participation in a community supervision program are, therefore, inapplicable to him. The Appellant further maintains that, even if they were applicable, inmates with life sentences are, by statute, specifically exempted from participation in the statutory community supervision program. Therefore, the Appellant argues that the Board erred in relying on his failure to complete a community supervision program to support its decision to deny him parole.

The Department does not dispute that the Appellant is ineligible for the statutory community supervision program or that it would be in error to hold his lack of participation therein against him. Rather, the Department argues that the phrase "community supervision program" is generic terminology that is broadly defined as any type of program in which an offender lives in the community at large but is still supervised by the state, such as probation. In this case, the Appellant had his probation revoked in 1983 for a offense that occurred in 1982. Thus, the Department argues that the Board did not err in finding that the Appellant failed to successfully complete a community supervision program because he failed to comply with the terms of his probation. As set forth below, the court is unable to determine from the Board's order what the community supervision plan was that he failed to complete.

Contrary to the parties' assertions, the meaning of the phrase "community supervision program" is not well established. It is not expressly or exclusively defined by statute, as the Appellant suggests, nor could the court find any official definition supporting the broad interpretation advanced by the Department. In South Carolina statutes and case law, the phrase appears to be overwhelmingly used in reference to the statutory community supervision program. *See, e.g.,* S.C. Code Ann. § 24-21-560 (2007 & Supp. 2022); *State v. McGrier*, 378 S.C. 320, 322, 663 S.E.2d 15, 16 (2008). However, on its face, it could also be interpreted more broadly as referring to any program involving supervised release into the community, particularly with the use of the article "a" preceding it, as in the Board's finding of fact.[2] Thus, the phrase "a community supervision program" is open to more than one reasonable interpretation.

In this case, the Record is devoid of evidence indicating what interpretation the Board intended. While the Department maintains that the Board was referencing a probation revocation from a prior offense, this court's review is confined to the Record and there is nothing in the Record regarding a prior probation revocation, or tying it to the Board's findings of fact. Moreover, given that the phrase in this state is most typically used in relation to the statutory community supervision program, the use of the phrase to refer to probation would be curious under the facts of this case. In any event, the court is unable to determine from the Record what the Board meant by "community supervision program."

[2] Notably, however, the court was unable to find any instances of "community supervision program" being used synonymously with probation in South Carolina statutes or case law.

Critically, because the Board's finding would be erroneous under one interpretation of "community supervision program" but potentially permissible under the other, the court is unable to reach the merits of the Appellant's arguments without further elucidation from the Board. This matter must, therefore, be remanded to the Department for clarification on what specific community supervision program the Board found that the Appellant failed to successfully complete. In its order, the Board must use language that makes it clear whether it was referring to the statutory community supervision program, probation, or something else.[3]

## ORDER

**THEREFORE**, for the foregoing reasons, this matter is hereby **REMANDED** to the Department. On remand, the Board must issue a new order clarifying with sufficient particularity what it meant by "community supervision program."[4]

**AND IT IS SO ORDERED.**

February 14, 2023
Columbia, South Carolina

S. Phillip Lenski
Administrative Law Judge

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 14th day of February, 2023
By: _____
Staff Counsel

[3] The Department argued in its brief that, if any relief is warranted, it should be limited to the issuance of a new notice of rejection "using more general language like 'a supervisory program' instead of 'a community supervision program.'" Though the court declines to provide specific language for the Board to use, it notes that "a supervisory program" would arguably still encompass the statutory community supervision program at the heart of the Appellant's argument.

[4] If, on remand, the Board decides to withdraw that finding from its order, it may, in the interest of judicial economy, reweigh the remaining factors to determine if that alters its decision regarding the Appellant's parole.

State of South Carolina

# Department of Probation, Parole and Pardon Services


**HENRY McMASTER**
Governor

**JERRY B. ADGER**
Director

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March 6, 2023

The Honorable Phillip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

**RE: Charles Madden, #182326 v. S.C. Department of Probation, Parole and Pardon Services**

Dear Judge Lenski:

Pursuant to the Court's Order dated February 14, 2023, in which the Court ordered this case be remanded back to the Parole Board to issue a new order clarifying what it meant by "community supervision program," please find enclosed the Parole Board's Order dated March 2, 2023.

Thank you.

Sincerely,

Matthew C. Buchanan
General Counsel

JEK:dn

Enclosures
cc: Michael Stover, Esquire

# State of South Carolina
# Board of Paroles and Pardons

Charles Madden #182326

ORDER

Whereas the Inmate, Charles Madden #182326, was before the Parole Board on July 13, 2022;

Whereas the Board denied parole for 1) the nature and seriousness of the current offense, 2) indication of violence in this or a previous offense, 3) use of a deadly weapon in this or a previous offense, 4) criminal record indicates poor community adjustment, and 5) failure to successfully complete a community supervision program; and

Whereas the Administrative Law Court remanded the matter to the Board for clarification on what it meant when it referred to "a community supervision program,"

THE BOARD HEREBY ORDERS that

At this time, the Board is meeting in the case of Mr. Charles Madden, the Board reviewed and noted that Mr. Madden did not successfully complete a term of probation in 1982. It is the position of the Board that this was the basis for including reason #5 in the reasons for rejection in the case of Mr. Madden.

In this and all cases, the Board's position regarding reason for rejection #5 is that it includes any and all supervision programs, including but not limited to: probation, parole, community supervision, shock parole, supervised furlough, or any other program.

ORDERED THIS DAY OF March 2, 2023
By the South Carolina Board of Paroles and Pardons

Chair

Member

Member

Member

Member

Member

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | |
|---|---|
| Charles J. Madden, #00182326,<br><br>Appellant,<br><br>v.<br><br>South Carolina Department of Probation, Parole and Pardon Services,<br><br>Respondent. | Docket No. 22-ALJ-15-0013-AP<br><br>**FINAL ORDER** |

## STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on August 23, 2022, by Charles J. Madden, #00182326 (Appellant), an inmate in the custody of the South Carolina Department of Corrections. Following his most recent parole hearing on July 13, 2022, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified the Appellant that the Parole Board (Board) had determined that his parole should be denied. The Appellant challenges the Department's decision on several grounds,[1] all of which rest upon the argument that the Board's decision is supported in part by an inapplicable requirement unlawfully imposed on the Appellant. Specifically, that the Appellant was found to have not successfully completed a "community supervision program," which he alleges he is ineligible for and statutorily exempted from. On March 6, 2023, following an Order of Remand from this court, the Department filed an order from the Board clarifying what it meant by "a community supervision program."

After careful consideration of the briefs of the parties, the record, as well as the applicable law, the court finds no error in the Board's decision, as clarified by its order on remand. Accordingly, the Department's decision is affirmed.

## BACKGROUND

The Appellant is serving a life sentence for a 1991 murder conviction. According to the Department, the Appellant killed his father during the commission of an armed robbery that was

[1] More specifically, the Appellant asserts, among other things, that: 1) the Board erred by basing its decision upon a clearly erroneous finding of fact; 2) the Board violated his due process rights by establishing a de facto permanent denial of parole eligibility; and 3) the Board's decision violates federal and state ex post facto clauses.

The State of South Carolina FILED MAR 28 2023 Administrative Law Court

committed while he was out on bond for other offenses. The Appellant is 59 years old and has remained continuously incarcerated during the 31 years since his conviction. He became parole eligible in 2011 and had his most recent parole hearing on July 13, 2022. Following that hearing, the Board voted four to one to reject the Appellant's request for parole based on the following reasons: 1) the nature and seriousness of current offense; 2) indication of violence in this or previous offense; 3) the use of deadly weapon in this or previous offense; 4) the criminal record indicates poor community adjustment; and 5) the "Failure To Successfully Complete A Community Supervision Program." The latter finding of fact is at issue.

On February 14, 2023, this court issued an order remanding this matter to the Department for clarification as to the meaning of the Board's use of the term "a community supervision program" upon finding that the term could be interpreted in two ways, one of which would ostensibly be improper. On March 6, 2023, the Department filed an order of clarification from the Board. In the order, the Board explained that:

> Mr. Madden did not successfully complete a term of probation in 1982. It is the position of the Board that this was the basis for including reason #5 in the reasons for rejection in the case of Mr. Madden.
>
> In this and all cases, the Board's position regarding reason for rejection #5 is that it includes any and all supervision programs, including but not limited to: probation, parole, community supervision, shock parole, supervised furlough, or any other program.[2]

Therefore, the Board was referring to a prior probation violation when it found that the Appellant "failed to successfully complete a community supervision program," rather than the statutory community supervision program that the Appellant is ineligible for.

## ISSUES ON APPEAL

1. Did the Board err in basing its decision to deny the Appellant parole, in part, on his "Failure To Successfully Complete A Community Supervision Program"?

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[2] Though the court appreciates the clarification with regard to the Appellant, it notes that the Board's position statement in this case is not binding in any other matter. Likewise, this court's decision is not binding on another administrative law judge in another matter. *See* 73A C.J.S. *Public Administrative Law and Procedure* § 352 ("While one administrative law judge [ALJ] may look to another's decisions for guidance, administrative decisions are not binding on other administrative law judges . . . ."). Therefore, absent the use of more precise verbiage with respect to reason #5, "a community supervision program," it is possible that this issue may again arise in future cases under similar circumstances.

a. Did the Board err in basing its decision on a clearly erroneous finding of fact?
b. Did the Board violate the Appellant's due process rights by establishing a de facto permanent denial of parole eligibility?
c. Did the Board's decision violate federal and state ex post facto clauses?

2. Did the Board properly consider the criteria set forth in *Cooper*[3] in reaching its decision to deny the Appellant parole, thereby making it a routine denial of parole?[4]

## 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). 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 the Board's decisions only for violations of statutory procedure or procedural due process, not 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 (citations 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) (Supp. 2022). 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-

[3] *See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008).
[4] Though not raised by the Appellant, the court finds that, in light of the Board's clarification, this case hinges on the Board's compliance with *Cooper*.

23-380(5) (Supp. 2022). 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 previously stated, 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. 2022) (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. 2022).

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 Appellant argues, generally speaking, that the Board's finding that he failed to successfully complete "a community supervision program" is an improper basis to reject his parole request because he is ineligible to participate in the statutory community supervision program. In

light of the Board's order of clarification, the court does not find support for the Appellant's argument that the Board held him to an inapplicable requirement. The Board explained that the reason for including that finding in the Appellant's case was related to an unsuccessful term of probation, another type of supervised community release program, rather than the statutory community supervision program for which he is ineligible. Thus, while awkwardly phrased, given the statutory program bearing the same name, the court does not find that the Board erred in this regard.

As such, the court turns to the Board's compliance with *Cooper*. The court commends the Appellant on his extensive rehabilitation efforts and lack of prison disciplinary history, however, the Board's substantive decision to deny him parole is outside of the limited scope of this court's review. *See Cooper*, 377 S.C. at 495-96, 661 S.E.2d at 109-10. This court may review the Board's decisions only to ensure that it has complied with the necessary procedures. *Id.* at 499, 661 S.E.2d at 111-12. In this case, the Board's order plainly reflects that it considered all 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 and considering the appropriate factors, the court may not interfere with the Department's determination.

## ORDER

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

**AND IT IS SO ORDERED.**

March 23, 2023
Columbia, South Carolina

S. Phillip Lenski
S.C. Administrative Law Judge

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 23rd day of March 2023

Judicial Law Clerk

State of South Carolina

# Department of Probation, Parole and Pardon Services


**HENRY McMASTER**
Governor

**JERRY B. ADGER**
Director

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September 28, 2022

The Honorable Phillip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

**RE: Charles Madden, #182326 v. S.C. Department of Probation, Parole and Pardon Services**

Dear Judge Lenski:

Please find enclosed for filing the *Record on Appeal* dated September 28, 2022, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Jessica E. Kinard
Legal Counsel

JEK:dn

Enclosures
cc: Michael Stover, Esquire

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 22-ALJ-15-0013

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APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

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CHARLES MADDEN, #182326.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, .....RESPONDENT

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**RECORD ON APPEAL**

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**Jessica E. Kinard**
**Legal Counsel**

**South Carolina Department of Probation, Parole and Pardon Services**
**P. O. Box 207**
**Columbia, South Carolina 29202**
**(803) 734-9220**

**ATTORNEY FOR RESPONDENT**

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


**HENRY McMASTER**
Governor

**JERRY B. ADGER**
Director

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


July 14, 2022

Mr. Charles Madden #00182326
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

RE: NOTICE OF REJECTION

Dear Mr. Madden:

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
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Criminal Record Indicates Poor Community Adjustment
Failure To Successfully Complete A Community Supervision Program
Vote Count: 4 Rejected - 1 Parole

Sincerely,

Valerie Suber
Associate Deputy Director for Paroles, Pardons and Release Services

7/13/2022

# South Carolina Department of Probation, Parole and Pardon Services
## Criteria for Parole Consideration

| Inmate Name | SCDC# |
|---|---|
| MADDEN, CHARLES J. | 00182326 |

SC Board of Probation, Parole and Pardon Services
P.O. Box 207
Columbia, SC 29202

### Criteria for Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates a expectancy of release; nor does it bind the Parole Board in any way to favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. The files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some errors or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the Community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow his/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate
15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.
16. Other factors considered relevant in a particular case by the Board.

### Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by case basis and to grant or deny parole as it determines to be in the best interest of society and the intimate under review.
In some cases, the Board may decide that the inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate fail to complete any one of these conditions or disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges. If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:
1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

**I certify that the above material has been explained to me, and I have received a copy.**

| Inmate's Signature: Charles Jackson Madden | Date: 2/28/2022 |
|---|---|

| Witness Signature: J. Kell | Date: 2/28/2022 |
|---|---|

Form 1212 (Stock) Revised 05-16-2017 Distribution: Parole Services and Inmate

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 22-ALJ-15-0013

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APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

---

CHARLES MADDEN, #182326.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, .....RESPONDENT

---

***CERTIFICATE OF COUNSEL***

---

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.

**Jessica E. Kinard**
**Legal Counsel**

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

September 28, 2022

**STATE OF SOUTH CAROLINA**

**ADMINISTRATIVE LAW COURT**

| | | |
|---|---|---|
| Charles J. Madden, 182326<br><br>Appellant,<br><br>v.<br><br>South Carolina Department of Probation, Parole, and Pardon Services,<br><br>Respondent. | ) | Civil Action No. 22-ALJ-15-0013<br><br>APPELLANT'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL |

MOTION TO SUPPLEMENT THE RECORD ON APPEAL

Pursuant to SCALC RULE 68 and SCACR Rule 212(b), Appellant Charles Madden moves this court to supplement the Record on Appeal in the above-captioned matter by including: (1) documents received by Respondent, the South Carolina Department of Probation, Parole and Pardon Services ("DPPPS") prior to Mr. Madden's parole hearing, attached as **Exhibit A**, (2) a transcript of Mr. Madden's most recent parole hearing, attached as **Exhibit B**, (3) an audio recording of Mr. Madden's most recent parole hearing, enclosed as **Exhibit C**, and (4) any and all non-privileged documents Respondent claims the Parole Board reviewed and considered in reaching its decision to deny parole. While some of these items are in Petitioner's possession and are attached herewith for inclusion in the Record on Appeal, several items are in the sole possession of the Respondent. Petitioner therefore requests the court include the provided materials as part of the Record on Appeal and issue an order compelling the Respondent to produce the requested documents for inclusion.

This appeal arises from a parole hearing held on July 13, 2022, at which Mr. Madden presented his case in favor of parole. The audio recording indicates that the Board, after a ten-

minute hearing, made its determination with no deliberation regarding the characteristics and circumstances of Mr. Madden's offense, consideration of Mr. Madden's record during incarceration, or consideration of the risk assessment factors presumably contained in the underlying record. Per the recording, immediately after Mr. Madden left the videoconference area the Board Chairman asked if there was "any discussion at all" – not a single word was given in response. (**Exhibits B & C**). The Board then proceeded to a vote without any further deliberation; 4 of 5 members voted to deny parole. The reasons provided for denial, again without any discussion or deliberation, were "1, 2, 3, 4, and 5" which coincide with the "Findings of Fact" listed on the Department's Notice of Rejection. (**Exhibit B & C,** *See* Notice of Rejection, attached as **Exhibit D**.). On July 18, 2022, the undersigned counsel received a letter from DPPPS dated July 14, 2022 confirming the decision of the Parole Board to deny parole. On August 12, 2022, Mr. Madden filed a Notice of Appeal with this Court.

On September 28, 2022, Respondent filed the Record on Appeal. (*See* **Exhibit E.**). The Record on Appeal contains only two documents: (i) DPPPS's Notice of Rejection Dated July 14, 2022 and (ii) Criteria for Parole Consideration. SCALC Rule 61 provides that:

> The record on appeal shall consist of the transcript of the proceedings before the agency, if any, and the record of the contested case as described by Rule 58. In appeals from decisions of the Probation, Pardon and Parole Board, the Department need only provide a copy of the agency decision, and where applicable, the decision following a motion for reconsideration.

SCALC Rule 61. However, Rule 68, SCALC and Rule 210 SCACR, as recognized by the Administrative Law Court earlier this year, provide that where a Motion to Supplement the Record is made and the relevance of the additional material to be included is shown, the Court may order the record to be supplemented with materials presented to the Parole Board. Rule 61, SCALC, Rule 210 SCACR; *Williams v. South Carolina Department of Probation, Parole, and Pardon*

*Services*, Docket No. 21-ALJ-15-0023-AP (S.C. Administrative Law Court, Filed May 16, 2022) (Order denying motion to dismiss and order to supplement record), attached as **Exhibit F**.

Denying Petitioner's motion and reading Rule 61 to constrain the record on appeal solely to the documents listed would limit the Court's review to two documents; neither of which provide any insight into whether the Board violated Mr. Madden's due process rights by failing to "carefully consider [his] complete record before, during, and after imprisonment." Limiting the record to only these two documents would also effectively abridge Petitioner's guarantee of juridical review found in the South Carolina Constitution. *See* S.C. Const. art. I, § 22 ("[N]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard... nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to juridical review.").

A strict application of Rule 61 limiting the Record on Appeal to only the documents proffered by Respondent would also prevent Petitioner from fulfilling his well-established burden of "present[ing] a sufficient record for appellate review." *Webb v. CSX Transp. Inc.,* 364 S.C. 639, 655, 615 S.E.2d 440, 449 (2005). Petitioner's appeal is predicated on his assertion that the Board violated his due process rights by failing, in several regards, to conduct a full and fair review of the record before it or conduct any deliberations in reaching its decision to deny parole. Petitioner cannot support his claims, and Respondent cannot refute them, without inclusion of the full record Respondent is charged with reviewing.

