

STATE OF SOUTH CAROLINA  
In the Court of Appeals

Appeal from the Administrative Law Court

Honorable Harold W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2020-001473

RECEIVED

SEP 13 2023

SC Court of Appeals

S.C. Dep't of Prob., Parole & Pardon Servs., ..... RESPONDENT,

V.

Joseph Glen Kelsey, ..... APPELLANT.

**PETITION FOR REHEARING**

On August 30, 2023, this Court issued its published opinion in *Kelsey v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, Op. No. 6020 (Ct. App. Aug. 30, 2023), reversing the Administrative Law Court's (ALC) decision denying Appellant relief and remanding to the ALC for Appellant to "review his [parole] file, correct any inaccuracies, and be given a new parole hearing." *Id.* at \*6. The Court based its decision solely on Appellant's argument that Respondent PPP must give potential parolees access to their parole files, and declined to reach the merits of Appellant's remaining issues. *Id.* at \*6 n.2. Thus, Appellant, Joseph Glen Kelsey, requests rehearing pursuant to Rule 221(a), SCACR, for this Court to consider those remaining issues and also to preserve those issues for review in the South Carolina Supreme Court should the agency seek certiorari in this case.

In addition to his argument that he is entitled to access his parole file, Appellant raised the following issues:

- (1) Whether the Administrative Law Court's (ALC) subject-matter jurisdiction confers on the ALC the authority to reverse a parole denial when, as the Supreme Court of South Carolina has held, doing so would require the Board to grant parole to a specific person;
- (2) Whether this Court must reverse a decision of the ALC affirming a parole denial where the Administrative Law Court found that the Parole Board's decision was the result of unconstitutional, arbitrary, capricious, and procedurally defective process; and
- (3) Whether the Parole Board exceeded its statutory authority and intruded on the judicial function when it substituted its opinion, based on a factual summary that the Board refuses to disclose, about the codefendants' relative culpability in connection with the nature and seriousness of the offense, for the findings of the Supreme Court of South Carolina.

A successful party is only precluded from seeking appellate relief if it has received the full scope of the relief requested. *See State v. Sinclair*, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) (“Inasmuch as the appellant obtained the only relief he sought, this court has no issue to decide.”); *State v. Parris*, 387 S.C. 460, 465, 692 S.E.2d 207, 209 (Ct. App. 2010) (noting that, in the trial context, “[w]hen the defendant receives the relief requested from the trial court, there is no issue for the appellate court to decide.”); *see also In re Application of Blue Granite Water Co. for Approval to Adjust Rate Schedules and Increase Rates* 434 S.C. 180, 204, 862 S.E.2d 887, 900 (2021) (citing *Parris* for the same proposition).

In its August 30 Opinion, this Court ordered that Appellant be granted a new parole hearing at which “the Board compl[ies] with the law.” *Kelsey* at \*6 n.3. In his brief, Appellant also requested other forms of relief with respect to his remaining claims, including “that this Court hold that the Board acted arbitrarily and capriciously and violated his procedural due process rights under the United States and South Carolina Constitutions,” Br. App. at 30, and a holding that the Administrative Law Court had subject-matter jurisdiction over Appellant's claims and the power to remedy the Board's unlawful action. Br. App. at 20. Consideration of these three remaining issues is necessary in order to realize the full extent of the relief that this Court intended—specifically, to provide guidance to both the Board and the ALC regarding further proceedings and

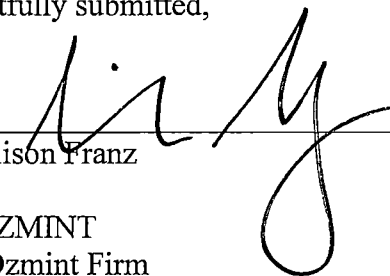
what PPP and the Board must do to “compl[y] with the law” in granting Appellant a new parole hearing. Thus, if the Court intends to grant Respondent’s Petition for Rehearing, Appellant respectfully requests that it also grant rehearing to consider the three remaining issues that the Court declined to reach.

For the reasons stated above, and to preserve the right to file a cross-petition for certiorari should Respondent seek review by the Supreme Court, undersigned counsel for Appellant submits this petition for rehearing.

Respectfully submitted,

By: \_\_\_\_\_

Allison Franz



JON OZMINT  
The Ozmint Firm  
5205 Forest Drive, Suite 1  
Columbia, SC 29206  
(803) 782-0042  
jon@ozmint.com

JOHN H. BLUME  
Cornell Law School  
159 Charles Evans Hughes Hall  
Ithaca, NY 14853  
(607) 255-1030  
jb94@cornell.edu

LINDSEY S. VANN  
ALLISON FRANZ  
ROSALIND MAJOR  
Justice 360  
900 Elmwood Ave., Suite 200  
Columbia, SC 29201  
(803) 765-1044  
lindsey@justice360sc.org  
allison@justice360sc.org  
rosalind@justice360sc.org

September 13, 2023.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of Appellant's Petition for Rehearing was served on opposing counsel by e-mail at the address provided in the Attorney Information System: Matthew.Buchanan@ppp.sc.gov. Service was made on September 13, 2023.

/s/Allison Franz  
Allison Franz  
Justice 360  
900 Elmwood Ave., Suite 200  
Columbia, SC 29201  
(803) 765-1044  
allison@justice360sc.org

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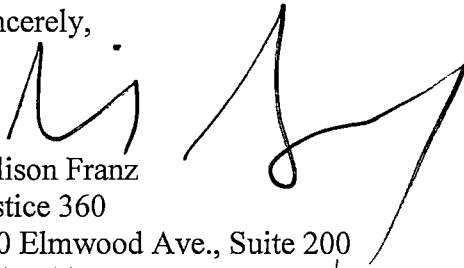
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: *Joseph Kelsey v. South Carolina Department of Probation, Parole, and Pardon Services*, No. 2020-001473

Dear Ms. Kitchings:

Enclosed for filing please find the original and six (6) copies of Appellant's Petition for Rehearing in the above-captioned case. If you should have any questions, please do not hesitate to contact our office.

Sincerely,



Allison Franz  
Justice 360  
900 Elmwood Ave., Suite 200  
Columbia, SC 29201  
(803) 765-1044  
allison@justice360sc.org

Enclosure

cc: Jon Ozmint, Esq.  
John Blume, Esq.  
Lindsey Vann, Esq.  
Rosalind Major, Esq.  
Whitney Harrison, Esq.  
Gerald Malloy, Esq.  
Allison Elder, Esq.  
Matthew Buchanan, Esq.