

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from the Administrative Law Court  
Honorable Ralph King Anderson, III, Chief Administrative Law Judge  
Administrative Law Court Docket No. 23-ALJ-15-0014-AP

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Court of Appeals Case No. 2024-000008

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KAMATHENE COOPER, #145333,

Respondent,

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION,  
PAROLE AND PARDON SERVICES,

Appellant.

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**MOTION TO CERTIFY THE CASE TO  
THE SOUTH CAROLINA SUPREME COURT**

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Appellant, the South Carolina Department of Probation, Parole and Pardon Services (DPPPS), through its undersigned counsel, would respectfully show unto the Court as follows:

**I. (Parole Consideration)**

On November 30, 1984, Respondent stabbed Rheupart Stewart (Victim) and then beat him with a chair, actions which led to Victim's death. Upon committing this murder, Respondent stole the victim's checkbook and forged the victim's signature on numerous checks. Respondent was later arrested and indicted by the Florence County Grand Jury for the offenses of murder, armed robbery, and forgery. On October 4, 1985, at the conclusion of a jury trial, Respondent

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was found guilty of the offenses of murder and forgery and not guilty of armed robbery. As a result of these convictions, Respondent was sentenced to death by electrocution, but this Court later reversed his sentence and remanded for resentencing. *State v. Cooper*, 291 S.C. 332, 353 S.E.2d 441 (1986).

Following the reversal, Respondent appeared before the Honorable James M. Morris for resentencing, and was sentenced to incarceration for the remainder of his natural life for murder and a consecutive seven years' imprisonment for forgery. At the time of this conviction, South Carolina law allowed an inmate serving a life sentence to appear before the South Carolina Board of Probation, Parole and Pardon Services ("Parole Board" or "Board") upon the service of twenty years' imprisonment.

Respondent originally appeared before the Parole Board for his first consideration for parole on May 23, 2000, and was rejected. After this rejection, Respondent filed an appeal to the Administrative Law Court (ALC) on the ground that the Parole Board did not follow appropriate procedures. The Honorable Marvin F. Kittrell, Chief Administrative Law Judge, dismissed Respondent's appeal on the ground that the ALC did not have jurisdiction over a denial of parole. Respondent appealed the decision in the Court of Common Pleas for the First Judicial Circuit. On November 17, 2005, all parties appeared before the Honorable James Williams to address this appeal. On March 10, 2006, Judge Williams issued an order ruling that the ALC did have jurisdiction to decide if the Parole Board's decision to deny parole was arbitrary and capricious and an abuse of discretion. He remanded the case back to the ALC for a hearing on the merits to determine whether DPPPS and the Board failed to apply the criteria listed in the statute when denying Respondent parole. On March 22, 2006, a motion to reconsider was filed by DPPPS, which was denied on August 15, 2006.

DPPPS appealed to the Court of Appeals, and the appeal was certified directly to this Court. Ultimately this Court held that, because Cooper was challenging the method and procedure employed by the Board rather than its decision to deny parole, the ALC had jurisdiction to hear the appeal. Further, it held: “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.” *Cooper v. SCDPPPS*, 377 S.C. 489, 502, 661 S.E.2d 106, 113 (2008). The case was remanded to the Board, which denied Respondent parole after explicitly considering the statutory criteria and clearly stating it had done so in its letter of rejection.

Respondent has now been before the Parole Board twenty-one times since his first appearance, last appearing before the Board on April 12, 2023. At this most recent hearing, which is the subject of this appeal, the Board unanimously rejected Respondent for parole. In the Board’s letter denying Respondent parole, the Board stated it considered “the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record.” The Board also specifically stated it considered the factors outlined in section 24-21-640 of the South Carolina Code, the factors published in [DPPPS] 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 ultimately stated the parole rejection was based upon the nature and seriousness of current offense and the use of a deadly weapon in this or a previous offense.

## II. (Appeal to ALC)

Following his 2023 parole rejection, Respondent filed an appeal with the ALC seeking review, alleging among other things, that DPPPS violated his due process rights when it “permitted the Board to consider information that [DPPPS] knows to be factually incorrect” and by “denying [him] an opportunity to see or challenge potentially inaccurate information about the nature and circumstances of the offense.” In his brief to the ALC, Respondent cited to the recently published opinion from the South Carolina Court of Appeals, *Kelsey v. S.C. Dep’t of Prob., Parole and Pardon Services*, 441 S.C. 373, 893 S.E.2d 588 (Ct. App. 2023), in support of his argument that the Board has a duty to ensure Respondent is allowed to correct any false information that is presented to them.<sup>1</sup> DPPPS filed a brief in response and a motion to dismiss in the ALC, arguing in part that: (1) it had reviewed the materials that were before the Board and confirmed that the alleged false information was not presented because “the victims’ exaggerations were not within the materials” and (2) Respondent’s reliance on *Kelsey* was premature because at the time of filing the *Kelsey* matter was under reconsideration and therefore not final. In an Order dated October 26, 2023, the ALC noted that both parties had filed Petitions for Rehearing in *Kelsey* and ordered “that review of this case shall be held in abeyance pending the decision of the South Carolina Court of Appeals on the Petitions in *Kelsey*.”