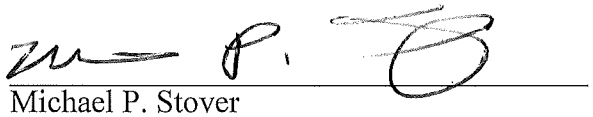
Finally, the information Petitioner seeks to include in the record is highly relevant to the issues before the Court. Petitioner's claims call into question whether the Board *actually* reviewed his entire record and conducted a full and fair deliberative process. Respondent's Notice of

Rejection claims that, based on a review of Mr. Madden's entire record including such items as his prior supervision history, prison disciplinary record, and actuarial risk and needs assessments, the Board made a *conclusion of law* and determined it *must* deny Petitioner parole. The Board's Notice of Rejection lists five "Findings of Fact" supporting its decision: (1) Nature and Seriousness of Current Offense, (2) Indication of Violence in This or Previous Offense, (3) Use of Deadly Weapon in This or Previous Offense, (4) Criminal Record Indicates Poor Community Adjustment, (5) Failure to Successfully Complete a Community Supervision Program. The documents Respondent claims to have reviewed and the transcript of their deliberations, or more appropriately the lack thereof, are both relevant and necessary for the Court to determine whether the Board considered the factors it is required by law and regulation to consider, whether the Board conducted deliberations in accordance with its own published requirements, and whether the totality of the record supports the Board's finding that it must deny Petitioner parole.

Because Respondent has not provided a record that would allow for meaningful appellate review, it is essential that the court grant this motion to supplement the record. Petitioner respectfully requests the Record on Appeal be supplemented to include the materials submitted with this motion and order Respondent to produce any additional non-privileged documents received and/or reviewed by Respondent for inclusion in the Record on Appeal.

*Signature page follows*

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Michael P. Stover
South Carolina Bar 104757
michael.stover@nelsonmullins.com
1320 Main Street, 17th Floor
Columbia, SC 29201
803.799.2000

Attorney for Appellant Charles J. Madden

# Exhibit A
# (Documents Submitted to the South Carolina Department of Probation, Parole, and Pardon Services)

# PAROLE CANDIDATE INFORMATION

**Submitted on behalf of**

## CHARLES J. MADDEN #182326

**Parole Hearing – July 2022**

**Charles Jackson Madden**
**SCDC#182326**

## PAROLE HEARING SUPPORT DOCUMENTS

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NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

1320 Main Street, 17th Floor
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T: 803.799.2000 F: 803.256.7500
nelsonmullins.com

Michael Stover
T: (803) 255-9475
michael.stover@nelsonmullins.com

June 22, 2022

South Carolina Department of Probation, Parole, and Pardon Services
293 Greystone Boulevard,
Columbia, SC 29202

RE: Parole Candidate Charles Madden (182326)

Dear Parole Board Members:

I am writing to respectfully request that you grant parole to Mr. Charles Jackson Madden (182326). Charles is 59 years old and has served 31 years of a life sentence for murdering his father in 1991. I have been working with Charles for over a year now and frequently meet with him in person. I truly believe that he is genuinely remorseful for what he did and the harm he caused. I also believe that when granted parole he will pose no risk of harm and has the tools and support needed to become a productive and, eventually, self-sufficient member of society.

Charles grew up in what can only be described as terrible conditions. He was physically abused by his father and sexually abused by both his father and grandfather. His mother died when he was 9 years old and as he grew into adulthood, he came to believe that his father played a role in his mother's death, a belief he holds to this day. In my conversations with him, Charles has never claimed that any of this is an excuse for what he did, and he consistently reiterates sincere remorse for his actions.

Charles' transformation to the person he is today began when he started attending religious services and became a Christian in 1997. In the 25 years since he has not had a single disciplinary action and has become a model inmate. He has actively participated in multiple faith-based self-improvement classes and eventually became an instructor for the "Addicts at the Cross" program for several years. As evidenced by the multiple letters of support that accompany this package, those who have worked with Charles and know him well emphatically support his release. He is approved for housing through JumpStart in Spartanburg and has the support of a local church and several individuals who are willing to accept him into their community and help him as he transitions to life outside prison. He is physically healthy, willing to do whatever work is available to him, and has a plan with both short and long-term goals towards being financially independent and self-supporting if granted parole.

A statement from Charles, letters supporting his release, and other supporting documents are enclosed for your review. Thank you for your careful consideration in this matter.

Respectfully submitted,



Michael Stover

**CHARLES J. MADDEN, SCDC #182326**
**PAROLE HEARING DATE: July 2022**

## BRIEF SUMMARY

Charles Madden is 59 years old, and has spent the last 31 years in prison. Charles confessed to murdering his father and was sentenced to life in prison in 1991 and has remained incarcerated continuously since. Charles was under the influence of alcohol and, to this day genuinely believes that his father had his mother killed in 1972. Charles was also physically and sexually abused by his father and grandfather during his childhood. Charles understands, however, that none of these factors are an excuse and he deeply regrets his actions and the harm he has caused. Charles has not had any disciplinaries in the past 25 years, has completed drug and alcohol counseling, anger management, multiple other personal development courses, and has devoted his life to Christ. If granted parole, Charles has lodging and employment secured through JumpStart at its Spartanburg, South Carolina location; he is physically able and willing to perform any job JumpStart provides. Charles has also recently restarted work towards obtaining his GED. If granted parole, he has numerous supporters and will be welcomed by a supportive community dedicated to ensuring he is able to successfully return to normal life outside prison. His short-term goals if granted parole are to obtain his driver's license and birth certificate, maintain attendance at rehabilitative classes outside prison, and complete his GED. His long-term plan is to find permanent employment, remain at JumpStart until he is financially self-sufficient, and, when financially able to do so, to purchase a small piece of land and live independently. He also hopes to be able to continue his work in the ministry through volunteer activities and wants to work with at-risk youth.

**CHARLES J. MADDEN, SCDC #182326**
**PAROLE HEARING DATE: July 2022**

## PERSONAL STATEMENT

To start out, thank you for listening to me. First and foremost, I would like the opportunity to say that I am very remorseful for my actions, from the deepest part of my soul, my very being. I want the members of the board to know that I love my family and always will in my heart. From the deepest part of me I wish I had my daddy back, I shouldn't have ever done what I did and I take full responsibility for my actions. I was young and not thinking about the action I was taking. When I was little, I always looked up to and respected my daddy. He definitely wasn't perfect, but we had some good times together going fishing, camping out, and going to the Daytona 500, Darlington, and Atlanta race tracks. I remember going to church with him a few times too. I had a close-knit relationship with my family coming up and still have a letter from my daddy's mother from 1995. She helped raise me and she spoke up for me in court. Most of my family is gone now, but not forgotten and I have beautiful memories of my family. I've cried a lot over the loss of my daddy and all the family members I hurt who have passed since I've been in here. From the deepest part of me if I could change my course of actions I would but I know that's impossible. Victim's Impact Class was very important for me because I do care and have remorse for what I did. There is nothing that I wouldn't do to take the pain that I caused my family upon myself for my actions. I can't blame anyone but myself for my actions and I know I'm here in prison because of what I did. If I could, I would erase all of my wrongdoings and start fresh, but I can't. I repented in 1997 for all my wrongdoings and I've been on a new path since then, and its been the best thing that ever happened to me. Through Christ and with help from volunteers and lots of people I've learned to be and do better and I hope the members of this board will give me the chance to be free again. I have a place to stay and work already lined up and I've been saving money so if the board votes to let me out I have a good start. Thank you again for listening to me and please vote to grant me parole.

Sincerely yours,
Charles Jackson Madden

Charles Jackson Madden

CHARLES J. MADDEN, SCDC #182326
PAROLE HEARING DATE: July 2022

## ANALYSIS OF PAROLE CRITERIA

Under South Carolina law the Parole Board has the exclusive power to grant or deny parole and "must establish written, specific criteria for the granting of parole and provisional parole." S.C. Code Ann. § 21-21-610. The criteria considered by the board, as stated in the South Carolina Board of Paroles and Pardons Policy and Procedure Manual, includes a list of factors the board examines in determining whether to grant parole. As set forth below, the vast majority of these factors favor granting Charles parole:

- **The risk that the offender poses to the community**:
    - Charles is a 59-year-old man who has dedicated his life to Christ during his incarceration. He poses no risk of harm to the community.
- **The nature and seriousness of the offender's offense, the circumstances surrounding that offense, and the prisoner's attitude toward it:**
    - Charles confessed to murdering his father, an extremely serious act. However, Charles' father was physically abusive to him as a child and Charles genuinely believes that his father played a role in his mother's death. Charles deeply regrets his actions.
- **The offender's prior criminal record and adjustment under any previous programs of supervision:**
    - Charles has 1 prior offense, in 1983, for burglary (nonviolent offense). He served 6 years and 3 months of a 12-year sentence, followed by 18 months of supervised parole. He did not commit the crime he is currently incarcerated for until after the expiration of his parole period.
- **The offender's attitude toward family members, the victim, and authority in general:**
    - Most of Charles' family that he knew before incarceration are deceased. He has a daughter who was born after he began his current incarceration, who he has recently tried to reconnect with. His contacts outside prison are predominantly friends he has met through his faith. Despite his difficult childhood, he still misses his father and regrets what happened. Charles' disciplinary record during his current incarceration shows he has respect for, and willingness to follow, authority.
- **The offender's adjustment while in confinement, including his progress in counseling, therapy, and other similar programs designed to encourage the prisoner to improve himself:**
    - Charles has actively worked towards self-improvement under the guidance of the S.C. Department of corrections and his pastor. He has completed several courses, as listed on pages 9–10, and has been ordained as a minister.

- **The offender's employment history, including his job training and skills and his stability in the workplace:**
    - Charles has worked in several jobs while incarcerated as listed on pages 9–10 and is also an ordained minister. If granted parole, he will live at JumpStart in Spartanburg, South Carolina where he is guaranteed a job, lodging, and positive supervision. Charles is physically capable and willing to perform any job he is asked to do.
- **The offender's physical, mental, and emotional health:**
    - Charles is physically, mentally, and emotionally healthy and prepared to become a contributing member of society if granted parole.
- **The offender's understanding of the causes of his past criminal conduct:**
    - Charles has completed multiple counseling and self-improvement courses over his 31-year incarceration and understands that drugs, alcohol, and anger management issues led him to commit his crime. He has worked diligently to address these issues head-on and, through his faith and time has become a better person.
- **The offender's efforts to solve his problems:**
    - Charles has worked diligently to address his alcohol, drug, and anger management issues head-on and, through his faith, counseling and self-improvement courses provided by the Department of Corrections has become an entirely different person than he was 31 years ago.
- **The adequacy of the offender's overall parole plan, including his proposed residence and employment:**
    - Charles has a well thought out, detailed plan for parole. Charles has twice completed the JumpStart program and has been accepted for post-release employment and residence at their Spartanburg, South Carolina location. He has worked with Dr. Bunty Desor, a pastor in the Spartanburg area and will be attending Dr. Desor's church for spiritual guidance and support. Charles has also been saving the small amount of income he receives each month and has $2,500 to help start his post-release life.
- **The willingness of the community into which the offender will be paroled to receive that offender:**
    - If granted parole, Charles will begin his post-incarceration life at JumpStart; a supervised community that is ready and willing to help him begin his post-incarceration life. Further, Charles has a personal relationship with Dr. Bunty Desor, the pastor at New Life Deliverance Worship Center in Spartanburg, who will support and help him through his transition to a self-sustaining life outside of prison.

## EDUCATION & INSTITUTIONAL CLASSES

Adult Education Classes
Problem Solving and Decision Making
Alcohol and Drug Education
Alcoholics Anonymous
Narcotics Anonymous
Carpentry Classes
Individual Therapy
The Impact of Crime: Understanding Victims and Changing Behaviors
The Institute of Self-Worth
Anger Management
Character Program Classes
Addicts at the Cross
WRAP Class

## EMPLOYMENT

| | |
|---|---|
| Horticulture Trainee | 2018-Present |
| Custodial Worker | 2016-2018 |
| Horticulturist | 2015-2016 |
| General Worker | 2013-2015 |
| Industries Trainee | 2013 |
| Wardkeeper | 2013 |
| Custodial Worker | 2008-2013 |
| Machine Operator | 2007 |
| General Worker | 2002-2006 |
| Wardkeeper Assistant | 2002 |
| Shipping and Receiving Clerk | 1998-2002 |
| Wardkeeper | 1998 |
| Shipping and Receiving Clerk | 1997-1998 |
| Welder Helper | 1996-1997 |
| Laundry Room Attendant | 1995-1996 |
| Custodian Helper | 1995 |
| Custodial Worker | 1995 |
| Welder | 1994-1995 |
| Machine Operator Helper | 1994 |
| Industries Trainee | 1994 |
| Machine Operator | 1994 |
| Machine Operator Helper | 1994 |
| Commissary Operator Helper | 1993 |
| Wardkeeper Assistant | 1993 |
| Custodian Helper | 1993 |
| General Worker | 1993 |
| Welder | 1992 |
| Welder Helper | 1992 |
| Industries Trainee | 1992 |

| | |
|---|---|
| Custodian Helper | 1992 |
| General Worker | 1991-1992 |

## VOLUNTEER ACTIVITIES & INSTITUTIONAL PROGRAMS

| | |
|---|---|
| Instructor - Addicts at the Cross: A 9 Step Christian Program | 2016-2020 |
| AWM Inmate Bible Studies by Mail Program | 2020 |
| Seeking Him Bible Study | 2019 |
| Bible Correspondence Course | 2019 |
| Cornerstone Project – Writing, Civics & Government, Essay Composition | 2018 |
| JUMPSTART (Green Certificate) | 2017 |
| JUMPSTART (Yellow Certificate) | 2012 |
| Kershaw Bible Institute | 2013 |

**CHARLES J. MADDEN, SCDC #182326**
**PAROLE HEARING DATE: July 2022**

## SUPPORTERS

| | |
|---|---|
| **Karen Underwood (Case Manager)**<br>JUMPSTART Ministries<br>418 Old Greenville Rd.<br>Spartanburg, SC 29301-4756<br>864-706-0240 | JumpStart Approval Letter |
| **Geraldine Nail**<br>200 Mulberry Ct.<br>Evans, GA 30809<br>706-855-8636 | Letter of Support |
| **John P. Miller**<br>Free Indeed House<br>4463 Winnsboro Rd.<br>Monroe, LA 71202 | Letter of Support |
| **Jackie Verner**<br>Metanoia Ministires<br>P.O. Box 1907<br>Tarpon Springs, FL 34688-1907 | Letter of Support |
| **Dr. Bunty Desor, Th.D**<br>New Life Deliverance Worship Center<br>361 Whitney Rd.,<br>Spartanburg, SC 29303<br>864-285-1745 | Letter of Support |
| **Stanley Fahland** | Letter of Support |

JUMPSTART

Thursday, June 2, 2022

Charles Madden

Dear Sir/Madam:

I am the Director of Operations at Jump Start, a faith-based prison rehabilitation program. We also help men and women in re-entering society after incarceration. We provide a 40-week inside preparation class and transitional housing after release, to include mentoring, employment assistance and placement into the community after successful completion of the outside program.

Charles is a graduate of our inside preparation program at Allendale Correctional Institution. He graduated with a Green assessment in 2017.

Pending bed space availability, we would offer Charles housing at one of our houses and employment with the ministry in the Spartanburg area. The following would be part of his housing and employment plan:

Home address: 458 North Church St. Spartanburg, SC 29303
Contact: William Harrison (864) 423-4930

Work Address: P.O.Box 1050, Spartanburg, SC 29304
Contact: Karen Underwood (864) 706-0240

Please feel free to contact me if you need any additional information.

Sincerely,

Karen Underwood
Director of Operations

418 Old Greenville Road, Spartanburg, SC 29301-4756 • mark@jumpstartvision.org • (888) 403-3815 x0

Geraldine S. Nail
200 Mulberry Court
Evans, GA 30809

Telephone: (706) 855-8636

Mr. Michael Stover
NELSON RILEY & SCARBOROUGH, LLP
Attorney and Counselors at Law
1320 Main Street, 17th Floor
Columbia, SC 29201

RE: Charles Jackson Madden #182326

TO WHOM IT MAY CONCERN:

I have known the above individual for approximately fifteen to twenty years. He is devoted to his Christian faith and his character exemplifies this fact.

After receiving his parole, Charles has been told that he has a place to stay and potential job prospects in a field where he has experience. Also, while in prison he was given an opportunity to learn additional skills which should help him. His long term goal is to work through a Christian ministry in an effort to help others avoid a life of crime. He plans to use Jesus Christ as an example in leading others to a more fulfilling life. Additionally, he plans to use his own life experiences as an example of "what not to do" in order to once again earn the respect of others while making a contribution to society. He sincerely gives praise to God for teaching him a better way to live his life and wishes to pass it on to others.

I hope this information will contribute to a favorable parole decision for Charles. Please let me know if you have any further questions. Thank you for your help.

Respectfully,

Geraldine S Nail

/s

10 December 2021

South Carolina Parole Board

My name is John P. Miller and I am writing on behalf of: Charles Jackson Madden # 182326.

I have known Charles for the past seven years, as we were inmates at Allendale Correctional from 2015, to 2020, when I reentered society. Let it be known that he is most welcomed here. This is a Christ based atmosphere, where he can get the help he needs to transition back to society. Church attendance is required, and also Bible study, three nights a week. There are men here, and people at the church, pastored by Gary Levine, to help in any way required to ensure a healthy atmosphere, with guidance to accomplish what is required of him, so as to not return to where he came from. Mr Levine said if you have any questions of him on this, do not hesitate to call him. His phone number is 318-789-9178

OVER

As his friend (Charles), I look forward to assisting him back to life outside those walls, and a continuing relationship with our Lord, Jesus Christ.

Charles has a strong will to succeed, and focuses on what he needs to remain a responsible man in society.

I ask that you consider strongly, and allow Charles to not also start a new life, but also prove that he can, and will succeed. Let his past, be just that - "Passed".

Respectfully
JOHN P. MILLER
John P. Miller
4463 Winnsboro Road
Monroe, Louisiana 71202

MNA
Mission to North America

Metanoia
MINISTRIES

December 6, 2021

RE: Charles Madden #182326

To Whom it May Concern,

My name is Jackie and I serve as an instructor/corresponding discipler through Metanoia Ministries. One of my students is Charles Madden. I would like to briefly share some of my experiences in corresponding with him since February 2020.

As a student, Charles has displayed consistent effort and produced in depth answers to the questions in each lesson. He is required to delve into various scripture texts and draw conclusions. His scores on the first two courses (20 booklets of lessons completed August 2021) ranged from 96 to 100 on a 100-point scale. The third course currently in session has scores ranging between 98 and 100. Charles has impressed me with the timely way he completes lessons and returns them for feedback.

