

specifically stated it considered the factors outlined in section 24-21-640 of the South Carolina Code, the factors published in Department Form 1212, and the actuarial risk and needs assessment factors pursuant to section 24-21-10(F)(1) of the South Carolina Code. The Board stated its findings were based upon the nature and seriousness of current offense and the use of a deadly weapon in this or a previous offense.

Appellant then filed an appeal with this Court challenging the April 12 denial. This case was assigned on June 15, 2023. On June 23, 2023, the Department filed the Record on Appeal.¹ On September 15, 2023, Appellant filed his brief in which he argues the Board: (1) violated his due process rights by failing to properly consider the relevant factors in its decision to deny Appellant parole; (2) issued an arbitrary and capricious decision based on misinformation; (3) violated Article I, Section 8 of the South Carolina Constitution by consistently denying Appellant parole solely on the basis of the nature and circumstances of the offense; and (4) violated his due process rights by considering information that the Department knew to be factually incorrect and denying him the chance to correct the information. In his brief, Appellant also cited to the South Carolina Court of Appeal's decision *Kelsey v. South Carolina Department of Probation, Parole & Pardon Services*, Op No. 6020 (S.C. Ct. App. Aug. 30, 2023), to support his argument that the Board has a duty to ensure Appellant is allowed to correct any false information that is presented to them.

On October 2, 2023, the Department filed its Brief and a Motion to Dismiss. The Department argues the Court should dismiss this appeal because it does not have jurisdiction over the routine denial of parole and the Board's decision in this case was a routine denial of parole based upon consideration of the appropriate statutory criteria. In its Brief, the Department asserts the Board did not violate Appellant's due process rights or violate the separation of powers doctrine when it exercises discretion with the result that it has consistently denied Appellant parole despite his parole eligibility. In addition, the Department specifically asserts it reviewed the materials that were before the Board and confirmed that the alleged false information was not

¹ Thereafter, Appellant filed a Motion to Supplement the Record on Appeal (Motion) and requested to submit the following to supplement the Record: (1) documents received by the agency and Parole Board Members prior to the parole hearing; (2) prior notices of Parole Board denials; (3) transcripts of Appellant's parole hearings; and (4) data collected from the Department's website. The Court denied the Motion on September 19, 2023, on the ground that the documents Appellant sought to supplement into the Record did not relate to whether the Board considered the statutory criteria, but rather sought to attack the Board's decision-making in reviewing the criteria. Thus, the documents were not relevant to the Court's limited review of whether the Board considered the requisite criteria.

presented because “the victims’ exaggerations were not within the materials.” Finally, the Department asserts that Appellant’s reliance on *Kelsey* is “premature at best and otherwise immaterial. As of the filing of this Brief, the matter is under reconsideration and therefore not final.”

As a result of the arguments presented in the filings, it is clear that the decision in *Kelsey* is dispositive of one of the issues presented in the case. Although the South Carolina Court of Appeals issued a decision in *Kelsey* on August 30, 2023, the matter was still under consideration as both parties filed Petitions for Rehearing (Petitions). As a result, on October 26, 2023, the Court held the case in abeyance pending the decision of the South Carolina Court of Appeals on the Petitions in *Kelsey*. On November 17, 2023, the Court of Appeals denied the Petitions.

The Court then held a conference call with the parties on December 11, 2023.

DISCUSSION

Before addressing the parties’ arguments, a brief overview of the decision in *Kelsey* is helpful. On August 30, 2023, the South Carolina Court of Appeals decided *Kelsey*. Op No. 6020 (S.C. Ct. App. Aug. 30, 2023). In *Kelsey*, the appellant inmate argued that he had a right to access his parole file. *Id.* at *4. The Department relied on Form 1212, section 24-21-40 of the South Carolina Code, and other statutory law to argue inmates have no right to review their parole files. *Id.* at *4-5. The Court of Appeals held that “an inmate is entitled to review his or her [parole] file.” *Id.* at *6. The Court of Appeals noted the Department’s Form 1212 imposes an affirmative requirement on inmates to correct any inaccurate information in their parole files, and inmates must therefore be allowed access to those files. *Id.* As a result, the Court reversed and remanded the matter for *Kelsey* to review his file, report any inaccuracies, and be given a new parole hearing.

Here, during his recent parole hearing, members of the victim’s family spoke and provided the Board with information Appellant contends was incorrect about the underlying offense. After learning about this information, Appellant requested his parole file from the Department to ensure the information he contends was incorrect was not included in his file, and, thus, considered by the Board when making its decision. Appellant’s request, however, was denied. Instead, the Department reviewed his parole file and confirmed that the victim’s “exaggerations were not in the materials.” Appellant then filed a formal request for reconsideration which was denied by the Department.

In this appeal, Appellant argues the Board violated his due process rights “when Respondent failed to allow [Appellant] to correct those inaccuracies before the Parole Board, or even to allow him to view his parole file to ensure that inaccurate information was not coming from multiple quarters.” Appellant asserts that pursuant to *Kelsey* and other legal authority, the “[Department] is required to disclose any information on which the Board relied in reaching its decision, including the parole file, in the administrative record.”

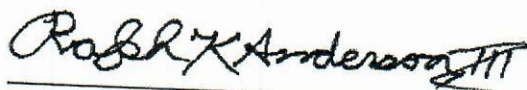
The Department objects to the Court considering *Kelsey* because the remittitur has not been issued by the Court of Appeals and the Department intends to file a Petition for Certiorari to the South Carolina Supreme Court. Therefore, the Department asserts *Kelsey* is not yet good case law. I disagree. All court of appeals decisions are binding precedent unless, and until, they are formally overruled. 20 AM. JUR. 2d *Courts* § 145. In addition, “[a]lthough the doctrine of stare decisis does not apply with full force the decision of an intermediate appellate court is the law of the jurisdiction until it is reversed or overruled by the court of last resort. 21 C.J.S. *Courts* § 202. Accordingly, the Court of Appeals’ decision in *Kelsey* is legal precedent that is binding upon lower courts, including the ALC, until it is reversed or overruled by the South Carolina Supreme Court. As a result, Appellant is entitled to review his parole file and report any inaccuracies to the Board.²

Therefore,

IT IS ORDERED that the matter is **REMANDED** to the South Carolina Department of Probation, Parole and Pardon Services.

IT IS FURTHER ORDERED that the Department provide Appellant the opportunity to review his parole file within thirty (30) days of the date of this Order. Appellant will then have thirty (30) days to either (1) request a new parole hearing based upon specific inaccuracies in his parole file or, if there are no inaccuracies, (2) refile his appeal with this Court to address the remaining issues he raised in this appeal.

AND IT IS SO ORDERED.



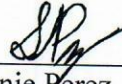
Ralph King Anderson, III
Chief Administrative Law Judge

December 21, 2023
Columbia, South Carolina

² Based on the disposition of this issue, the Court declines to address the remaining issues on appeal.

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

December 21, 2023
Columbia, South Carolina