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<sup>1</sup> In *Kelsey*, the Court of Appeals held “the language of Form 1212 requiring an inmate to notify the Board if his or her file is incorrect necessarily implies the right to review the file” and therefore concluded “an inmate is entitled to review his or her file.”

### III. (*Kelsey v. SCDPPPS*)

In an order filed November 17, 2023, the Court of Appeals denied both DPPPS's and Respondent's petitions for rehearing in *Kelsey*.<sup>2</sup> On December 11, 2023, the ALC held a conference call with the parties to discuss the *Kelsey* case next steps in Respondent's appeal before the ALC. At that time, neither party had filed a petition for a writ of certiorari with this Court; however, the ALC was advised that DPPPS was very likely to do so. Three days later, on December 14, 2023, DPPPS timely filed a "Petition for Writ of Certiorari" in this Court, asking it to review and reverse the decision of the Court of Appeals in *Kelsey*. The argument raised by DPPPS to this Court in *Kelsey* is as follows:

The Court of Appeals erred in deciding that parole-eligible inmates are entitled to review of their parole files, which are simply summaries of the case which must be prepared by Department staff on behalf of the Parole Board, without first presenting some credible, likely, or reasonably anticipated evidence of significant errors.

(Supreme Court Case No. 2023-001932). As of the date of the instant "Motion to Certify" in this matter, Respondent has not served or filed a response to Appellant's petition for certiorari in the *Kelsey* appeal.

### IV. (Order from ALC Affecting Substantial Rights and Effectively Determining the Action)

In an order dated and filed December 21, 2023, the ALC noted the Department's objection to it considering *Kelsey* as controlling law because the remittitur has not been issued by the Court of Appeals; however, the ALC held *Kelsey* is nevertheless legal precedent that is binding on the lower courts until it is reversed or overruled by this Court. Consequently, the

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<sup>2</sup> All appellate records associated with the *Kelsey* appeal before the South Carolina Court of Appeals are available for review through the South Carolina Appellate Court Public Index on the South Carolina Judicial Branch's website.

ALC ordered that the matter be immediately remanded to Appellant to: (1) provide Respondent the opportunity to review his parole file within thirty (30) days of the date of the order and (2) provide Respondent thirty (30) additional days to either request a new parole hearing or refile his appeal with the ALC to address the remaining issues he had raised.

On January 3, 2024, DPPPS filed a Notice of Appeal of the December 21, 2023, Order from the ALC. At present, neither initial briefs nor the Record on Appeal have been filed, and the matter is currently pending before the Court of Appeals.<sup>3</sup>

## V.

Pursuant to both statute and rule in our state, this Court has the discretion to certify any case pending before the Court of Appeals for review and to take jurisdiction over the matter. See S.C. Code Ann. § 14-8-210(b) (“In any case pending before the court of appeals, the Supreme Court may in its discretion, on motion of any party to the case, on request by the court of appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the court of appeals.”); see also Rule 204(b), SCACR (“In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals.”).

Significantly, it is appropriate for the Court to exercise such discretion when “the case involves an issue of significant public interest or a legal principle of major importance, or in other cases the court considers appropriate.” S.C. Code Ann. § 14-8-210(b).

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<sup>3</sup> All appellate records associated with this matter (Cooper), which is now on appeal before the South Carolina Court of Appeals, are available for review through the South Carolina Appellate Court Public Index on the South Carolina Judicial Branch’s website.

## VI.

Respectfully, DPPPS submits certification is appropriate in Cooper's case due to: (1) the significance of the issue raised in this appeal; (2) the fact that the identical issue is currently pending before this Court in *Kelsey*; and (3) Appellant's contention that the ALC's decision in this case affects substantial rights of the parties which, if implemented, effectively determines the action and prevents a judgment from which an appeal might be taken or discontinues the action. S.C. Code Ann. § 14-3-330 (2023). As explained above, an inmate's purported "right" to review his or her parole file is the only reason the ALC decided to remand Cooper's case to DPPPS and the Board. As acknowledged by the ALC, this reason is exactly the same issue addressed by the Court of Appeals in *Kelsey* and is precisely the issue which DPPPS has asked this Court to review. Although the Court of Appeals recognizes that any "right" an inmate has to review his or her parole file would merely be an implied right which springs solely from the language currently included in DPPPS Form 1212, DPPPS contends the Court of Appeals nevertheless significantly misinterpreted the language in that form in reaching the conclusion that such a "right" exists at all. This is a significant issue involving a novel question of law that, until now, has not been addressed in South Carolina. It could have broad implications both for DPPPS and the courts in South Carolina's unified judicial system. S.C. Const. Art 5, § 1.