In addition to completing lessons, part of the learning in this course takes place through sharing letters with each other. Our letters have included encouragement of each other in our personal spiritual growth and the development of a friendship. He has been generous in sharing personal details about his daily life and in being interested in me as a person. The letters I've received from Charles also reflect a very positive attitude concerning both his present and his future. It has been a blessing to get to know him and some of his feelings about nature and his hopes for living a productive life on some open land at some point after his imprisonment is over.

I look forward to continuing my relationship with Charles as instructor as he moves forward with his studies!

Sincerely,

Jackie

P.O. Box 1907 Tarpon Springs, FL 34688

# NEW LIFE DELIVERANCE WORSHIP CENTER

*Reaching the Unreachable with the Unchangeable Gospel of Christ*

March 23, 2022

Dear Madam/Sir:

I find myself extremely proud to be recommending Charles Madden for Parole with your esteemed agency. Having known Charles since 1998, nearly 24 years now, I can only say that Charles has been one of the most remarkable men of God that I have come across. His true Christin qualities are already there for you to see, but I would like to familiarize you with what I have learned about him over the many years that I have known him.

Apart from being one of the more dedicated men that I have met to his faith, Charles Madden is deeply committed to the men around him in spirit and in service. He has been very active in many groups and it is to my knowledge that during his entire incarceration he has been one of the rare people there to remain disciplinary free for the most part of his sentence. He has freely led Kairos' groups, and has virtually participated in every inmate church services, etc. He is a good man and although I cannot attest to his life before incarceration, as many years as I have known him I have never seen him do anything illegal, unethical or immoral.

As his current pastor I have personally seen Charles successfully carry out several other ministerial activities in a service capacity. I know that he has been in choirs and wherever employed he has a commanded a commendable work ethic. A natural leader, Chales is a good team player without appearing presumptuous. He is someone who is not only diligent and lively, but someone who is a tremendous listener who has often placed others' needs before his own. This of course is a quality that my colleagues, I, and his peers have often marveled at. In spite of his being involved in several extracurricular activities in ministry, church and other service related prison outreaches his dedication as a Believer has to us been steadfast and unwavering. I would definitely recommend him for release, as he is a gem of a person and a jewel of a man who is bound to make a difference wherever he goes. Charles has been a blessing to our lives, our church and to so many others that know him. Allowing him to be released after 30 long years of incarceration would be a sure joy to him and others. He would certainly be an asset to whatever environment he transitions too.

Lastly as a church, we can provide housing, clothing, transportation and employment should he be released at any time. Our ministry owns and oversees several homes for ex-offenders and we have a thrift store where he is assured employment the very day he would be released. If anyone should have a second chance we believe it is this man.

Should you require any further details regarding Charles Madden, please do not hesitate to contact me at (864) 285-1745. My email ID is drbuntydesor@gmail.com. Thank you for your consideration in this most pertinent matter.

Sincerely,

*Dr. Bunty Desor*

Dr. Bunty Desor, Th.D., Senior Pastor
New Life Deliverance Worship Center
361 Whitney Road

Phone: 864-285-1745; Email: newlifedeliveranceministry@gmail.com

NEW LIFE DELIVERANCE WORSHIP CENTER
*Reaching the Unreachable with the Unchangeable Gospel of Christ*

Spartanburg, South Carolina 29303
www.newlifedeliveranceworshipcenter.com

Phone: 864-285-1745; Email: newlifedeliveranceministry@gmail.com

## Michael Stover

**From:** stanley fahland <mapafahland@gmail.com>
**Sent:** Tuesday, November 16, 2021 4:21 PM
**To:** Michael Stover
**Subject:** Charles Jackson Madden

◄External Email► - From: mapafahland@gmail.com

Mr. Madden works for me. He is a very hard worker he is always on time. He takes pride in his job keeping the yard clean. He has always been respectful to me and others. He does his job and when asked to help by doing something else he does it and always does his best. He works good with others. He is well respected by his Co workers.

# Addicts at the Cross

*A 9 Step Christian Program*




*Certificate of Completion*

*Awarded To*

*Charles Madden*

As of February 28, 2020 for completing a
Multilevel Program

L. Myron Martin

**Myron Martin - C.C.P. Chaplain Assistant**

Lawrence Skrant

**Lawrence Skrant - Founder Addicts at the Cross**

# Addicts at the Cross

*A 9 Step Christian Program*

*Certificate of Completion*

*Awarded To*

*Charles Madden*

As of August 16, 2019 for completing a
Multilevel Program

S. Myron Martin

Myron Martin - C.C.P. Chaplain Assistant

Lawrence Skrant

Lawrence Skrant - Founder Addicts at the Cross

# CERTIFICATE *of* ACHIEVEMENT

THIS ACKNOWLEDGES THAT

## Charles Madden

HAS SUCCESSFULLY COMPLETED THE

Seeking Him
Bible study

JULY 30
2019

S. Myron Martin

SIGNED, *Signatory Name,* Signatory Title

You who seek GOD, let your hearts revive.
Psalm 69:32b

# Addicts at the Cross

*A 9 Step Christian Program*




*Certificate of Completion*
*Awarded To*

*Charles Madden*

As of Feb. 15, 2019 for completing a Multilevel Program

S. Myron Martin

Myron Martin - C.C.P. Chaplain Assistant

Lawrence Skrant

Lawrence Skrant - Founder Adicts at the Cross

# Certificate of Achievement

*is hereby presented to*

*Charles Madden*

*In recognition of outstanding dedication and attendance in*

*EA/AA/NA*

AWARDED THIS 17TH DAY OF OCTOBER, 2018

*Mike Znachko, Recovery Volunteer*

Yvonne Wilkins-Smith

*(Yvonne-Wilkins Smith, Associate Warden*

# Addicts at the Cross

*A 9 Step Christian Program*

*Facilitator's Certificate*

*Awarded To*




## *Charles Madden*

**For facilitating a 12 week program ending on July 12, 2018**

S. Myron Martin

Myron Martin - C.C.P. Chaplain Assistant

Lawrence Skrant

Lawrence Skrant - Founder Addicts at the Cross

# Certificate of Achievement

*is hereby presented to*

## Charles Madden

*in recognition of outstanding dedication and attendance in*

*EA/AA/NA*

AWARDED THIS 28TH DAY OF MARCH, 2018

*Mike Znachko, Addictions Facilitator*

*Yvonne Wilkins-Smith, Associate Warden*


Certificate of Achievement
to
Charles Madden
in recognition of his diligent efforts and success in having graduated from
Essay Composition
AWARDED THIS 24TH DAY OF MARCH, 2018
Kenny Swaney, Class Facilitator
Brandon Jones, Principal
Robert Briggs, Program Leader
Kenneth Combs, Unit Manager
Tasha Cohen, Unit Counselor


Certificate of Achievement
to
Charles Madden
in recognition of his diligent efforts and success in having graduated from
Civics & Government
AWARDED THIS 24TH DAY OF MARCH, 2018
Jonathan Brooks, Class Facilitator
Brandon Jones, Principal
Robert Briggs, Program Leader
Kenneth Combs, Unit Manager
Tasha Cohen, Unit Counselor


Certificate of Achievement
to
Charles Madden
in recognition of his diligent efforts and success in having graduated from
Level 5 Writing
AWARDED THIS 15TH DAY OF FEBRUARY 2018
Kenny Sweeney, Class Facilitator
Brandon Jones, Principal
Kenneth Comas, Unit Manager
Eusha Cohen, Unit Counselor

# Addicts at the Cross

*A 9 Step Christian Program*

*Certificate of Completion*
*Awarded To*

## Charles Madden

**As of November 20, 2017 for Completing a 12 Week Program**

S. Myron Martin

**Myron Martin - C.C.P. Chaplain Assistant**

Lawrence Skrant

**Lawrence Skrant - Founder Adicts at the Cross**

# Addicts at the Cross

*A 9 Step Christian Program*

*Certificate of Completion*
*Awarded To*

## Charles Madden

**As of April 21, 2017 for Completing a 12 Week Program**

John Yoder - Director South Carolina Chaplaincy Program

Lawrence Skrant - Founder Adicts at the Cross

# Certificate of Completion

*this is to certify that*

# Charles Madden

***has completed the Jump Start Program***
***in the category of*** *Green*

**JUMPSTART®**

*Faith-Based Prison Rehabilitation*

March 6, 2017

Kent James, Inside Coordinator

Cary Sanders, Inside Program Director

# South Carolina Department of Corrections

*Certificate of Participation*

*Presented to*

## *Charles Madden*

*In Recognition of Successfully Completing*

*The Impact of Crime Program*

**Understanding Victims** **Changing Behaviors**

*Presented this* 25th *Day of* January, 2017

Instructor

Randall Williams

Warden

# Addicts at the Cross

*A 9 Step Christian Program*

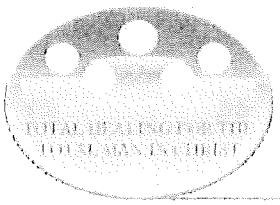
*Certificate of Completion*
*Awarded To*

## Charles J. Madden

**As of Oct. 22, 2016 for Completing a 12 Week Program**

John Yoder - Director South Carolina Chaplaincy Program

Lawrence Skrant - Founder Adicts at the Cross



*Now Is The Time*
*To Open The Door To...*

# A New Beginning

*April 18, 2015*

***S.C. Dept. of Corrections***
***Attn.: S.C. Dept. of Parole, Pardons and Probation***

***To Whom This May Concern:***

***Re.: Mr. Charles Jackson Madden # 182326***
***Kershaw Correctional Inst.***

***I am pleased to inform Mr. Charles Madden, that he has been accepted into our Program, A NEW BEGINNING IN LEXINGTON CHRISTIAN LIFE CENTER.***

***There are several opportunities for employment within our community, that are opened to Charles. We will provide transportation to and from work. It is my HOPE that you will grant him this opportunity for A NEW BEGINNING, in order for him to be an asset to himself, his family and community !***

***I am enclosing a brochure, in order to share some of the information provided on our website, NOW IS THE TIME TO OPEN THE DOOR TO A NEW BEGINNING. We provide a very structured Christian environment. The Lord Jesus Christ is very evident here, and HE blesses beyond belief, if the motive is sincere.....to know HIM and to grow stronger spiritually!***

***We off resident housing, assistance with transportation, meals and employment placement throughout our community. The results have been astounding! We are located within an Industrial area, where there are numerous job opportunities with excellent benefits.***

***We have partnered with the Lexington County Parole & Probation Dept. for the past 20 years, providing residency and supervision for their clients.***

***The address of the residence is 2201 Old Two Notch, Lexington, S.C., 29072. The telephone number is (803) 808-0680.***

***MAY GOD BLESS YOU!*** Pastor Dottie K.
***Pastor Dottie Keisler.....Founder/Administrator***
***NEW BEGINNINGS OF THE MIDLANDS***

***A NEW BEGINNING IN LEXINGTON CHRISTIAN LIFE CENTER***

2201 Two Notch Road • Lexington, SC 29072 • Pastor: 803-238-4675 • Office: 803-808-0680 • Fax: 803-808-0746
Visit Our Website: www.beginanewlife.org

# Certificate of Recognition

*is awarded to*

## Charles Madden

*for full completion of the*

## ALPHA COURSE

Kershaw Bible Institute

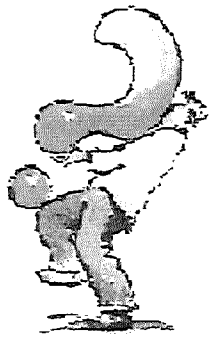
*Kershaw, South Carolina*

*Presented this 19th day of December, in the year of 2013*

*JoAnn Blackwell, Course Leader*

*Michael Goins, Course Leader*

*Jim Sarver, Course Leader*



*Cynda Hunter, Course Leader*

*Joann S. Cook, Course Leader*

*Daron Robinson, Course Leader*

# The Institute of Self-Worth®

*This certifies that*

Charles Jackson Madden

*Has successfully completed the full course of study*

***The Institute of Self-Worth®, A Curriculum for Life***

*And is therefore awarded this*

## Diploma

*Today, the* 6th *day of* February, 2013

President, Vic Porter Ministries

Chaplain

# Certificate of Completion

## This is to certify that

Charles Jackson Madden

*Has successfully completed Series III*

*The Institute of Self-Worth®*
*A Curriculum for Life*

**Date** February 6, 2013

President, Vic Porter Ministries

Chaplain

# Certificate of Completion

*this is to certify that*

## Charles Madden

*has completed the JumpStart Program*
*in the category of* Yellow

**JUMPSTART®**

*Faith-Based Prison Rehabilitation*

**December 13, 2012**

Tim Terry, Executive Director and Founder

Michael Cannon, Senior Chaplain

# JumpStart Re-Entry Assessment

Based upon Purpose Driven Life Health Assessment

**Inmate's Name:** Charles Madden 182326
**Institution:** Evans CI
**Mentor:** Charles Madden **Type**
**Date:** 12/13/2012 **Assessment:** Final

| | Score 1-5 (5 highest) |
|---|---|
| **CONNECT: You were formed for God's Family** | |
| Member is developing authentic community within the Christian family (interpersonal relationships) | 5 |
| Member is more loving, grace giving and forgiving to others than when the class began | 4 |
| Member is intentionally cultivating their relationships with Christian friends and spiritual mentors | 3 |
| Member is sharing about their attempts to restore or enhance immediate family relationships | 2 |
| Member is resolving conflict in a Biblical manner and supporting the leadership of the church family | 1 |
| **Membership Total** | 3 |
| **GROW: You were created to become like Christ** | |
| Member is sharing with their church family about their growing relationship with God through His Word and prayer | 5 |
| Member is responding to challenges with peace and faith rather than anxiety and fear | 1 |
| Member is avoiding using addictive behaviors (food, television, busyness, etc.) to meet their needs | 2 |
| Member has a relationship with someone that encourages spiritual health & and personal growth (spiritual partner) | 3 |
| Member is honoring God with whatever means they have | 4 |
| **Maturity Total** | 3 |
| **SERVE: You were shaped for serving God** | |
| Member is expressing their unique God-given design as a way oflife (dorm, work assignment, institution) | 2 |
| Member is open and praying to be used by God and express their unique S.H.A.P.E. for ministry | 5 |
| Member is serving in a regular (once a month or better) ministry in the church or institution | 3 |
| Member is sharing group ownership by assuming a small responsibility or facilitating a discussion group | 1 |
| Member is discovering new ways to cultivate and develop their unique S.H.A.P.E. for ministry | 4 |
| **Ministry Total** | 3 |
| **SHARE: You were made for a Mission** | |
| Member is actively praying for and cultivating relationships with un-churched friends and family | 4 |
| Member is inviting seekers (un-churched people) to Christian events or church and sharing their spiritual journey with them | 5 |
| Member is seeking to connect un-churched people into this group, its members or another suitable ministry (networking) | 2 |
| Member is praying and considering where God can use them cross-culturally in the future (overcoming age, race, and cultural barriers) | 3 |
| Member is regularly investing in the spiritual life of another person or group (spiritual reproduction) | 1 |
| **Mission Total** | 3 |
| **WORSHIP: You were planned for God's pleasure** | |
| Member is faithfully attending church worship services for spiritual renewal and refreshment | 4 |
| Member has a personal plan and process to help them achieve their goals and dreams (health plan) | 5 |
| Member has a growing heart for worship to God through music and praise (personal, group, & church) | 3 |
| Member is honoring God with their physical and personal health (exercise and nutrition) | 2 |
| Member is pleasing God with every dimension of their life by balancing His purposes in their life | 1 |
| **Magnification Total** | 3 |
| **Total Assessment Score** | 15 |

| | |
|---|---|
| Well Developed | (21-25) |
| Very Good | (16-20) |
| Getting Going | (11-15) |
| Getting Started | (6-10) |
| Just Beginning | (1-5) |

Revised October 8,2010

The SOUTH CAROLINA HIV/AIDS COUNCIL

& The Pharaoh Intervention

Recognize

CHARLES MADDEN

For completion of the Pharaoh Intervention at

Evans Correctional Institution

December 10, 2012

*"Empower Yourself,*

*Protect Yourself"*

Mr. Michael Robertson, Pharaoh Facilitator

Shernell Sells, Pharaoh Coordinator

# Certificate of Completion

## This is to certify that

CHARLES JACKSON MADDEN

*Has successfully completed Series II*

*The Institute of Self-Worth®*
*A Curriculum for Life*

**Date** October 03, 2012

President, Vic Porter Ministries

Chaplain

# Certificate of Completion

*This is to certify that*

## Charles Jackson Madden

*Has successfully completed Series I*

## *The Institute of Self-Worth ®*
## *A Curriculum for Life*

Date. March 14, 2012

Vic Porter

President. Vic Porter Ministries

Michael Cannon. Chaplain

"Everyone should be quick to listen, slow to speak, and slow to become angry"

James 1:20



**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**
**EVANS CORRECTIONAL INSTITUTION**
**EVANS CHAPEL**

# *Certificate of Completion*

***This hereby certifies that***

*Charles J. Madden*

***is awarded this certificate for the completion of a Twelve-week class on***

## ANGER MANAGEMENT

Frederick N. Yebuah, Chaplain

November 25, 2011

# Exhibit B
# (Transcript of Mr. Madden's Most Recent Parole Hearing)

**Madden, Charles – 20220713 Hearing Pt.1**
**Duration 05:01 Min**

**Female:** Our next case is Case Number 33, Charles Madden, Case No. 33, Charles Madden and he will be represented by Attorney Stover.

Hello, sir, Allendale confirming you are Charles Madden?

**Charles Madden:** My name is Charles Jackson Madden, 182326.

**Female:** Thank you, Mr. Madden, and, and Attorney Stover, are you able to hear us, sir?

**Attorney Stover:** Yes, ma'am, I can hear you. Can you hear me okay?

**Female:** Yes sir, we are able to hear you. Thank you both for joining here before the Board. Please await for the chairman to address you.

**Eldridge:** Good afternoon, Mr. Madden, and good afternoon Mr. Stover. Thank y'all for appearing today. And, Mr. Stover, would you like to begin or would like the client to begin?

**Stover:** Let's let Mr. Madden go first, Mr. Eldridge, if that's okay?

**Eldridge:** Sure! Good afternoon, Mr. Madden. If granted parole, Mr. Madden, where do you plan on living? Are you still, it looks like you got the jumpstart program in here right now, is that correct?

