

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Mar 11 2024

SC Court of Appeals

Appeal From The Administrative Law Court
Honorable H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2021-001162

LARRY BLACKWELL, #176790APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICESRESPONDENT.

MOTION TO SUPPLEMENT THE RECORD AND TAKE JUDICIAL NOTICE

Pursuant to SCACR 212(b), Appellant moves to supplement the Record on Appeal with the following¹:

- (1) The South Carolina Department of Paroles and Pardons Policy and Procedure Manual (Nov. 2019) (“Parole Board Manual”);
- (2) A redacted copy of the most recent version of the 30-day hearing notification letter sent to attorneys representing a potential parolee before the Board; and
- (3) The meeting minutes from the Board of Paroles and Pardons Administrative Meeting on Wednesday, July 12, 2023, which was provided to select attorneys representing parole-eligible inmates on July 26, 2023 (“Meeting Minutes”).

These documents are agency created documents, forms, or records developed and published by Respondent and used in every parole case. Ironically Respondent refuses to consent to its own standard form, its own meeting minutes, and its own Policy and Procedure Manual,

¹ Appellant sought Respondent’s consent to supplement the record. Respondent did not consent.

documents intended to ensure that the Board's process is fair and in compliance with law and constitutional standards. This is the very governing Manual that Respondent provides to Board members, agents, and staff, containing guidance, and stating the rules, policies, procedures, and forms governing the entire parole process before, during, and after this and every parole hearing. It is clearly relevant to this case and should be included in the record.

In addition, Appellant submits that the Court may take judicial notice of information contained in the Parole Board Manual and the Meeting Minutes. SCRE 201(d) ("A court shall take judicial notice if requested by a party and supplied with the necessary information.") "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Id.* (b).

A court may properly take judicial notice of matters of public record, and specifically of public records produced by an executive agency that prescribe rules and regulations for the conduct of agency business. *See, e.g., New York Indians v. United States*, 170 U.S. 1, 32 (1898); *Caha v. United States*, 152 U.S. 211, 222 (1894) ("[W]herever, by the express language of any act of Congress, power is entrusted to either of the principal departments of government to prescribe rules and regulations for the transaction of business in which the public is interested, and in respect to which they have a right to participate, and by which they are to be controlled, the rules and regulations prescribed in pursuance of such authority become a mass of that body of public records of which the courts take judicial notice."); *Goldfarb v. Mayor & City Council of Baltimore*, 791 F.3d 500, 508 (4th Cir. 2015); *Hall v. Virginia*, 385 F.3d 421, 424 n.3 (4th Cir. 2004); *Davenport v. Piedmont Mfg. Co.*, 169 S.C. 165, *Scanwell Logistics (CHI) v. VIS*, 2018 S.C. C.P. LEXIS 1602, at *2 n.2 (Common Pleas 13th Circ 2018). In addition, "[m]inutes of a government agency's board

meeting may be judicially noticed as public records.” *Webb v. Cnty. of El Dorado*, 2016 U.S. Dist. LEXIS 96931, at *4 (citing *Sumner Peck Ranch, Inc. v. Bureau of Reclamation*, 823 F. Supp. 715, 724 (E.D. Cal. 1993)); *see also Bennett v. City of Kingman*, 543 F. Supp. 3d 794, 801 n.2 (D. Ariz. 2021).

PPP, a government agency, is a “public body,” and as such, its meeting minutes are public records. S.C. Code §§ 30-4-20(a) (defining “public body” to include 30-4-90(4)(b) (“[agency meeting] minutes shall be public records”). Similarly, PPP’s “administrative staff manuals,” including the Parole Board Manual, are also public information. S.C. Code § 30-4-50(A)(2); Parole Board Manual at 15 (recognizing that “administrative manuals, including this manual,” are public information subject to disclosure under the Freedom of Information Act). Therefore, both documents are properly subject to judicial notice as public records of an executive agency.

Consequently, Appellant requests that this Court allow Appellant to supplement the record with the Parole Board Manual, the Meeting Minutes, and a redacted copy of PPP’s 30-day hearing notification letter. In addition, Appellant requests that this Court take judicial notice of the Parole Board Manual and the Meeting Minutes.

Respectfully submitted,

/s/Jon Ozmint

Jon Ozmint

The Ozmint Firm, LLC

PO Box 17554

Greenville, SC 29606

(803) 429-9331

jon@ozmint.com

Allison Franz

Justice 360

900 Elmwood Ave., Suite 200

Columbia, SC 29201

(803) 765-1044

allison@justice360sc.org

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Appellant’s Motion to Supplement the Record and Take Judicial Notice 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 March 11, 2024.

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