As argued by DPPPS in *Kelsey*, the Form 1212 explicitly states that inmates do *not* have the right to examine the contents of their files, and at best implies an inmate must have a preexisting, credible, likely, or reasonable belief that there is a significant error or inconsistency in his or her parole file before then placing the burden on the inmate to notify the Board of the existence and specific nature of this belief prior to any further review. By finding otherwise, the Court of Appeals is inviting fishing expeditions, similar to the fishing expeditions decried by the

United States Fourth Circuit Court of Appeals in regard to prison files. *See Paine v. Baker*, 595 F.2d 197 (4th Cir. 1979) and *Franklin v. Shields*, 596 F.2d 800 (4th Cir. 1978). By the same token, by attempting to immediately implement the *Kelsey* opinion rather than waiting for this Court to resolve the underlying issue concerning parole files with finality, the ALC is likewise inviting Cooper and his attorneys to embark on their own fishing expedition. By forcing DPPPS and the Board to comply with a directive with a dubious, form-based foundation, the ALC runs the risk of compounding confusion that already exists over the parole consideration process and the ever-increasing push to turn it into a second trial. The latest efforts regarding parole files is simply a part of the incessant effort by inmates and their attorneys to seek substantive changes in the parole consideration process through the appellate process rather than through the legislative process. As clearly and repeatedly recognized by this Court, in South Carolina parole is a privilege, not a right. *Cooper v. S.C. Dep't of Prob., Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008).

Because this novel question of law has not yet been resolved by this Court, and could potentially have a widespread impact on parole consideration practices in our state as well as the anticipated flood of appeals stemming from dissection of those practices, DPPPS submits Cooper's case involves a legal issue of major importance and is a matter of significant public interest. For all of these reasons, DPPPS submits certification is appropriate and warranted in Cooper's case. See S.C. Code Ann. § 14-8-210 ("Certification is appropriate where the case involves an issue of significant public interest or a legal principle of major importance, or in other cases the court considers appropriate.").


**WHEREFORE**, DPPPS prays this Court will certify its appeal to the Court of Appeals for consideration by the South Carolina Supreme Court for all purposes pursuant to S.C. Code

Ann. § 14-8-210 and Rule 204, SCACR; hold the matter in the Court of Appeals in abeyance pending a ruling on Appellant's motion; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

J. BENJAMIN APLIN  
Deputy Director for Legal &  
Policy Management, DPPPS

MATTHEW C. BUCHANAN  
General Counsel, DPPPS

By:   
Matthew C. Buchanan, #73740

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COUNSEL FOR APPELLANT

January 4, 2024

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable Ralph King Anderson, III  
Chief Administrative Law Judge  
Case No. 23-ALJ-15-0014-AP

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Court of Appeals Case No. 24-000008

KAMATHENE COOPER, #145333,

Respondent,

SOUTH CAROLINA DEPARTMENT OF PROBATION,  
PAROLE AND PARDON SERVICES,

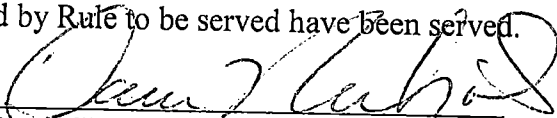
Appellant.

**CERTIFICATE OF SERVICE**

I, Dawn K. Nichols, Executive Administrative Assistant, certify that I have served the within Motion to Certify the Case to the SC Supreme Court, dated January 4, 2024, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, this 4<sup>th</sup> day of January, 2024, addressed to:

Allison Franz, Esquire  
Lindsey Vann, Esquire  
Justice 360  
900 Elmwood Ave., Suite 200  
Columbia, S.C. 29201

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

  
**Dawn K. Nichols**  
**Executive Assistant**  
South Carolina Department of Probation,  
Parole, and Pardon Services  
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State of South Carolina  
Department of Probation, Parole and Pardon Services

HENRY McMASTER  
Governor



JODI GALLMAN  
Acting Director

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January 4, 2024

The Honorable Patricia Howard  
Clerk of the S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Re: Kamathene Cooper, #145333 v. SCDPPPS  
Case No.: 24-000008

Dear Ms. Howard:

Enclosed please find the original and six (6) copies of the Appellant's Motion to Certify the Case to the SC Supreme Court, along with proof of service, for filing in your office.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan".

Matthew C. Buchanan  
General Counsel

MCB:dn

cc: Allison Ann Franz, Esquire  
Lindsey Vann, Esquire  
The Honorable Jenny Kitchings

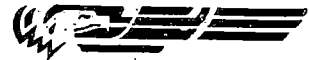
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