**Madden:** Yes, sir.

**Eldridge:** What color folders you get in the Jumpstart?

**Madden:** Please tell me that again, sir.

**Eldridge:** Say that again?

**Female:** He asked you what you said.

**Eldridge:** What, what folder did you get in Jumpstart?

**Madden:** I got a green folder.

**Eldridge:** Ok.

**Madden:** I finished, I finished Jumpstart about 4 years ago.

**Eldridge:** Good. And, were drugs, alcohol involved in your crime, sir?

**Madden:** Yes, sir.

**Eldridge:** And what kind of, did you take any programs for that?

**Madden:** Yes, sir, I took Victims Impact, [inaudible] recovery, AA, Victims Impact Recovery NAA, Criminal [inaudible], [inaudible]

**Eldridge:** Tell me about the, tell me about the Victim Impact program. What'd you learn there?

**Madden:** The Victim Impact class, sir, is, is, I was learning about the victims that when, that was in pain in the crime, and how they were hurting and different things about that. I was very sorry for what I done, sir, and I understand because it was my family.

**Eldridge:** Yes, sir, the victim was your father, is that correct?

**Madden:** Yes, sir.

**Eldridge:** Alright, and have you gotten any family out there to help you?

**Madden:** Yes, sir, upon my release, I will be staying in Jumpstart in Spartanburg, SC on North Church St and I will be, I will be in, I will have, I got friends there at Jumpstart to help me and I also got Mr. [inaudible] to help me, which is in the church there and he's a, he's a pastor.

**Eldridge:** You know

**Madden:** And I also have a letter, a letterhead there, stating he would help me as well and I also have finances sacked up too as [inaudible].

**Eldridge:** We, I was gonna tell your attorney this in a few minutes, but we received a packet from your attorney, he's got a lot of good information in here on church and letters from them, and throughout the packet so, thank you very much, Mr. Stover, for supplying that. Let's hear from your attorney now. Mr. Stover?

**Stover:** Yes, sir, Mr. Eldridge, and other members of the Board, I don't want to go, you know, rehashing everything. I know y'all got that package and you looked over, a lot of other information as well, so as your....

[End of recording 1]

**Madden, Charles – 20220713 Hearing Pt.2**
**Duration 05:56 Min**

**Stover:** ...where. Charles confessed to his crime and has currently served 31 years of a life sentence. And again, I know, we, we've looked into all the details and everything and I know we're not here to relocate the charges that and everything that were pled to. But I want to reiterate the extenuating circumstances surrounding Mr. Madden's crime. The fact that he was abused both physically and sexually by his father, so this is not just something where it's a random act of violence that occurred.

I've been working with Charles for a little over a year now. I've met with him multiple, multiple times in Allendale and of course at the [inaudible]. And my personal thought would be [inaudible] believe Charles is ready for parole. He is devout Christian who actively practices what he believes. Early on, he had a rocky start to incarceration, like many people do, and then he realized personally that he needed to change. He devoted his life to Christ in 1997 and since then, he has not had a single disciplinary event in incarceration.

He actively participates in opportunities for personal improvement that have been offered through the Dept. of Corrections, including anger management, the drug and alcohol counseling that he talked about earlier, and he's actually become an instructor for the addicts at the Cross program out there at Allendale. He has taught himself to read and write in prison and has continued to improve himself via education and if he is granted parole, he does intend to complete his GED so that he can have more opportunities for gainful employment on the outside. Again, he's got that green folder from JumpStart, I know that everybody on the Board is familiar with that program and the success that it has had in the past and continues to have with, with inmates and helping them transition to life outside. And again, in addition to JumpStart, he's got the support of Dr. Bunty Dissor who he already talked about. He is a minister in the Spartanburg area who is willing to help him out. And Charles does understand that he can't stay at JumpStart forever and has actually been saving the little bit he earns through the Dept. of Corrections and has, I don't know the amount, but it's, it's what he can scrape together as a way of kind of making sure that he's already got a, an advanced start on like getting himself independent from JumpStart when that time comes. And that is all I have.

**Eldridge:** Well, thank you, thank you, Mr. Stover, I do appreciate all that, and thank you for appearing today, Mr. Madden, we do appreciate it. We'll, someone, will be back in touch with you later today when the results are here. Thank y'all and thank you for attending.

**Multiple Talkers:** Thank you, thank you, Mr. Stover.

**Madden:** Do y'all mind if I say anything?

**Eldridge:** No, go ahead sir, what, what, what else would you like to say?

**Madden:** I would like to say to all the members here that, on this Board, right now, that I am deeply sorry for my crime. I loved my daddy and I miss him and I wished I had him back in my life. It hurts, it, it will always, always be in the back of my mind what I did to my daddy. But I want everyone of y'all to know that I love my daddy and I wished I had him back in my life. And I wish that this would have never, ever happened because I ain't never did anything like that before in my life.

**Eldridge:** Yes, sir.

**Madden:** And…

**Eldridge:** Thank you, thank you for sharing that with us.

**Madden:** I'm just, I'm, I'm very hurt by what I've done.

**Eldridge:** Thank you, thank you,

**Madden:** I'm very hurt.

**Eldridge:** Thank, thank you, Mr. Madden. If ya'll would exit the room, we'll get an answer for you shortly. Thank you, sir.

**Madden:** Yes, sir. Thank you!

**Female:** One moment as the room clears. And the room is clear.

**Eldridge:** Any discussion at all? [inaudible], Mr. Wyman?

**Male:** Denied

**Eldridge:** Boyd?

**Boyd:** Denied

**Eldridge:** Ms. Gregor

**Gregor:** Denied

**Eldridge:** Dr. Randolph?

**Dr. Randolph:** Denied

**Eldridge:** I have [inaudible] Mr. Charles Madden will be denied parole today, 1, 2, 3, 4 and 5, the vote is 4 to 1.

**Female:** Thank you, our next case

**[END OF RECORDING 2]**

# Exhibit C
# (Audio Recording of Mr. Madden's Most Recent Parole Hearing)


Madow
05634/1500
80 minutes

# Exhibit D
# (Notice of Rejection)

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

**HENRY McMASTER**
Governor

**JERRY B. ADGER**
Director

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

July 14, 2022

Mr. Charles Madden #00182326
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

RE: NOTICE OF REJECTION

Dear Mr. Madden:

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
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Criminal Record Indicates Poor Community Adjustment
Failure To Successfully Complete A Community Supervision Program
Vote Count: 4 Rejected - 1 Parole

Sincerely,

Valerie Suber
Associate Deputy Director for Paroles, Pardons and Release Services

7/13/2022

# Exhibit E
# (Record on Appeal)

State of South Carolina

# Department of Probation, Parole and Pardon Services


**HENRY McMASTER**
Governor

**JERRY B. ADGER**
Director

293 GREYSTONE BLVD
POST OFFICE BOX 207
COLUMBIA, SOUTH CAROLINA 29202
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp


September 28, 2022

The Honorable Phillip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

**RE: Charles Madden, #182326 v. S.C. Department of Probation, Parole and Pardon Services**

Dear Judge Lenski:

Please find enclosed for filing the *Record on Appeal* dated September 28, 2022, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Jessica E. Kinard
Legal Counsel

JEK:dn

Enclosures
cc: Michael Stover, Esquire

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 22-ALJ-15-0013

---

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

---

CHARLES MADDEN, #182326.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,.....RESPONDENT

---

**CERTIFICATE OF SERVICE**

---

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Record on Appeal*, dated September 28, 2022, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 28th day of September, 2022, addressed to:

Michael Stover, Esquire
Nelson Mullins Riley & Scarborough
1320 Main Street-17th Floor
Columbia, S.C. 29211-1070

I further certify that all parties required by Rule 61 to be served have been served.

**Dawn Nichols**
**Executive Assistant**
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 22-ALJ-15-0013

---

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

---

CHARLES MADDEN, #182326.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, .....RESPONDENT

---

# RECORD ON APPEAL

---

**Jessica E. Kinard**
**Legal Counsel**

**South Carolina Department of Probation, Parole and Pardon Services**
**P. O. Box 207**
**Columbia, South Carolina 29202**
**(803) 734-9220**

**ATTORNEY FOR RESPONDENT**

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State of South Carolina

# Department of Probation, Parole and Pardon Services


**HENRY McMASTER**
Governor

**JERRY B. ADGER**
Director

293 Greystone Boulevard
Post Office Box 207
Columbia, South Carolina 29202
Telephone: (803) 734-9220
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July 14, 2022

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Allendale Correctional Institution
P.O. Box 1151
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RE: NOTICE OF REJECTION

Dear Mr. Madden:

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:

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

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Failure To Successfully Complete A Community Supervision Program
Vote Count: 4 Rejected - 1 Parole

Sincerely,

Valerie Suber
Associate Deputy Director for Paroles, Pardons and Release Services

# South Carolina Department of Probation, Parole and Pardon Services
## Criteria for Parole Consideration

| Inmate Name | SCDC# |
|---|---|
| MADDEN, CHARLES J. | 00182326 |

SC Board of Probation, Parole and Pardon Services
P.O. Box 207
Columbia, SC 29202

### Criteria for Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates a expectancy of release; nor does it bind the Parole Board in any way to favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. The files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some errors or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the Community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow his/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate
15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.
16. Other factors considered relevant in a particular case by the Board.

### Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by case basis and to grant or deny parole as it determines to be in the best interest of society and the intimate under review.
In some cases, the Board may decide that the inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate fail to complete any one of these conditions or disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges. If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:
1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

**I certify that the above material has been explained to me, and I have received a copy.**

| Inmate's Signature: Charles Jackson Madden | Date: 2/28/2022 | Witness Signature: J. Kell | Date: 2/28/2022 |
|---|---|---|---|

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 22-ALJ-15-0013

---

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

---

CHARLES MADDEN, #182326.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,.....RESPONDENT

---

***CERTIFICATE OF COUNSEL***

---

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.

**Jessica E. Kinard**
**Legal Counsel**

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

September 28, 2022

# Exhibit F
# (Order Denying Motion To Dismiss and Order To Supplement Record)

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | |
|---|---|
| Matthew Williams, #215077,<br><br>Appellant,<br><br>v.<br><br>South Carolina Department of Probation, Parole and Pardon Services,<br><br>Respondent. | Docket No. 21-ALJ-15-0023-AP<br><br>**ORDER DENYING MOTION TO DISMISS AND ORDER TO SUPPLEMENT RECORD** |

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Matthew Williams (Appellant), who is incarcerated with the South Carolina Department of Corrections. Appellant is appealing a September 22, 2021 decision of Respondent South Carolina Department of Probation, Parole and Pardon Services (Respondent, Department or DPPPS) to deny his parole. Appellant filed a notice of appeal with the ALC on October 22, 2021, and the appeal was assigned to me on October 26, 2021.

On February 2, 2022, Respondent filed an Amended Brief and Motion to Dismiss. Appellant filed a response in opposition to the Motion to Dismiss on February 17, 2022. In its motion Respondent argues that this appeal should be dismissed pursuant to the holding in Compton v. S.C. Dep't of Prob., Parole & Pardon Servs., 385 S.C. 476, 685 S.E.2d 175 (2009). In Compton, the South Carolina Supreme Court held

> 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 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.

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Id, at 479, 685 at 177 (emphasis added). Respondent argues that because its decision denying parole recites that the factors outlined in Section 24-21-640 (Supp. 2021) and Form 1212 were considered, this appeal must be deemed a routine denial of parole and dismissed. This argument misapprehends the nature of the issue raised by Appellant in this case. Here, Appellant has raised the issue of whether the Board actually complied with the procedure as recited in its order. As the Supreme Court made clear in Compton, a decision only qualifies as a routine denial of parole if the Board complied with the procedure. Id. It is the role of this Court on appeal to evaluate whether a state-created liberty interest has been infringed by an agency when that question is squarely raised. Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs., 352 S.C. 594, 596, 576 S.E.2d 146, 147 (2003).

The issues raised by Appellant here are not an appeal of the denial of parole as argued by Respondent, but rather whether the Board infringed upon his due process rights in a matter involving a state-created liberty interest by failing to follow its stated procedure in conducting the parole hearing. Therefore, Respondent's Motion to Dismiss is denied.

I turn next to Appellant's Motion to Supplement the Record on Appeal and Motion to Conduct Discovery, filed January 31, 2022. Respondent filed a return in opposition to the motion on February 3, 2022, and Appellant filed a Reply on February 15, 2022.

Appellant seeks to supplement the record with:

1. Documents received by DPPPS prior to Appellant's parole hearing;
2. A transcript of Appellant's parole hearing;
3. An audio recording of the parole hearing; and
4. All non-privileged evidence received or considered by the Board.

Respondent opposes the motion to supplement the record on two grounds. First, Respondent argues the language of SCALC Rule 61 provides that the record on appeal in appeals from decisions of the Probation, Pardon and Parole Board (Parole Board) need only contain a copy of the agency decision and any decision following a motion for reconsideration. While it is true that the ALC rules only require DPPPS to file the agency decision rather than a full record of the proceedings before the agency, where a Motion to Supplement the Record is made and the relevance of additional matter is shown, it is appropriate for the Court to order that the record be supplemented with additional matter that was presented to the lower tribunal. See, Rule 210, SCACR. This is such a case. Therefore, Appellant's Motion to Supplement the Record is granted.

Second, Respondent cites Furtick in support of its argument that the minimal due process afforded an inmate concerning parole decisions means that Appellant "is not entitled to mold the parole review process and any review thereof to his liking." Our Supreme Court has made clear that, while limited, an inmate has a constitutionally protected state-created liberty interest in having the Parole Board consider the appropriate statutory criteria along with criteria established by the Parole Board. Cooper v. South Carolina Dep't. of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008); Compton at 479. Here, Appellant has averred that the relevant criteria were not considered by the Parole Board. That challenge falls squarely within the limited protection afforded an inmate in hearings before the Parole Board. Therefore, Appellant's Motion to Supplement the Record is granted.

The final motion pending before me at this time is Appellant's Motion to Conduct Discovery. Appellant argues the process and procedure used by the Board in this parole hearing violates the law and that discovery is needed to examine the procedural methods employed at the agency that would not be reflected in the record. Respondent objects to discovery on the ground that an Inmate is not entitled to the full protections of the Constitution.

The procedure for presenting additional evidence not considered before the agency in an appeal before the ALC is established by statute:

> (3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.
> (4) The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.

S.C. Code Ann. § 1-23-380(3)-(4) (Supp. 2021). It is important to emphasize that the matter pending here is an appeal of the agency decision. This Court is charged with reviewing the agency action in consideration of the record before the agency. Thus, there is no role for discovery in these matters. However, the statute does provide for a process in circumstances where irregularities in procedure before the agency can be shown and for presenting evidence outside the record. Therefore,

**IT IS ORDERED** that Respondent's Motion to Dismiss is **DENIED.**

**IT IS ALSO ORDERED** that Appellant's Motion to Supplement the Record on Appeal is **GRANTED.** Respondent shall supplement the record with all documents considered by the Board in rendering its decision in this case, including, but not limited to, the risk assessment results, the full case summary, notes from the pre-hearing interview, and any recommendations or summaries created by the parole agent. The additional documents for the record must be filed by June 30, 2022.

**IT IS ALSO ORDERED** that Appellant's Motion for Discovery is **DENIED.**

**IT IS FURTHER ORDERED** that Appellant shall have until July 29, 2022 to file any supplemental brief. Respondent shall have until August 31, 2022 to submit a supplemental brief. Any reply brief must be filed within ten days from the date Respondent's brief is filed.

**AND IT IS SO ORDERED.**

Deborah Brooks Durden

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

May 16, 2022
Columbia, South Carolina

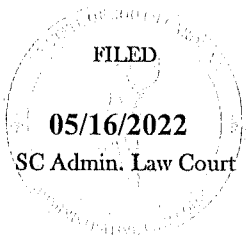
**CERTIFICATE OF SERVICE**

I, Robin E. Coleman, 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).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

May 16, 2022
Columbia, South Carolina



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


**HENRY McMASTER**
Governor

**JERRY B. ADGER**
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November 8, 2022

The Honorable Phillip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

**RE: Charles Madden, #182326 v. S.C. Department of Probation, Parole and Pardon Services; Case No.: 22-ALJ-15-0013**

Dear Judge Lenski:

Please find enclosed for filing the *Response to Appellant's Motion to Supplement the Record on Appeal*, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Jessica E. Kinard
Legal Counsel

JEK:dn

Enclosures
cc: Michael Stover, Esquire

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | | |
|---|---|---|
| Charles Madden, #182326,<br><br>Appellant,<br><br>v.<br>South Carolina Department of Probation, Parole and Pardon Services,<br><br>Respondent. | ) | Docket No. 22-ALJ-15-0013<br><br><br><br>**RESPONSE TO APPELLANT'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL** |

Respondent, the Department of Probation, Parole and Pardon Services, files this response to Appellant's motion to supplement the record. Respondent so responds because the Administrative Law Court Rules limit the record for appeals from the Parole and Pardon Board. Furthermore, South Carolina law limits the authority of the Administrative Law Court to review routine denials of parole.

The SCALC Rules, amended in 2021, now only require a copy of the agency decision and the decision following a motion for reconsideration, if applicable. SCALC Rule 61. SCALC Rule 61 was specially drafted to set apart appeals from the Department.

Appellant is requesting permission to supplement the record with 1) documents received by the agency and Parole Board Members prior to the hearing; 2) transcript of Appellant's most recent parole hearing; 3) audio recording of Appellant's most recent parole hearing; and 4) and any and all non-privileged documents Respondent claims the Parole Board reviewed and considered in reaching its decision to deny parole. However, Respondent respectfully submits that this evidence would only go toward the Board's decision-making process, which is beyond this Court's authority to review.

The Supreme Court's opinion in *Compton v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009), held that "if the Parole Board clearly states in its order denying parole that it considered the factors outlined in S.C. Code Ann. § 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." Because this procedure was followed, the ALC consequently does not have the authority to overturn or remand a routine denial of parole. Additional material is immaterial to the matter at issue and is outside the scope of the limited authority of the ALC.

The Supreme Court in *Compton* set the outer reaches of the extremely limited authority of the Administrative Law Court to review a parole consideration decision of the Parole Board by only allowing a review of the issue of whether the Parole Board complied with the stated procedure. This was decided after the Supreme Court set the criteria for review in *Cooper*. For this court to have jurisdiction, Appellant must show the Department's denial was effectively a permanent denial of parole eligibility because the Board failed to consider the statutory criteria and/or the criteria set forth in Form 1212. *Cooper v. SCDPPS*, 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008).

These decisions were bolstered by updates to S.C. Code Ann. § 1-23-600(D) (Supp. 2020) that expressly prohibit Administrative Law Judges from hearing appeals "involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services." Such records as the material Appellant wants to offer into the record are simply not relevant to the limited nature and scope of the appellate review. Appellant's dissatisfaction with the amount of deliberation on the record – truly the only issue at hand – is simply not enough to ignore the well-established case law, statutory law, and court rules that govern this matter.

The only reason to allow Appellant to supplement the record is so this court can investigate the procedures employed by the Board, which is clearly prohibited so long as Appellant remains parole eligible. Further, doing so would remove the deliberative and decision-making authority from the Board and place it into the hands of this court and, potentially, the appellate courts. Appellant argues that not allowing this court to review an expanded record makes the Court of Appeals, as the next step, a de facto reviewing court. In reality, there is no concern for the Court of Appeals taking on this duty because these cases have no basis under any law to go forward.

This is true despite Appellant's reference to the South Carolina Constitution and his rights thereunder. He cites Art. I, section 22 for the proposition that he is guaranteed judicial review and shall not be deprived of liberty or property. Appellant was afforded these rights during the initial phases of the criminal process where he was convicted and sentenced. That was the opportunity to prevent evidence, challenge witnesses, and exercise his constitutional rights. After conviction, he is not entitled to the same panoply of rights as a person who has never been convicted of a crime. Now, during the parole process, the Board "has the sole authority to determine parole eligibility separate and apart from the court's authority sentence a defendant." *State v. McKay*, 300 S.C. 113, 115, 386, S.E.2d 623, 623-4 (1989). "Parole is a privilege, not a right." *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443 n.4, 586 S.E.2d 125, 127 n.4 (2003). As such, no potential parolee is afforded rights to a full trial or judicial review if the proper procedures are followed.

Separately, Appellant references the holdings of the Honorable Deborah Brooks Durden in *Williams v. SCDPPS*, Docket No. 21-ALJ-15-0023 (S.C. Administrative Law Court, Filed May 16, 2022), in which Judge Durden allowed the record to be supplemented, as if that may be dispositive in this action. Respondent notes the case of *Joseph Kelsey v. SCDPPPS*, Docket No. 22-ALJ-15-0004-AP (S.C. Administrative Law Court, Order Denying Motion to Supplement,

Filed June 3, 2022), in which the Honorable Ralph King Anderson, III denied a similar motion based on the legal standards stated above. In the same action, via an Order Denying a Motion to Compel (FN 3, Filed June 22, 2022), Judge Anderson also specifically found that one Administrative Law Judge's decision is not binding upon another.

For these reasons, Respondent respectfully requests that Appellant's motion to supplement the record be denied.

Respectfully submitted,

**Jessica E. Kinard**
**Legal Counsel**

South Carolina Department of Probation, Parole
and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202

Columbia, South Carolina
November 8, 2022

COPY

**STATE OF SOUTH CAROLINA**

**ADMINISTRATIVE LAW COURT**

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|---|---|
| Charles J. Madden, 182326<br><br>Appellant,<br><br>v.<br><br>South Carolina Department of Probation, Parole, and Pardon Services,<br><br>Respondent. | Civil Action No. 22-ALJ-15-0013<br><br>REPLY IN SUPPORT OF MOTION TO SUPPLEMENT THE RECORD ON APPEAL |

Petitioner Charles Madden, by and through the undersigned counsel, hereby files his Reply in Support of his Motion to Supplement the Record on Appeal. The Court should grant Petitioner's motion and supplement the Record on Appeal as requested because the issues raised in this appeal appeal are not addressable by the two documents currently in the Record.

The Respondent's Response to Appellant's Motion to Supplement the Record on Appeal contends, in essence, that the record should not be supplemented because this Court does not have authority to review the issues before it. Citing S.C. Code Ann. § 1-23-600 (D), *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.,* 377 S.C. 489, 661 S.E.2d 106 (2008), and *Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.,* 385 S.C. 476, 685 S.E.2d 175 (2009) Respondent claims that the issue of whether the Board violated the limited due process rights afforded Mr. Madden during the parole process is not reviewable so long as he remains parole eligible. Respondent's assertion misstates the law applicable to this case.

In *Cooper* and again in *Compton* the Supreme Court of South Carolina stated 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

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interest, warranting minimal due process protection." *Compton*, 385 S.C. at 479, 685 S.E.2d at 177; *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. The *Cooper* court specifically noted that while the Parole Board is the sole authority with respect to parole decisions, it did not believe "the Legislature established the Board and intended for it to render decisions without any means of accountability" and stated that where the Parole board fails to follow the applicable statutes or consider appropriate criteria, an inmate's right to the state-created liberty interest in parole eligibility is infringed. *Cooper,* 377 S.C. at 498-99, 661 S.E.2d 106 at 111. Simply stated, while inmates do not have a right to be paroled, they have the right to "require the Board to adhere to statutory requirements in rendering a decision." *Id.* at 499, 661 S.E.2d 106 at 112.

First, Petitioner notes that Respondent is correct inasmuch as it asserts the Parole Board's *decision* is generally not within the power of this Court to review. So long as the Board follows certain procedures, its decision is a routine denial of parole that the Administrative Law Court has limited authority to review. *See Compton*, 385 S.C. at 479, 685 S.E.2d at 177. Respondent takes this holding too far, however, and asserts that the board can escape review of whether its process conforms to the applicable law and comports with due process by simply claiming in its denial letter that it followed the required procedures. Mr. Madden's due process rights during the parole process, limited though they may be, are not reduced to the question of whether the Board claims in its denial letter to have followed the applicable laws and requirements: the question is whether the Board *actually followed* the correct procedures. In Respondent's view the Board can completely ignore its responsibilities and escape any accountability for its failures by claiming it "followed the rules" in its rejection letter. This argument borders on absurdity and, if accurate, would allow the Board to abrogate Petitioner's ability to hold it accountable for violations of his rights by merely claiming to have done the very thing Petitioner alleges they failed to do.

Second, Respondent's assertion that the Court cannot review this case because Mr. Madden remains parole eligible is likewise incorrect. The Supreme Court of South Carolina's holding in *Cooper* makes clear that permanent denial of parole is not necessary for the Administrative Law Court to have power to hear an inmate's appeal. *Cooper* 377 S.C. at 498, 661 S.E.2d at 111. The issue is not whether Mr. Madden remains parole eligible but whether his claim "raises a sufficient state-created liberty interest to trigger due process requirements." *Id.* Where, as is the case here, an inmate alleges the Board failed to adhere to the proper process in reaching its decision, such an interest is triggered. *Id.* ("If a Parole Board deviates from or renders its decision without consideration of the appropriate criteria, we believe it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest.").

Finally, Petitioner readily concedes that the requested documents would, as argued by Respondent, "only go toward the Board's decision-making process." Indeed, that is why Petitioner has requested they be included; the board's decision-making process is the issue before the Court. However, contrary to Respondent's position, the Board's decision-making process, specifically whether the Board's process comported with applicable statutes, regulations, and Mr. Madden's rights, is well within this Court's authority to review. *See Allen v. S.C. Dep't of Corr.,* 434 S.C. 114, 117, 862 S.E.2d 268, 269 (Ct. App. 2021), reh'g denied (Sept. 8, 2021) (finding that the ALC correctly ruled its jurisdiction regarding inmate appeals was limited to state-created liberty interests); *Glenn v. S.C. Dep't of Corr.,* No. 2011-UP-182, 2011 WL 12451603, at *1 (S.C. Ct. App. Apr. 19, 2011) (affirming the ALC's dismissal for failure to assert a state-created liberty or property interest); *Rose v. S.C. Dep't of Prob., Parole & Pardon Servs.,* 429 S.C. 136, 138, 838 S.E.2d 505, 507 (2020), reh'g denied (Mar. 12, 2020) (affirming the ALC's decision that no evidence supported the Parole Board's decision to deny the appellant parole).

The issues raised in this appeal, contrary to Respondent's memorandum, are not limited to Mr. Madden's "dissatisfaction with the amount of deliberation on the record." While certainly the fact the Parole Board failed to conduct *any* deliberations, in contravention of its own policies and procedures[1], is at issue, this is merely one of a string of facts that indicate the Board violated Mr. Madden's limited due process rights by failing to comply with the statutorily mandated procedures which require the Board to carefully consider Mr. Madden's entire record before rendering its decision. *See* S.C. Code Ann. § 24-21-640 ("The board must carefully consider the record of the prisoner before, during, and after imprisonment…"). The documents Petitioner requests, namely the documents Respondent claims to have reviewed as part of its decision-making process, are directly relevant to whether the Board's decision-making process comports with the applicable law. Moreover, if the Court's review is limited to the documents currently within the Record on Appeal, the Court cannot effectively render a decision in this matter as the information before it would force it to either accept Petitioner's or Respondent's claims as true without any evidence one way or the other aside from Respondent's one-page, self-serving letter.

Because the Record on Appeal does not allow a meaningful appellate review of the central issue in this case, it is imperative the Court grant Petitioner's motion. Petitioner respectfully requests the Court supplement the Record on Appeal to include the materials submitted with his motion and order Respondent to produce any additional non-privileged documents received and/or reviewed by Respondent for inclusion in the Record on Appeal.

*Signature Page Follows*

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[1] *See* page 22 of the "Parole Board Manual," South Carolina Department of Probation, Parole, and Pardon Services, Division of Paroles and Pardons and Release Services, November, 2019; available at https://www.dppps.sc.gov/content/download/209320/4885043/file/Board+of+Paroles+and+Pardons+11062019.pdf ("After the witnesses in opposition are heard, they are excused from the hearing room, and the Board or the panel then *deliberates.*" *"After deliberations*, a voice and/or electronic vote is cast and documented."

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorney for Appellant Charles J. Madden

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**BRIEF OF APPELLANT**

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

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APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

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Docket No. 22-ALJ-15-0013-AP

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Charles J. Madden, #00182326,

Appellant,

v.

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

Respondent.

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# INITIAL BRIEF OF APPELLANT

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The State of South Carolina
FILED
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Administrative Law Court

## STATEMENT OF ISSUES ON APPEAL

1. Did the Parole Board Violate the Administrative Procedures Act and Abuse Its Discretion by Rendering a Decision That Was Based Upon a Clearly Erroneous Finding of Fact and Consequently Affected by Error of Law and Arbitrary and Capricious?

2. Did the Parole Board Violate Mr. Madden's Right to Due Process by Establishing a *De Facto* Permanent Denial of Parole Eligibility by Denying Him Parole Based Upon a Clearly Erroneous Finding of Fact and Failing to Carefully Consider Mr. Madden's Entire Record Before and During His Incarceration?

## STATEMENT OF THE CASE

This is an appeal of a final decision by the South Carolina Department of Probation, Parole, and Pardon Services ("the Department") denying Mr. Charles J. Madden parole. Mr. Madden was convicted of murder and was sentenced to life in prison in 1991. Mr. Madden first became parole eligible in 2011; despite his exemplary disciplinary record, efforts towards rehabilitation, community support, and satisfactory completion of the Jump Start program,[1] Mr. Madden has been denied parole at each of his appearances before the board. Mr. Madden is currently 59 years old and has remained continuously incarcerated during the 31 years since his conviction.

Mr. Madden appeared for his most recent hearing before the Parole Board ("the Board") on July 13, 2022. Following the hearing, the Board voted 4 to 1 to deny Mr. Madden parole. On July 14, 2022, the Board sent a Notice of Rejection ("Notice") that informed Mr. Madden of its decision. The Board's Notice stated that it determined, as a matter of law, that it must deny Mr. Madden parole based on its "careful consideration" of

> (1) the characteristics of [Mr. Madden's] current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact

[1] The Jump Start program is a faith-based program that provides both an intensive, 40-week in-prison program and post-release assistance to inmates. If granted parole, Mr. Madden will have at least 12 months of low-cost, stable housing and long-term employment secured through the Jump Start program.

> 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.

Record on Appeal at p. 1. The Board stated five "Findings of Fact" to support its position: (1) Nature And Seriousness Of Current Offense, (2) Indication Of Violence In This Or Previous Offense, (3) Use Of A Deadly Weapon In This Or Previous Offense, (4) Criminal Record Indicates Poor Community Adjustment, (5) Failure To Successfully Complete A Community Supervision Program. *Id.* Mr. Madden filed this appeal with the Administrative Law Court ("ALC") on August 23, 2022.

## STANDARD OF REVIEW

The Parole Board is, unquestionably, "the sole authority with respect to decisions regarding the grant or denial of parole," but this does not, in the eyes of our appellate courts, mean the board is free to render decisions without any accountability or judicial oversight. *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008); *Tinsley v. S.C. Dep't of Prob.*, No. 2015-000196, 2016 WL 1367046, at *1 (S.C. Ct. App. Apr. 6, 2016).

Thus, while South Carolina law provides that an administrative law judge may not hear an appeal from an inmate while he remains eligible for parole, South Carolina's appellate courts have held that under certain circumstances denial of parole may implicate a sufficient liberty interest to trigger judicial review. *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003); *Steele v. Benjamin*, 362 S.C. 66, 72, 606 S.E.2d 499, 502 (Ct. App. 2004); *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112.

To protect the limited due process rights inmates have in parole proceedings, the Administrative Law Court may review Parole Board decisions if the Parole Board "deviates from or renders its decision without consideration of the appropriate criteria...essentially abrogate[ing] an inmate's right to parole eligibility and, thus, infring[ing] on a state-created liberty interest." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. The Administrative Law Court may reverse, modify, or remand the decision of the Parole Board if an inmate's rights have been prejudiced because the Parole Board'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. *James Hudson, Appellant*, 09-ALJ-08-0188-AP, 2009 WL 8167933, at *1 (Sept. 15, 2009).

## ARGUMENT

### I. THE BOARD'S DECISION IS CLEARLY ERRONEOUS AND AFFECTED BY ERROR OF LAW.

The Administrative Law Court may reverse, modify, or remand the Board's decision if Mr. Madden's rights have been prejudiced because the Board's findings, inferences, conclusions, or decisions are affected by error of law or are clearly erroneous in view of the evidence on the whole record. *Id.* at *1.

The Board's Notice states that it concluded, *as a matter of law*, that it *must* deny Mr. Madden parole based on its review of Mr. Madden's records. Record on Appeal at p. 1

(emphasis added).[2] Among the findings of fact cited in support of its conclusion the Board lists "Failure To Successfully Complete A Community Supervision Program." *Id.* Mr. Madden does not dispute that he has not completed a Community Supervision Program ("CSP"). He has never, in fact, been placed into a CSP and is, by statute, not eligible to participate in a CSP. Moreover, he is not, by law, required to complete a CSP and the Board's inclusion of this "finding of fact" as grounds for denial of parole is clearly erroneous and plain error of law.

"Community Supervision Program" is a statutorily defined term, with statutorily defined parameters. *See, e.g.*, S.C. Code Ann. §§ 24-21-510 *et seq.*; 24-21-30. The CSP is, in essence, a more rigorous form of probation which certain offenders are assigned to at sentencing. *State v. Dawkins*, 352 S.C. 162, 573 S.E.2d 783 (2002); S.C. Code § 24-21-560. Completion of a CSP is a mandatory condition of release for persons convicted of a "no parole offense."[3] *State v. Bennett*, 375 S.C. 165, 650 S.E.2d 490 (Ct. App. 2007); S.C. Code § 24-21-560(A). The statutes enacting the CSP are prospective and apply only to persons convicted of a "no parole offense" on or after the date the statute was enacted. S.C. Code § 24-21-30. A person who is convicted of a "no parole offense" is not eligible for parole and must, instead, successfully complete a CSP prior to discharge for his or her sentence. *Id.* Therefore, if Mr. Madden were required to complete a community supervision program and failed to do so the Board would be correct: he would be ineligible for parole and the Board, as a matter of law, must deny him parole.

However, the provisions mandating prisoners who commit "no parole offenses" to complete a CSP do not apply to Mr. Madden because these prospective requirements became

---

[2] Notably, the Board's language in its Notice unquestionably indicates its decision was not made within its broad discretion to grant or deny parole but was instead mandated as a matter of law. *See* Record on Appeal at p. 1 ("The Board hereby makes the following CONCLUSION OF LAW... The Parole Board ha[s] determined that your parole ***must*** be denied") (emphasis added).

[3] "No Parole Offense" is defined as "a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more." S.C. Code Ann. § 24-13-100.

operative on January 1, 1996; five years after Mr. Madden was convicted and sentenced. *See* 1995 S.C. Laws Act 83 (H.B. 3096) (amending various code sections to provide certain prisoners must complete a CSP).[4] Moreover, both the crime Mr. Madden was convicted for and the sentence imposed on him are specifically exempted from participation in a CSP. S.C. Code Ann. § 24-21-560(A). The Board's conclusion that it must deny Mr. Madden parole, as a matter of law, because he has not completed a CSP is, therefore, clearly erroneous and its decision is affected by error of law. Consequently, this Court should reverse the Board's decision and grant Mr. Madden parole.

## II. THE BOARD'S DECISION IS A *DE-FACTO* PERMANENT DENIAL OF PAROLE BASED ON AN ERRONEOUS CONCLUSION OF LAW

South Carolina's appellate courts have held that denial of parole need not be an actual permanent denial of parole eligibility to implicate an inmate's due process rights; permanent denial of eligibility is merely one of the ways that a sufficient liberty interest may be involved. *Cooper*, 377 S.C. at 498, 661 S.E.2d at 111; *Steele v. Benjamin*, 362 S.C. 66, 72, 606 S.E.2d 499, 502 (Ct. App. 2004). In *Cooper*, the Supreme Court of South Carolina held that an inmate's limited liberty interests were infringed where the Board failed to adhere to statutory requirements when rendering its decision, creating a *de facto* denial of parole eligibility. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112. In the instant appeal, the Board's erroneous conclusion that it must deny parole because Mr. Madden has failed to complete a CSP similarly creates a *de facto* permanent denial of parole eligibility.

As previously noted, inmates who are statutorily required to complete a CSP are, by law, not eligible for parole consideration unless and until they complete their CSP. S.C. Code Ann. §

[4] The Department's own website unambiguously addresses the effective date and prospective nature of the community supervision program, noting that "[i]ndividuals who committed one of these ["no parole offenses"] on or after January 1, 1996 are not eligible for parole consideration at any time during their sentence." SCDPPP, *Supervision Strategies*, available at https://www.dppps.sc.gov/offender-supervision/supervision-strategies

24-21-30. The Department itself notes that the Board does not review CSP release, and that participation in a CSP is beyond its "absolute and exclusive discretion to grant or deny parole." SCDPPP, SOUTH CAROLINA BOARD OF PAROLES AND PARDONS POLICY AND PROCEDURE MANUAL, 5 (2019). A CSP is a form of probation imposed at sentencing; inmates like Mr. Madden who are sentenced to a term of life imprisonment are ineligible for participation. S.C. Code Ann. § 24-21-560(A); *See also State v. Dawkins*, 352 S.C. 162, 167, 573 S.E.2d 783, 785 (2002).

Because Mr. Madden's conviction and sentencing occurred five years before the CSP was enacted his sentence does not include mandatory participation in a CSP. The plain language of the statute makes clear the CSP is only applied prospectively to convictions after its date of enactment. Moreover, even assuming the statutes applied to Mr. Madden, he was sentenced to a term of life imprisonment and is therefore ineligible to participate in a CSP. Simply stated, Mr. Madden ***cannot*** complete a CSP. The Board's use of Mr. Madden's failure to complete a program which he is ineligible to participate in as a reason for denying parole is not only arbitrary and capricious, but also has the effect of permanently denying Mr. Madden parole eligibility. Because Mr. Madden will never be able to complete a CSP, and because the Board has erroneously concluded that his failure to complete a CSP mandates denial of parole as a matter of law, the Board has eliminated any possibility that he will be paroled in the future. Because the Board's failure to appropriately apply the CSP statutes creates a *de facto* permanent denial of parole eligibility based on an erroneous conclusion of law, this Court should reverse the Board's decision and grant Mr. Madden parole.

## III. THE BOARD'S DECISION VIOLATES FEDERAL AND STATE *EX POST FACTO* CLAUSES.

Both the United States and South Carolina Constitutions explicitly prohibit the

enactment of *ex post facto* laws. U.S. Const. Art. I, §§ 9, 10; S.C. Const. Art. 1, § 4. A law or amendment is considered *ex post facto* when it retroactively alters the definition of, or increases the punishment for, a crime. *Barton v. S.C. Dep't of Prob. Parole & Pardon Servs.*, 404 S.C. 395, 403, 745 S.E.2d 110, 114 (2013) (citing *Jernigan v. State,* 340 S.C. 256, 261, 531 S.E.2d 507, 509 (2000)).

In addition to permanently rendering Mr. Madden ineligible for parole, the Board's determination that it must deny Mr. Madden parole unless and until he completes a CSP retroactively imposes S.C. Code § 24-21-560(A) and materially increases the measure of punishment provided in his sentence. Mr. Madden was convicted to a term of life imprisonment with eligibility for parole after 20 years. Retroactively applying the CSP statutes to require Mr. Madden to complete a CSP prior to being eligible for parole would add up to two years of probation, subject to heightened supervision, to his sentence. *See Dawkins*, 352 S.C. at 162, 573 S.E.2d at 783 ("The community supervision program is a *more stringent*, closely monitored form of supervision than normal probation. Mandatory participation in CSP *serves as a more rigorous term of probation* for those convicted of non-parole offenses, in lieu of normal probation.") (emphasis added). Because the Board's decision attempts to apply the CSP statutes retroactively, resulting in a material increase the measure of punishment Mr. Madden must serve before being granted parole, the Board's decision violates both federal and state prohibitions on *ex post facto* laws. Consequently, this Court should reverse the Board's decision and grant Mr. Madden parole.

## IV. THE BOARD VIOLATED MR. MADDEN'S DUE PROCESS RIGHTS BY FAILING TO ADHERE TO THE RELEVANT STATUTORY PROVISIONS IN REACHING ITS DECISION.

South Carolina law requires the members of the Parole Board to "carefully consider the

record of the prisoner before, during, and after imprisonment" when rendering decisions to grant or deny parole. S.C. Code Ann. § 24-21-640. While parole is unquestionably a privilege, not a right, the Supreme Court of South Carolina has held that inmates *do* possess a right to require the Board to adhere to statutory requirements when reaching its decisions. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112. Failure to adequately consider the requisite statutory criteria and the fifteen factors published by the Board constitutes a violation of this limited due process right. *See generally id.*

In *Cooper*, the Board denied the appellant parole without indication that it had considered the statutorily required criteria. *Id.* at 492, 661 S.E.2d at 108. The Court found the Board's "apparent failure" to consider the appropriate criteria "constituted an infringement of a state-created liberty interest" warranting minimal due process requirements and consequently the Court could "only conclude that the Parole Board's decision was arbitrary and capricious." *Id.* at 499-500, 661 S.E.2d at 112. The *Cooper* Court went on to note that the Board could avoid similar decisions in the future by "clearly stating 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" and that by doing so, its decision would constitute a "routine denial of parole" which the Administrative Law Court would have limited authority to review. *Id.; see also Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 685 S.E.2d 175 (2009).

On the surface, the Board's Notice in this matter complies with the requirements set forth in *Cooper* and clarified in *Compton*. *See* Record on Appeal at p. 1. Unlike the facts presented in both *Cooper* and *Compton*, however, this case presents a scenario where it is readily apparent from the facts in the Record that the board did not, in fact, "carefully consider" Mr. Madden's entire record as required by statute. While *Cooper* and *Compton* state that the Board's statement

that it complied with statutory requirements is sufficient to render the Board's decision a "routine denial of parole," neither stands for the proposition that the Board's claim is uncontestable, or that it must be accepted as fact in the face of evidence to the contrary.

Mr. Madden is unquestionably neither eligible to participate in, nor required to complete, a CSP. Even a cursory review of Mr. Madden's records shows he was convicted and sentenced five years before the statutes mandating participation in a CSP were enacted, and that the criminal act he is incarcerated for and the sentence he received both disqualify him from participation in a CSP. A cursory review of his record also reveals that Mr. Madden has never failed to successfully complete a CSP, *because he has never been placed in one*. All these facts were readily available to the Board as part of Mr. Madden's record and, per the Department's Parole Manual, were presented to members of the Board not less than two weeks before Mr. Madden's hearing. SCDPPP, SOUTH CAROLINA BOARD OF PAROLES AND PARDONS POLICY AND PROCEDURE MANUAL, 21 (2019). The Board's failure to recognize these facts is unequivocal evidence that it did not "carefully consider" Mr. Madden's record prior to rendering its decision.

The Board's failure to recognize that Mr. Madden is neither required nor eligible to participate in a CSP calls into question other pertinent issues, such as whether the Board failed to utilize COMPAS in reaching its decision as mandated by S.C. Code Ann. § 24-21-10(F)(1) or whether it considered *any* of the appropriate criteria aside from the crime he was convicted of.[5] More importantly, the Board's failure to comply with the statutory requirements of S.C. Code Ann. § 24-21-640 not only constitutes a violation of Mr. Madden's limited due process rights during parole proceedings, but also resulted in a finding of fact that is clearly erroneous in view of the evidence in the record, culminating in a decision that is both affected by error of law and

[5] Notably, as was the case in *Cooper*, each of the findings of fact enumerated by the Board, except for its erroneous finding that Mr. Madden failed to complete a CSP, are immutable characteristics of the crime Mr. Madden was convicted of that will never change, regardless of any steps towards rehabilitation Mr. Madden accomplishes.

arbitrary and capricious. Accordingly, the Board's decision to deny Mr. Madden parole should be reversed.

## CONCLUSION

For the reasons set forth above, Mr. Madden respectfully requests the Administrative Law Court: (1) reverse the final decision of the Parole Board; (2) require the Department and the Parole Board to grant Mr. Madden parole; and (3) provide any other relief that the Court deems just and proper.

Respectfully submitted,

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January 20, 2023

The Honorable Phillip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

**RE: Charles Madden, #182326 v. S.C. Department of Probation, Parole and Pardon Services**

Dear Judge Lenski:

Please find enclosed for filing the *Brief of Respondent* dated January 20, 2023, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Jessica E. Kinard
Legal Counsel

JEK:dn

Enclosures
cc: Michael Stover, Esquire

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 22-ALJ-15-0013

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APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

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CHARLES MADDEN, #182326, APPELLANT,

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, RESPONDENT.

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# INITIAL BRIEF OF RESPONDENT

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## APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the Parole Board violate the Administrative Procedures Act and abuse its discretion by rendering a decision that was based upon a clearly erroneous finding of fact and consequently affected by error of law and arbitrary and capricious?

2. Did the Parole Board violate Mr. Madden's right to due process by establishing a *de facto* permanent denial of parole eligibility by denying him parole based upon a clearly erroneous finding of fat and failing to carefully consider Mr. Madden's entire record before and during his incarceration?

3. The Board's decision violates federal and state ex post facto clauses.

4. The Board violated Mr. Madden's due process rights by failing to adhere to the relevant statutory provisions in reaching its decision.[1]

[1] Issues 3 and 4 were not listed in Appellant's formal Statement of Issues on Appeal but were designated as separate arguments in the body of the argument.

## STATEMENT OF THE CASE

Appellant, Charles Madden, is serving a life sentence for murder after satisfying sentences for assault and battery of a high and aggravated nature and burglary third degree. He killed his father during the commission of an armed robbery that was committed while he was out on bond for other offenses. Appellant initially became parole eligible in 2011 after service of twenty years for the instant offense.

Appellant filed this appeal after failing to be granted parole at the conclusion of his sixth parole hearing on July 13, 2022. The following day, the Board issued its notice of rejection informing Appellant of its decision. Included in this rejection letter was the Board's findings of fact as reasons for rejection, which were nature and seriousness of the current offense, indication of violence in this or previous offense, use of a deadly weapon in this or previous offense, criminal record indicates poor community adjustment, and failure to complete a community supervision program. ROA, p.1.

## ARGUMENT

Appellant misconstrues and misapplies the term "community supervision program," as well as his own criminal history.

1. **The Board's findings of fact were correct, thus no error of law could have arisen therefrom, nor could the Administrative Procedures Act have been violated as a result.**

The phrase "community supervision program" is a broad one that has been in use for decades and is generally defined as any type of program in which an offender lives in the community at large but is still supervised by the State. This includes probation, parole, supervised furlough, and, in South Carolina, Community Supervision Program (CSP)[2]. Appellant is correct

[2] For clarity, Respondent will use the acronym CSP to refer to the program available to those serving no parole offenses pursuant to S.C. Code 24-21-560, and "community supervision program(s)" to refer to the concept of any program in which an offender is serving their sentence

that the generic terminology is also the given name of the period of supervision required of prisoners who are convicted of "no parole offenses" per S.C. Code Ann. § 24-13-100 that begins upon the release from incarceration. S.C. Code Ann. § 24-21-560. Appellant is also correct that this program and its specific name came into being via operation of legislation in 1995, five years after he was originally convicted and sentenced. *See* 1995 S.C. Laws Act 83 (H.B. 3096).

Regardless, the phrase "community supervision" was used in the world of probation and parole far before 1995. This understanding can be seen even in the way Appellant's brief is phrased, as it repeatedly refers to "***a*** community supervision program." (emphasis added) Tellingly, the Board also uses this phrasing: "Failure To Successfully Complete ***A*** Community Supervision Program." (emphasis added) Were the Board referring to CSP, the use of the article "a" would be unnecessary and "the" or no article at all would be more grammatically appropriate.

The Parole Board is considering whether to release inmates from incarceration to parole – another supervision program served in the community. Therefore, the inmate's record of prior terms of supervision in the community would be relevant to the Board's analysis. Thus, Appellant's conviction from the early 1980s is relevant. When Appellant received a sentence for one year suspended to 18 months' probation for his June 10, 1982 conviction for attempted housebreaking, he was enrolled into a community supervision program – specifically, probation. Subsequently, when his probation was revoked by the court on November 7, 1983, he was considered by the Board to have failed to successfully complete that community supervision program. *See* State v. Charles J. Madden, 1982-GS-24-00368.

Appellant's argument wholly ignores his prior conviction and subsequent revocation of probation. Instead, he centers on the idea that the Board would somehow expect him to participate

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in the community.

in CSP despite it not coming into existence until five years after his conviction. Such an interpretation of the Board's rejection letter is entirely without merit.

Appellant is correct that murder is specifically exempted from participation in CSP (not "a CSP" as he stated) pursuant to S.C. Code Ann. § 24-21-560(A). Regardless, he misapprehends the meaning of the generic phrase "a community supervision program" by equating it to the specific CSP that is clearly inapplicable to him. The Board's concern about Appellant's prior supervision history arises not from Appellant's murder conviction but from his earlier conviction for which he received a probationary sentence, which was unsuccessfully completed.

As such, the Board's finding that Appellant failed to successfully complete a community supervision program is accurate and there is no reason the decision should be overturned. Appellant's request for a grant of parole is a massive overreach, particularly for such a small misconception. It is also an impossible grant of relief because Respondent respectfully submits that this Court does not have the authority to grant parole. The Board is the "sole authority with respect to decisions regarding the grant or denial or parole." *Cooper v. S.C. Dep't. of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008). If any remedy is warranted, it should be limited to the issuance of a new notice of rejection using more general language like "a supervisory program" instead of "a community supervision program" to alleviate Appellant's confusion.

**2. Because the Board's decision was based on factually accurate information, it could not have produced an erroneous conclusion of law or a de facto permanent denial.**

Appellant's is correct in noting that *Cooper* is one of the main cases regarding how the Board is required to render its decisions. *See Cooper, supra.* However, that has also been modified by other case law, notably *Compton. See also Compton v. S.C. Dep't. of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 685 S.E.2d 175 (2009) (The Board must consider the statutory criteria and

those set forth in Form 1212). To state that *Cooper* held a failure to adhere to statutory requirements creates a *de facto* permanent denial of parole eligibility is inaccurate. The actual citation is, "Parole is a privilege and Cooper has no right to be paroled; however, Cooper does have a right to require the Board to adhere to statutory requirements in rendering a decision." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112.

Thus, Appellant has a right to require the Board adhere to statutory requirements, which the Board has. As demonstrated by the Record, the Board considered the statutory factors laid out in the notice of rejection and Form 1212. The consideration was based on factually accurate information, notably Appellant's prior criminal record. Therefore, Appellant's argument that he has received a *de facto* permanent denial of parole is incorrect.

The Board is accurately applying the consequences of Appellant's probationary sentence from 1982 and his revocation in 1983 to their consideration of parole. As such, the Board is applying relevant and statutory criteria to the evaluation of a potential parolee. These are stated in both the notice of rejection and Form 1212. ROA, pp. 1; 2, item 3. Also noteworthy in the notice of rejection is the last line, which mentions that Appellant will notified of his next hearing date approximately thirty days beforehand. This clearly shows that he is not permanently denied parole eligibility. If the Board had reason to believe that one of its own factors would prevent it from ever granting parole, there would be no need to grant future hearings.

Again, Appellant relies upon his confusion regarding participation in "***a*** CSP" as the basis for his argument that he is permanently denied parole eligibility. Appellant's Initial Brief, p. 5 (emphasis added). Appellant discusses his inability to complete CSP because of the nature his crime and because his conviction occurred before CSP was enacted. As noted above, these facts are irrelevant due to his prior conviction and its probationary sentence. Therefore, the Board's

finding that Appellant failed to successfully complete a community supervision program is accurate and there is no reason the decision should be overturned. Appellant relies upon his own confusion over the phrase "a community supervision program" and then requests this Court reverse the Board's denial of parole – essentially asking this Court to grant him parole. Respondent submits that Appellant overreaches, particularly for such a small misconception. It is also an impossible grant of relief because the Board is the "sole authority with respect to decisions regarding the grant or denial or parole." *Cooper*, 377 at 499, 661 at 111. If any remedy is warranted, it should be limited to the issuance of a new notice of rejection using more general language like "a supervisory program" instead of "a community supervision program."

**3. Appellant has not received a retroactive change or increase in punishment and, therefore, there is no *ex post facto* clause violation.**

This argument again relies on Appellant's misunderstanding of his criminal history and the historical use of the term "community supervision program." As he argues, the retroactive imposition of participation in CSP would violate *ex post facto* clauses, both state and federal. That would be true if it were to happen. He further argues that "the Board's decision attempts to apply the CSP statutes retroactively, resulting in a material increase [sic] the measure of punishment Mr. Madden must serve before being granted parole." Appellant's Initial Brief, p.7. Again, Appellant is not subject to CSP as defined in S.C. Code Ann. § 24-21-560.

Because of Appellant's murder conviction, he is required to serve a life sentence but, as discussed above, he became eligible for parole after service of twenty years. Therefore, if granted parole, he will be released to an appropriate level of supervision on parole, not "a more rigorous term of probation for those convicted of non-parole offenses," as contemplated in his brief. Appellant's Initial Brief, p. 7, citing *State v. Dawkins*, 352 S.C. 162, 573 S.E.2d 783 (2002). The only possibility of release from incarceration at the time of his conviction was – and remains –

parole. Appellant's argument that because the Board used the generic phrase "a community supervision program" in his letter of rejection, he is suffering an *ex post facto* violation is untenable. No actions by the Board or Respondent are violative of any *ex post facto* clauses because the Board is not attempting to alter the nature or length or Appellant's sentence.

Appellant's misapprehension of the language used in the rejection letter – that capitalization and/or usage of the term "community supervision program" necessarily connotes the program defined in S.C. Code Ann. § 24-21-560(A) – has caused him to believe that he will receive a lengthier sentence and that he will never receive parole. Neither of these are true, and the Board's analysis and decision were in compliance with all relevant statutory and case law. Therefore, the Board's finding that Appellant failed to successfully complete a community supervision program is accurate and there is no reason the decision should be overturned. Appellant overreaches when he requests this Court grant him parole, particularly when it is his own confusion over the phrase that is the basis for his appeal. Furthermore, his requested relief is outside the court's authority, because the Board is the "sole authority with respect to decisions regarding the grant or denial or parole." *Cooper*, 377 at 499, 661 at 111. Respondent respectfully submits that if any remedy is warranted, this court could require the issuance of a new notice of rejection using more general language like "a supervisory program" instead of "a community supervision program."

4. **Appellant's due process rights were maintained and statutory provisions were respected during the Board's deliberation.**

Appellant alleges that the Board failed to "carefully consider the record of the prisoner before, during, and after imprisonment" when rendering its decision to grant or deny parole as required by S.C. Code Ann. § 24-21-640. This assertion is in direct contravention to the Board's statement that it carefully considered all necessary criteria as listed in the notice of rejection. Record, p.1. Appellant further argues that the use of the term "a community supervision program"

in the notice of rejection shows evidence that the Board could not have carefully considered the evidence before it because Appellant has never participated in CSP.

As with all arguments above, Appellant's due process violation assertion strains credulity. It requires an assumption, which he makes, that the entire parole review process has failed – COMPAS[3] has not been utilized, parole examiners have not completed their duties, the Board is not aware of the facts of the current offenses or disciplinary history, victims and involved parties have not been notified, and so forth. This is simply ludicrous. For Appellant, who has a prior unsuccessful probationary sentence as part of his criminal history, to assume that the Board would ignore that in favor of projecting a new, improper punishment upon him is inane. The Board followed all prescribed duties, criteria, and procedures in his hearing as it does with every parole request. Therefore, the Board's finding that Appellant failed to successfully complete a community supervision program is accurate and there is no reason the decision should be overturned or remanded. The Board's decision should be upheld and Appellant's appeal dismissed.

**Conclusion follows on next page.**

[3] COMPAS is the Respondent's validated actuarial risk and needs assessment tool pursuant to S.C. Code Ann. § 24-21-10(F)(1).

## CONCLUSION

The Board's finding that Appellant failed to successfully complete a community supervision program is accurate and there is no reason the decision should be overturned. Appellant's request for a grant of parole is a massive overreach, particularly for such a small misconception. It is also an impossible grant of relief because the court does not have the authority to grant parole as the Board is the "sole authority with respect to decisions regarding the grant or denial or parole." *Cooper*, 377 at 499, 661 at 111. If any remedy is warranted, it should be limited to the issuance of a new notice of rejection using more general language like "a supervisory program" instead of "a community supervision program."

Respectfully submitted,

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January 20, 2023

COPY

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

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APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

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Docket No. 22-ALJ-15-0013-AP

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Charles J. Madden, #00182326,

Appellant,

v.

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

Respondent.

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# REPLY BRIEF OF APPELLANT

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The State of South Carolina
FILED
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Administrative Law Court

## ARGUMENT

Respondent argues that Appellant "misunderstands" and "misconstrues" the term "community supervision program" and falsely alleges Appellant has misrepresented his criminal history before this Court.[1] Respondent claims, relying on facts which are not in the Record, that the Board's decision is proper because "community supervision program" is a broad term which encompasses probation and it based its decision on Appellant's prior revocation of probation. Respondent's arguments are meritless.

### 1. Respondent's Attempts to Redefine "Community Supervision Program" To Support its Decision are Contrary to South Carolina Law, Its Own Use of the Term In Public Documents, and its Use of the Term in its Notice of Rejection.

Appellant's Brief asserts the Parole Board's decision is plain error because the Board erroneously based its decision to deny Appellant parole on his purported "Failure to Successfully Complete a Community Supervision Program." Denial for this reason is clear error and violative of Appellant's rights because Appellant has never been assigned to, and is legally prohibited from, participating in a community supervision program. When confronted with its error, Respondent's argument appears to be that the Parole Board can give "community supervision program" whatever meaning it pleases in legal correspondence. Utilizing its own generic definition, Respondent claims what it *really* meant is not that it denied Appellant parole based on "Failure to Successfully Complete a Community Supervision Program" but instead that it denied Appellant parole based on a probation revocation from nearly 40 years ago.

Respondent argues the "phrase" "community supervision program" is broad, has been in use for decades, and, without citation to authority, defines the term to suit its arguments. "Community supervision program" may certainly have many meanings in common parlance. That the phrase exists in common language does not, however, remove the fact that the General Assembly has given a specific meaning to that phrase and intended that specific meaning to apply in the context Respondent has used it here.

[1] Despite Respondent's attempts to redefine statutory language to include other forms of supervised release, Appellant has never been assigned to a community supervision program, is not required to complete a community supervision program as a condition of his release, and is, in fact, statutorily prohibited from participating in a community supervision program as "community supervision program" is defined under South Carolina law. Appellant has not represented any other facts to this Court regarding his prior criminal history and/or history of supervisory release as those facts are – at Respondent's insistence – not within the Record on Appeal before the Court.

Respondent has not provided citation to any authority that either supports its proposed definition of "community supervision program" or indicates the statutory definition supplied by the South Carolina Code is inapplicable to the Parole Board's decisions.

In contrast to Respondent's arguments, the South Carolina Code's text is clear: the General Assembly intended "community supervision" and/or "community supervision program" to have a defined meaning that is separate and distinct from both "probation" and "parole." This is apparent first from the way the General Assembly drafted the relevant Chapter to include separate Articles governing each distinct form of supervised release. *See* S.C. Code Ann. Title 24, Ch. 21 (containing separate Articles for Probation, Comprehensive Community Control System (including CSP), and Parole). The legislative intent that probation, parole, and community supervision are terms for separate and distinct types of supervised release is further apparent from the General Assembly's repeated references to "probation, parole, ***and*** community supervision" and "probation, parole ***or*** community supervision." S.C. Code Ann. §§ 24-21-5 (6); 24-21-13 (A)(1); 24-21-80; 24-21-220; 24-21-230(B); 24-21-280 (A)-(B); 24-21-300; 24-21-1300 (D) (emphasis added). Contrary to Respondent's unsupported contentions, "community supervision" and "community supervision program" are neither "broad phrases" that encompass probation nor are they synonyms which may be used interchangeably with "probation."

Respondent's attempt to create an artificial distinction between "a" community supervision program and "the" community supervision program is similarly untenable. Respondent's assertion that using the article "a" rather than the article "the" preceding "community supervision program" operates to supplant the statutory meaning of that term with a generic meaning is contradicted by the statutory text, which uses both "a" and "the" preceding "community supervision program," as grammatically appropriate, to refer to the same statutorily defined term. *See, e.g.*, S.C. Code Ann §§ 24-21-13(A)(2); 24-21-560 et. seq. In some instances, the statute refers to both "a" and "the" community supervision program interchangeably in the same passage, paragraph, and even within the same sentence, as in the example below:

> ...The department must determine when a prisoner completes ***a*** community supervision program, violates a term of community supervision, fails to participate in a program satisfactorily, or whether a

> prisoner should appear before the court for revocation of ***the*** community supervision program.

S.C. Code Ann. § 24-21-560(B)(2) (emphasis added). Notably, when referring to an individual offender's participation, as the board does in its Notice, the statute invariably refers to "a" community supervision program. S.C. Code Ann. § 24-21-30(A) ("A person who commits a "no parole offense"... must complete ***a*** community supervision program") (emphasis added); *see also* §§ 24-21-32(B); 24-21-560(A); 24-21-560(B). The term "community supervision program," whether preceded by an "a" or "the" in Respondent's Notice, means what the South Carolina Code says it means; not what Respondent wants it to mean.

Respondent also cannot claim ignorance of the statutory definition of "community supervision program" or deny that it is neither synonymous, nor interchangeable with, the term "probation." This is particularly true since Respondent itself is responsible for implementing, operating, and supervising community supervision as a separate and distinct form of supervised release. S.C. Code Ann. §§ 24-21-13(A)(1)–(2), 24-21-560(A) ("...any sentence for a "no parole offense"...must include ... completion of a community supervision program operated by the Department of Probation, Parole, and Pardon Services). Respondent's use of the term on its public website and in its "Parole Manual" also shows its awareness that "community supervision program" is neither synonymous nor interchangeable with the term "probation." SCDPPP, *Facts and Figures*, https://www.dppps.sc.gov/about-PPP/Facts-Figures (calculating the "active offender population" and separately accounting for offenders in the community supervision program); SCDPPP, *Supervision Strategies*, https://www.dppps.sc.gov/ Offender-Supervision/Supervision-Strategies (describing "community supervision program" and setting forth in lay terms its statutory definition and parameters); SCDPPP, South Carolina Board of Paroles and Pardons Policy and Procedure Manual, 5 (2019) (noting the Parole Board does not have power over offenders serving in a community supervision program). Respondent's unsupported insistence that it intended "community supervision program" to have a generic meaning in its Notice, when its use of that term elsewhere accords with its statutory meaning simply defies reason. Respondent has shown nothing, in the Record or elsewhere, to support its contention that the board *meant* "revocation of probation" when it *wrote* "Failure to Successfully Complete a

Community Supervision Program."

Finally, Respondent's Notice demonstrates that Respondent intended "community supervision program" to have its statutory meaning in that document. Respondent's letter states its ***conclusion of law*** that Appellant ***must*** be denied parole. (ROA at 1). This language unequivocally indicates the Board was not acting within its discretion to grant or deny parole, but instead concluded that it was ***legally compelled*** to deny Appellant parole. In support of its legal conclusion, the Board states five findings of fact. *Id.* Of the five findings listed none, except "Failure to Successfully Complete A Community Supervision Program" legally mandate denial of parole. *See* S.C. Code § 24-21-30 (noting offenders convicted of a "no parole offense" are not eligible for parole); SCDPPP, South Carolina Board of Paroles and Pardons Policy and Procedure Manual, 5 (2019) (noting the Parole Board has exclusive provenance to grant or deny parole *except* where an offender is assigned to a community supervision program). Critically, failure to complete a community supervision program legally compels the Board to deny parole ***only if*** "community supervision program" is given its statutory meaning and not the broad meaning Respondent claims: revocation of probation is a factor the board must consider, but it does not *mandate* denial.

In summary, it is evident from statutory text, Respondent's own public use of the term elsewhere, and Respondent's Notice itself that Respondent understood the statutory meaning of "community supervision program" and intended that term to have that meaning in its Notice.

**2. Respondent's Argument is Predicated on Facts Which are Not Before the Court.**

Respondent's entire brief is predicated on its assertion that the Parole Board properly relied upon Appellant's probation being revoked in 1983 to find he "failed to complete a community supervision program." However, assuming for the sake of argument that Respondent's arguments regarding the meaning of "community supervision program" are correct (they are not), nothing in the record supports its arguments, as Appellant's prior history is not in the Record and may not be considered by the Court. *See* Rule 36 (G) SCALJ ("The Administrative Law Judge will not consider any fact which does not appear in the record").

Further, Respondent should be judicially estopped from its arguments relating to facts not in the

Record. *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 632 (2004). Respondent's arguments in reliance on these facts is entirely inconsistent with its prior opposition to entering these facts into the Record on Appeal.[2] From the outset, Respondent has had the ability, and incentive, to include any facts it deemed relevant to this Court's review but instead chose to include only the single-page document required by Rule 61. *See* R. 61 SCALC (stating the Department *need* only provide a copy of the agency decision but not prohibiting inclusion of additional documents). Not only did Respondent exclude the facts it now relies on when it filed the Record, it actively opposed Appellant's request to put these facts in the Record[3] because, as it argued, they are irrelevant to this Court's review.[4] By intentionally misleading the Court with regards to arguments it intended to raise and facts it intended to rely upon, Respondent gained the advantage of precluding Appellant from introducing any facts beyond the four corners of the Notice and then, after Appellant filed his brief, springing these arguments on him.

Respondent simply cannot have it both ways; it cannot omit facts from a Record it creates, oppose inclusion of those facts by claiming they are irrelevant, secure an Order precluding introduction of those facts and then, when convenient for its arguments, rely upon those facts in its Brief. Consequently, and in accordance with Rule 36 (G) SCALJ, Appellant request the court refuse to consider facts raised by Respondent which are not in the Record and find Respondent is judicially estopped from raising arguments based on facts not in the Record.

## CONCLUSION

For the reasons set forth above, Mr. Madden respectfully requests the Administrative Law Court: (1) reverse the final decision of the Parole Board; (2) require the Department and the Parole Board to grant Mr. Madden parole; and (3) provide any other relief that the Court deems just and proper.

*Signature Page Follows*

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[2] See Respondent's Response to Appellant's Motion to Supplement the Record on Appeal, filed Nov. 8, 2022.
[3] Appellant's Motion to Supplement the Record on Appeal at 1.
[4] Respondent's Response to Appellant's Motion to Supplement the Record on Appeal, filed Nov. 8, 2022.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Michael P. Stover
SC Bar No.104757
E-Mail: michael.stover@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 255-9475

*Attorney for Appellant*

Columbia, South Carolina
January 30, 2023

## Witnesses

Gary M. Stratton
Sam Riley
Gail Smith ✓
Ricky Miles
Ray S. Norman
W. R. Dunn

## Verdict

Foreman

(a) G. Anderson
(b) Surety

## The State of South Carolina

County of GREENWOOD

82GS24-368

**COURT OF GENERAL SESSIONS**

JUNE Term, 1982

## THE STATE

vs.

(a) CHARLES JACKSON MADDEN PTI

(b) LEWIS GARY WALKUP PTI

Nolle Prosequi as to
Lewis Gary Walkup
William T. Jones
Solicitor 6-10-82

## INDICTMENT FOR

ATTEMPTED HOUSEBREAKING WITH INTENT TO COMMIT A CRIME

William T. Jones Solicitor

Edward E. Moore Jr.
True Bill 6-7-82
Foreman of Grand Jury

McCAW PRINTERS, COLUMBIA, S. C.
A65224
A65225

I Hereby Appear In My Own Proper Person, Waive Grand Jury Action, and Plead Guilty To The Within Indictment.

William T. Jones (a) Charles T. madden (b)

SOLICITOR

JUN 10 1982

WM 19

SENTENCE

One Year,
Suspended, Probation 18 months

Conditions: 1) restitution to Mary Gail Smith for damages $>>162.00
2) enroll in & complete any recommended program of the County Alcohol & Drug Abuse Comm. & Commun. Mental Health Ctr.

6-10-82

10-5 Date Advised of Sentence

ROA 145

FORM 6

**The State of South Carolina**
County of Greenwood

**INDICTMENT FOR**
ATTEMPTED HOUSEBREAKING WITH INTENT TO COMMIT A CRIME

~~At a Court of General Sessions, convened on the~~ 7th day of June,
19 82, the Grand Jurors of Greenwood County present upon their oath:

That CHARLES JACKSON MADDEN and LEWIS GARY WALKUP

did in Greenwood County on or about the 10th day of April,
19 82,
aid, abet and assist one another in attempting to break and enter the house, to wit: dwelling of one Gail Smith with intent to commit a crime therein

Against the peace and dignity of the State, and contrary to the statute in such case and made and provided.

William T. James
Solicitor

Form 2

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT GENERAL SESSIONS

JUNE 7, 1982
Term

STATE

-VS-

CHARLES JACKSON MADDEN
Defendant

OFFENSE 82GS24-368 - Attempted Housebreaking With Intent to Commit a Crime.

The sentence of the Court is that the defendant, Charles Jackson Madden shall be in the custody of the Board of Corrections of the state of South Carolina for a term of one (1) year xxxx

SPECIAL CONDITIONS AS ORDER BY THE COURT: Restitution to Mrs. Gail Smith for damages in the amount of $162.00. (PAID). Enroll in and complete any recommended program of the County Alcohol and Drug Abuse Commission and pay the fee of the Commission.

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years.

You shall be subject to arrest, upon order of the Court, or without order, by the Probation Agent. At any time within the period of your probation the Court may, if it sees fit, impose the judgment and sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me the Order of Probation and the Conditions set out therein. I agree to comply with such conditions during the period of my probation. I have received a copy of this court order.

Witnessed by: James E. Walker Signed: Charles Jackson Maddox

Probationer

Signed this 10th day of June 19 82 ; Greenwood ,S. C.

IT IS FURTHER ORDERED: that the Sheriff or other law enforcement officers, who have the custody of the defendant, is hereby ordered to deliver said defendant to the Probation Office of this district, or if defendant is under bond, then such bond shall remain in full force until said defendant reports to the Probation Office. The conditions of probation begin (today). ~~[illegible] sentence.~~ It is further ordered that this order be filed by the Clerk of Court in his office and that he forthwith forward copy (certified) to Probation Office or the South Carolina Parole and Community Corrections Board.

This 10th day of June

19 82 , Greenwood, , S. C.

Francis B. Nicholson

Presiding Judge

8th Judicial Circuit

Francis B. Nicholson

Form Approved by
S.C. Attorney General
Section 17-13-160
October 18, 1979

Arrest Warrant A 653225

# STATE OF SOUTH CAROLINA

## ARREST WARRANT

COUNTY OF Greenwood

OR MUNICIPALITY OF Greenwood

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF Greenwood, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of defendant]: Charles Jackson Madden did on the 10th day of April, 1982, violate the criminal laws of the State of South Carolina [or ordinances of the municipality of Greenwood] as set forth below:

DESCRIPTION OF OFFENSE

Accessory before the Fact (Housebreaking)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him before me forthwith to be dealt with according to law.

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Greenwood, S.C., this 11th day of April, 1982.

Joe C Cantrell (L.S.)
Signature of Judge

**STATE OF SOUTH CAROLINA**

**AFFIDAVIT**

COUNTY OF Greenwood

Personally appeared before me, judge of this Court, one Gary M Stratton, who, first being duly sworn, deposes and says that [name of defendant] Charles Jackson Madden did within this County and State on the 10th day of April, 1982, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of Greenwood] in the following particulars:

DESCRIPTION OF OFFENSE

Accessory before the Fact (Housebreaking)

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

In that the defendant Charles Jackson Madden, did on 4/10/82 violate the laws of this State by being accessory to Housebreaking. The defendant Charles Madden did remain beside a vehicle while another person did attempt to break and enter the home of Paul Smith.

Investigation by Miles & Stratton

Sworn to and Subscribed before me

this 11th day of April, 1982.

Joe C Cantrell (L.S.)
Signature of Judge

Address of Judge _____

_____

Phone _____

Deputy Gary M Stratton
Affiant

Address _____

_____

Phone _____

FORM CONTINUES ON BACK

**ORIGINAL**

Form 11

STATE OF SOUTH CAROLINA
COUNTY OF Greenwood

STATE
-vs-

Charles J. Madden
Defendant

COURT OF GENERAL SESSIONS
ORDER OF TERMINATION

82-368

WHEREAS the defendant, Charles Jackson Madden was duly convicted of Attempted HB W/Intent to Commit a Crime at the June 10, 19 82 Term of this Court; whereupon a probation sentence was imposed, with conditions specified as to terms and length of probation; and

WHEREAS it now is made to appear to this court that the terms of probation have been met and the purposes of probation been fulfilled; Due to subject being convicted on 10-18-83 for the offense of Burglary and receiving a sentence of twelve (12) years

It is ORDERED that the said Charles Jackson Madden be and (he) ~~(she)~~ is hereby relieved of sentence previously imposed by this Court and is DISCHARGED from probation as of this date.

ORDERED:

This 18th day of October,
19 83, McCormick, S. C.

s/ John H. Smith
Judge
Eleventh Judicial Circuit

McCORMICK COUNTY- October TERM OF GENERAL SESSIONS

Indictment No. 91-GS-35-003

Warrant No. C 867119

Indicted for: Burglary 1st Degree Sec. 16-11-311

Plea To: Burglary 3rd

STATE OF SOUTH CAROLINA

COUNTY OF McCORMICK

The Prisoner Charles Jackson Madden ~~waiving ... and jury~~ is put to the Bar of this Court and arraigned, and upon his arraignment pleads guilty of Burglary 3rd.

Attest: Wendy Miller

X Charles Jackson Madden

S E N T E N C E

The defendant CHARLES JACKSON MADDEN is committed to the State Department of Corrections for a term of 2 ~~month~~/years ~~and/or to pay a fine of $~~ ~~provided upon the service of~~ months/years ~~and/or payment of $~~ plus pay/waive ~~costs and assessments as applicable*, the balance~~ suspended with probation for months/~~years~~.

Restitution Yes/No

For physical injury $_____

Property damage $_____

to be paid _____

_____

to clerk for _____ **

Other conditions _____

_____

_____

Date October 8 1991

William P. Keesley
Presiding Judge
William P. Keesley

*Costs and Assessments
Non-waivable $_____
Not waived $_____
Total $_____

Katherine P. Butler
Clerk of Court

** Pay to Victim's Compensation Fund if subrogated.

**WITNESSES**

Waldrop, MPD

**ARREST WARRANT NO.** C 867119

**ACTION OF GRAND JURY**

True Bill

*Foreman of Grand Jury*

**VERDICT**

*Foreman of Petit Jury* *Date:*

**DOCKET NO.** 91-GS 33 - 012

# The State of South Carolina,

**County of** MCCORMICK

**COURT OF GENERAL SESSIONS**

March **TERM** 1991

**THE STATE**

**vs.**

CHARLES J. MADDEN

CDR # 079

# Indictment for

BURGLARY, 1st Degree
Section 16-11-311

Donald V. Myers, Solicitor

FORM 32 (12/87)

STATE OF SOUTH CAROLINA )
)
COUNTY OF MCCORMICK )

INDICTMENT FOR

BURGLARY, 1st Degree

At a Court of General Sessions, convened on March 18, 1991, the Grand Jurors of McCormick County present upon their oath:

That CHARLES J. MADDEN did in McCormick County on or about December 22, 1990, wilfully and unlawfully enter the dwelling of Dora Dorn Robinson, 110 North Maple Street, McCormick, without consent and with the intent to commit a crime therein and the defendant:

(a) When, in effecting entry or while in the dwelling or in immediate flight therefrom, he caused physical injury to Dora Dorn Robinson a person who was not a participant in the crime; and/or

(b) The said Charles J. Madden has prior record of two or more convictions for burglary or housebreaking or a combination of both,

all in violation of Section 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

**STATE OF SOUTH CAROLINA**

COUNTY OF MCCORMICK

# AFFIDAVIT

Personally appeared before me, judge of the Court, one BILLY T. WALDROP, who being duly sworn, deposes and says that CHARLES J. MADDEN (name of defendant) did within this County and State on DEC. 22 19 90, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of XXXXXXXXXXXXXXXXXXXXXXXXXXXX] in the following particulars:

## DESCRIPTION OF OFFENSE

VIOLATE SECTION 16-11-311 OF THE SOUTH CAROLINA CRIMINAL CODE OF LAWS, 1976, AS AMENDED, WHIC IS BURGLARY IN THE FIRST DEGREE, WHILE IN THE TOWN LIMITS OF MCCORMICK, SOUTH CAROLINA.

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that such probable cause is based on the following facts:

ON DECEMBER 22, 1990, ONE CHARLES J. MADDEN DID VIOLATE SECTION 16-11-311 OF THE SOUTH CAROLINA CRIMINAL CODE OF LAWS, 1976, AS AMENDED, IN THAT HE DID UNLAWFULLY ENTER A DWELLING WITHOUT CONSENT, WITH THE INTENT TO COMMIT A CRIME THEREIN, NAMELY CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. THIS INCIDENT OCCURRED AT THE RESIDENCE OF DORA DORN ROBINSON WHICH IS LOCATED AT 110 NORTH MAPLE STREET IN THE TOWN LIMITS OF MCCORMICK, SOUTH CAROLINA. SAID CHARLES J. MADDEN HAS TWO(2) PRIOR CONVICTIONS FOR BURGLARY AND/OR HOUSEBREAKING. SAID INCIDENT CONSTITUTES THE CRIME OF BURGLARY IN THE FIRST DEGREE.

Sworn to and Subscribed before me,

This 27TH. day of DECEMBER, 19 90.

Thomas B. Minor (L.S.)
Signature of Issuing Judge

Address P.O. BOX 306
MCCORMICK, SOUTH CAROLINA 29835
Phone: 465-2225

Billy T. Waldrop
Signature of Affiant

Address P.O. BOX 306
MCCORMICK, SOUTH CAROLINA 29835
Phone: 465-2150

---

**STATE OF SOUTH CAROLINA**

# ARREST WARRANT

COUNTY OF MCCORMICK

[or MUNICIPALITY OF MCCORMICK]

**TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:**

It appearing from the above affidavit that there are reasonable grounds to believe that CHARLES J. MADDEN (name of defendant) did on DEC. 22 19 90, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of XXXXXXXXXXXXXXXXXXXXXXXXXXXX] as set forth below:

## DESCRIPTION OF OFFENSE

VIOLATE SECTION 16-11-311 OF THE SOUTH CAROLINA CRIMINAL CODE OF LAWS, 1976, AS AMENDED, WHICH IS BURGLARY IN THE FIRST DEGREE, WHILE IN THE TOWN LIMITS OF MCCORMICK, SOUTH CAROLINA.

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at MCCORMICK, S.C.
on DECEMBER 27, 19 90.

Thomas B. Minor (L.S.)
Signature of Judge
THOMAS B. MINOR

Form Approved by
S.C. Attorney General
May 13, 1983
SCCA / 518 (REV. 7/87)

FORM CONTINUES ON BACK

ORIGINAL

RETURN

A copy of this Arrest Warrant was delivered to the following defendant:

CHARLES JACKSON MADDEN

on the 28th day of DECEMBER, 19 90

Coke M. Brown

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in

MCCORMICK County XXXXXXXX (Circle one)

The accused is to be arrested and brought before me to be dealt with according to law.

June H. Dair (L.S.)

Signature of Judge

PRELIMINARY HEARING held by

Judge _____

on _____, 19____

with _____
Attorney for Defendant

Decision: _____

BAIL

Date Set _____, 19____

Judge _____

Amount _____

Surety _____

RETURN WARRANT TO:

ARREST WARRANT

No. [illegible]

STATE OF SOUTH CAROLINA

MCCORMICK XXXXX (Circle one)

THE STATE

vs.

CHARLES JACKSON MADDEN

Address: MADDEN'S TRAILER PARK
CEDAR HILL ROAD
MCCORMICK, SOUTH CAROLINA

Phone 465-3132 [illegible] 250-15-5968

Sex M Race W [illegible]-08 Weight 150

DOB 10-31-1962 [illegible] (SC)

Offense BURGLARY IN THE FIRST DEGREE

Offense Code

Code (or Ordinance) 16-11-311

Issuing Judge THOMAS B. MERO

Judge Code

Officer BILLY T. WALDROP

Agency MCCORMICK CITY P.D.

ORI No.

Date of Offense DECEMBER 22, 1990

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

ROA 156

WITNESSES:

Name BILLY T. WALDROP

Address MCCORMICK CITY P.D.

MCCORMICK, S.C. Phone 465-2150

Name CONNIE MCABEE RIBINSON

Address 110 NORTH MAPLE STREET

MCCORMICK, S.C. Phone 465-2475

Name DORA DORN ROBINSON

Address 110 NORTH MAPLE STREET

MCCORMICK, S.C. Phone 465-2475

Name CHIEF COKE M. BROWN

Address MCCORMICK CITY P.D.

MCCORMICK, S.C. Phone 465-2150

Name _____

Address _____

_____ Phone _____

JURORS

MCCORMICK CITY P.D. CASE NO.: 90-12-009

Filed 1-3-90 2:40 pm
Kathryne P. Butler (sd)
McCormick County Clerk of Court

McCORMICK COUNTY- October TERM OF GENERAL SESSIONS

Indictment No. 91-GS-35-0013

Warrant No. C 867118

Indicted for: Assault with Intent to Commit Criminal Sexual Conduct 1st Degree

Plea To: Assault [redacted] of an High and Aggravated Nature

STATE OF SOUTH CAROLINA

COUNTY OF McCORMICK

The Prisoner Charles Jackson Madden is put to the Bar of this Court and arraigned, and upon his arraignment pleads guilty of Assault [redacted] of a High and Aggravated Nature

Attest: Wendy Miller

X Charles J. Madden

## S E N T E N C E

The defendant CHARLES JACKSON MADDEN is committed to the State Department of Corrections for a term of 2 ~~month~~/years ~~and/or to pay a fine of $~~ ~~provided upon the service of~~ ~~months/years~~ ~~and/or payment of $~~ ~~plus pay/waive~~ ~~costs and assessments as applicable*, the balance suspended with probation for~~ ~~months/years~~.

Restitution Yes/No

For physical injury $_____

Property damage $_____

to be paid _____

_____

to clerk for _____ **

Other conditions _____

_____

_____

Date October 6 1991

William P. Keesley
Presiding Judge
William P. Keesley

*Costs and Assessments
Non-waivable $_____
Not waived $_____
Total $_____

Kathryn P. Butler
Clerk of Court

** Pay to Victim's Compensation Fund if subrogated.

**WITNESSES**

MPD

**ARREST WARRANT NO.** C 867118

**ACTION OF GRAND JURY**

True Bill

*Foreman of Grand Jury*

**VERDICT**

*Foreman of Petit Jury* *Date:*

**DOCKET NO.** [illegible]

# The State of South Carolina,

**County of** MCCORMICK

**COURT OF GENERAL SESSIONS**

March **TERM** 1991

**THE STATE**

**vs.**

CHARLES JACKSON MADDEN

CDR # 253

# Indictment for

ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT, 1st Degree

§ 16-3-656

Donald V. Myers, Solicitor

FORM 32 (12/87)

STATE OF SOUTH CAROLINA )
)
COUNTY OF MCCORMICK )

INDICTMENT FOR

ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT, 1st Degree
§ 16-3-656

At a Court of General Sessions, convened on March 18, 1991,

the Grand Jurors of McCormick County present upon their oath:

That CHARLES JACKSON MADDEN did in McCormick County on or about the 22nd day of December, 1990, assault Dora Dorn Robinson with intent to commit a sexual battery with and upon the body of Dora Dorn Robinson and either:

(a) The said Charles Jackson Madden did use aggravated force during the assault; AND/OR

(b) The said Dora Dorn Robinson was also a victim of forcible confinement, kidnapping, robbery, burglary and housebreaking the time of the assault,

all in violation of Section 16-3-656 and Section 16-3-652 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Donald V. Myers
SOLICITOR

STATE OF SOUTH CAROLIN/

COUNTY OF MCCORMICK

# AFFIDAVIT

Personally appeared before me, judge of the Court, one BILLY T. WALDROP, who being duly sworn, deposes and says that CHARLES J. MADDEN (name of defendant) did within this County and State on DEC. 22 19 90, violate the criminal laws of the State of South Carolina [~~XXXX

# ARREST WARRANT

**No. C** [illegible]

STATE OF SOUTH CAROLINA

MCCORMICK County / Municipality (Circle one)

THE STATE

against

CHARLES JACKSON MADDEN

Address: MADDEN'S TRAILER PARK
CEDAR HILL ROAD
MCCORMICK, S.C. 29835

Phone 465-3132 SS# 250-15-5968

Sex M Race W Height 5'08" Weight 150

DOB 10-31-1962 DL# [illegible] 27 (S.C.)

Offense ASSAULT WITH THE INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE ☐☐☐ Offense Code

Code (or Ordinance) § 16-3-652

Issuing Judge THOMAS B. MINOR ☐☐☐ Judge Code

Officer BILLY T. WALDROP

Agency MCCORMICK CITY P.D. ☐☐☐ ORI No.

Date of Offense DECEMBER 28, 1990

Date of Disposition

Disposition

Sentence

Co-Defendants

**ROA 161**

RETURN

A copy of this Arrest Warrant was delivered to the following defendant:

CHARLES JACKSON MADDEN

on the 28th day of DECEMBER, 1990

Coke M. Brown

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in

MCCORMICK County ~~Municipality~~ (Circle one)

The accused is to be arrested and brought before me to be dealt with according to law.

June N. Main (L.S.)

Signature of Judge

PRELIMINARY HEARING held by

Judge

on , 19

with
Attorney for Defendant

Decision:

BAIL

Date Set , 19

Judge

Amount

Surety

RETURN WARRANT TO:

WITNESSES:

Name BILLY T. WALDROP

Address MCCORMICK CITY P.D.

MCCORMICK, S.C. Phone 465-2150

Name CHIEF COKE M. BROWN

Address MCCORMICK CITY P.D.

MCCORMICK, S.C. Phone 465-2150

Name DORA DORN ROBINSON

Address 110 NORTH MAPLE STREET

MCCORMICK, S.C. Phone 465-2475

Name CONNIE MCABEE ROBINSON

Address 110 NORTH MAPLE STREET

MCCORMICK, S.C. Phone 465-2475

Name

Address

Phone

JURORS

RECEIVED JAN 1991

MCCORMICK CITY P.D. CASE NO.: 90-12-009

Filed 1-3-91 @ 8:40 pm

Katherine P. Butler (gd)

McCormick County Clerk of Court

McCORMICK COUNTY- October TERM OF GENERAL SESSIONS

Indictment No. 91-GS-35-240

Warrant No. C 978010

Indicted for: Murder

Plea To: Murder

STATE OF SOUTH CAROLINA

COUNTY OF McCORMICK

The Prisoner Charles J. Madden ~~waiving grand jury~~ is put to the Bar of this Court and arraigned, and upon his arraignment pleads guilty as Charged.

Attest: Cindy Miller

X Charles Jackson Madden

## SENTENCE

The defendant CHARLES J. MADDEN is committed to the State Department of Corrections for a term of life imprisonment ~~month/years and/or to pay a fine of $~~ ~~provided upon the service of~~ ~~months/years~~ ~~and/or payment of $~~ ~~plus pay/waive~~ ~~costs and assessments as applicable*, the balance suspended with probation for~~ ~~months/years.~~

Restitution Yes/No

For physical injury $_____

Property damage $_____

to be paid _____

_____

to clerk for _____ **

Other conditions _____

_____

_____

Date October 8 1991

William P. Keesley
Presiding Judge
William P. Keesley

*Costs and Assessments
Non-waivable $_____
Not waived $_____
Total $_____

Kathryne P. Butler
Clerk of Court

** Pay to Victim's Compensation Fund if subrogated.

WITNESSES

Willis, MPD

ARREST WARRANT NO. C-978010

ACTION OF GRAND JURY

True Bill

Manfred J. Mayer

FOREMAN OF GRAND JURY

VERDICT

FOREMAN OF PETIT JURY DATE:

DOCKET NO. 91-GS-33-0470

THE STATE OF SOUTH CAROLINA

COUNTY OF McCormick

COURT OF GENERAL SESSIONS

July TERM 1991

THE STATE

vs.

CHARLES JACKSON MADDEN

a/k/a DOOGER MADDEN

CDR 116

INDICTMENT FOR

MURDER

Donald V. Myers, Solicitor

FORM 5 (9/86)

STATE OF SOUTH CAROLINA )
)
COUNTY OF McCormick )

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on July 8, 1991, the Grand Jurors of McCormick County present upon their oath:

COUNT ONE - MURDER

That CHARLES JACKSON MADDEN a/k/a DOOGER MADDEN did in McCormick County on or about June 2, 1991, feloniously, wilfully and with malice aforethought, kill one Dillard L. Madden by means of shooting and did thus unlawfully kill as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

**ARREST WARRANT**

C-978010

**STATE OF SOUTH CAROLINA**

☐ County/ ☒ Municipality of McCormick

**THE STATE**

against

Charles Jackson Madden/AKA Dooger Madden

Address: CEmetery Road
Greenwood, SC

Phone: _____ SSN: _____

Sex: M Race: W Height: _____ Weight: _____

DL State: _____ DL #: _____

DOB: _____ Agency ORI #: 3301

Prosecuting Agency: Town of McCormick Police Dept.

Prosecuting Officer: Any Lawful Officer

Offense: Murder

_____ Offense Code: _____

Code/Ordinance Sec. 16-3-10

This warrant is **CERTIFIED FOR SERVICE** in the ☒ County/ ☐ Municipality of Greenwood. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: 6-4-91

**RETURN**

A copy of this arrest warrant was delivered to defendant Charles Jackson Madden on June 4, 1991.

Jimmy Reap, Greenwood S.O.
Signature of Constable/Law Enforcement Officer

**RETURN WARRANT TO:**

Filed 6-10-91 @ 9:55 A.M.
_____
McCormick County Clerk of Court

**STATE OF SOUTH CAROLINA**

☐ County/ ☒ Municipality of McCormick

**AFFIDAVIT**

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant William D. Willis who being duly sworn deposes and says that defendant Charles Jackson Madden/AKA Dooger Madden did within this county and state on June 2, 1991 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) in the following particulars:

**DESCRIPTION OF OFFENSE:** Violation S.C. Criminal Code of Laws, 16-3-10, Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On or about June 2, 1991, one Charles Jackson Madden/AKA Dooger Madden did, with Malice aforethought, kill one Dillard L. Madden while in the commission of armed robbery. Said offense occurred at 403 Cedar Hill Road, in the Town of McCormick

Sworn to and subscribed before me on June 4, 1991

Thomas B. Mann (L.S.)
Signature of Issuing Judge

William D. Willis
Signature of Affiant

Affiant's Address 117 AUGUSTA ST. POBX 306
MCCORMICK S.C. 29835

Affiant's Telephone 465-2150

**STATE OF SOUTH CAROLINA**

☐ County/ ☒ Municipality of McCormick

**ARREST WARRANT**

**TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:**

It appearing from the above affidavit that there are reasonable grounds to believe that on June 2, 1991 defendant Charles Jackson Madden/AKA Dooger Madden did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) as set forth below:

**DESCRIPTION OF OFFENSE:** Violation S.C. Criminal Code of Laws, 16-3-10, Murder

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Thomas B. Mann (L.S.)
Signature of Issuing Judge

Judge Code: _____

Judge's Address McCormick Town Hall
McCormick, SC

Judge's Telephone 465-2225

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

BAIL set by

Judge A Rivas

on 6-5-91

Type and Amount: Bond Cond. R.O.

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

_____ _____

_____ _____

_____ _____

RECEIVED
Jul 18 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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Case No. 22-ALJ-15-0013-AP

Appellate Case No. 2023-000693

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Charles J. Madden, #00182326, Appellant,

v.

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

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# CERTIFICATE OF COUNSEL

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The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by all parties and not any other material.

July 14, 2023

s/ Michael P. Stover
Michael P. Stover
S.C. Bar No. 104757
1320 Main Street, 17th Floor
Columbia, SC 29201
Email: michael.stover@nelsonmullins.com
(803) 799-2000
Attorney for Appellant