

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Administrative Law Judge

Appellate Case No. 2024-000295

Michael Pettinato, #218405,.....Appellant,

v.

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

RECORD ON APPEAL

Appellant proposes the following to be included in the Record on Appeal:

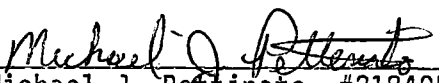
1. NOTICE OF HEARING dated March 8, 2023;
2. Letter dated March 27, 2023, To DPPPS seeking to have Parole Hearing Re-scheduled;
3. Notice of Rejection dated April 12, 2023;
4. 2 Page Letter of Appellant to DPPPS dated April 26, 2023;
5. 2 Page Letter of Appellant to DPPPS dated June 1, 2023;
6. Respondent's June 12 2023 Final Decision;
7. Appellant's June 23, 2023 letter to ALC Clerk seeking NOA Forms and explaining the situation;
8. Appellant's July 5, 2023 Cover Letter to July 5, 2023 NOA;
9. NOA dated June 26, 2023 and filed July 5, 2023;

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SC Court of Appeals

10. Certificate of Service of July 5, 2023, Notice of Appeal ("NOA");
11. August 3, 2023 Letter from Pettinato to ALC Clerk;
12. August 17, 2023 Letter from Pettinato to ALC Clerk;
13. September 17, 2023 Letter from Pettinato to Judge Anderson;
14. ALC Memorandum dated September 18, 2023;
15. Notice of Appeal dated September 26, 2023;
16. Letter from SCDPPPS dated September 25, 2023;
17. Cover Letter to Combined Motion For Enlargement Of Time;
18. Combined Motion For Enlargement Of Time And Other Relief;
19. ALC Order of Dismissal dated February 6, 2024;
20. Notice of Appeal to the Court of Appeals dated February 19, 2024;
21. Order of Court of Appeals filed March 28, 2024;
22. Letter from the Court Of Appeals dated May 8, 2024;
23. Order of Dismissal filed June 10, 2024;
24. Appellant's Petition For Rehearing/Reconsideration dated June 17, 2024;
25. Proof Of Service of Appellant's Petition For Rehearing/Reconsideration dated June 17, 2024;
26. Order Granting Petition For Rehearing as Motion To Reinstate Appeal;
27. Letter of Court of Appeals dated July 2, 2024, informing Appellant of due date of August 1, 2024;

I, Michael J. Pettinato, hereby CERTIFY that the Record On Appeal contains all material proposed by Appellant to be included and not any other material.

August 19, 2024  
Fairfax, South Carolina

  
Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A24  
1057 Revolutionary Trail  
Fairfax, SC 29827

Appellant, Pro Se

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

March 8, 2023

Mr. Mitchell Pettinato #00218405  
Allendale Correctional Institution  
P.O. Box 1151  
Fairfax, SC 29827

**RE: NOTICE OF HEARING**

Hearing Date: Wednesday, April 12, 2023 Arrival Time: 7:45 AM  
Location: Ridgeland Correctional Institution  
P.O. Box 2039  
Ridgeland, SC 29936

Dear Mr. Pettinato:

This is to inform you that your parole hearing is scheduled for the above date. Your hearing will be held at the above location. Family members or supporters should report at the above noted time. Your hearing will be by way of videoconference, which means that the Board will review your case on a television monitor.

You can have a total of three (3) visitors or family members appear with you and you may retain an attorney at your own expense. It is your responsibility to notify visitors or family members of the date and time they will need to be at your hearing. Also, you must notify your attorney if he or she has not requested in writing such notifications from this agency.

Please find enclosed parole hearing information sheet. It may be necessary to provide your family members or visitors a copy.

Sincerely,

A handwritten signature in black ink, appearing to read "Valerie Suber".

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

4/12/2023

Michael J. Pettinato, # 218405  
Allendale Corr. Inst., F3 A-27  
P.O. Box 1151  
Fairfax, SC 29827

SD PPS

Attn: Parole Hearing Administrator  
Hearing Date: April 12, 2023

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Board Support Services

march 27 2023

Dear Sir/Madam:

Please reschedule my hearing date for parole.

I did not receive at least 30 days prior notice of the hearing as required by law and I am unprepared. I received my Notice on March 20, 2023 after the Allendale Mail Room received the letter on March 17, 2023 (Friday) and sent me an OTR to pick it up on Monday. See enclosed copy of envelope.

Also, my circumstances have changed as I do not plan to return to Spartanburg, but rather I intend to go to Charleston when granted parole.

Thank you in advance for your assistance in this matter.

Sincerely,  
Michael J. Pettinato  
Michael J. Pettinato

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

April 12, 2023

Mr. Mitchell Pettinato #00218405  
Allendale Correctional Institution  
P.O. Box 1151  
Fairfax, SC 29827

RE: NOTICE OF REJECTION

Dear Mr. Pettinato:

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:

01 Nature And Seriousness Of Current Offense  
03 Use Of Deadly Weapon In This Or Previous Offense  
Vote Count: Unanimous To Reject

Sincerely,

A handwritten signature in black ink, appearing to read "Valerie Süber".

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

Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A-27  
P.O. Box 1151  
Fairfax, SC 29827

April 26, 2023

S.C. Dept. of Probation,  
Parole and Pardon Servs.  
Attn. Matthew Buchanan, Esq.  
General Counsel  
P.O. Box 207  
Columbia, SC 29202

RE: Parole Information

Dear Mr. Buchanan:

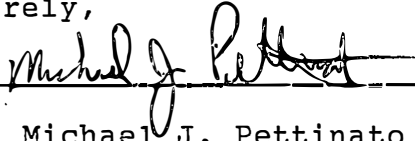
I would appreciate it if you would please provide me with the following information:

1. Please inform me as to how many Parole support letters were received at the SCDPPPS on my behalf and provided to the Parole Board prior to or during my hearing of April 12, 2023;
2. Please provide me with the means and method for an individual such as myself, to seek an Appeal, A Rehearing, a Reconsideration, or any other post hearing remedy within the SCDPPPS, and if none exists, please state that none exists. Please refrain from informing me about a Routine Denial of Parole" as that will only cause me to write again to seek the information that I require. I am already aware that you always state that there is no appeal from a "routine denial of parole" and I am not concerned about a "routine denial of parole."
3. Please send me a NOTICE OF APPEAL to the Administrative Law Court as I have been made aware that Michael Shannon asked for you to send me one with the Rejection Letter should your Board decide to Deny me parole even though they are aware that they did not provide me with at least 30 DAYS PRIOR NOTICE OF THE DATE AND PLACE OF THE HEARING AS REQUIRED BY LAW and even though your agency received my letter dated March 27, 2023 requesting that the hearing be rescheduled because of the inadequate NOTICE and

my change of circumstances.

Thank you in advance for any assistance you may be able to provide in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael J. Pettinato", is written over a horizontal line.

Michael J. Pettinato

Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A-27  
P.O. Box 1151  
Fairfax, SC 29827

June 1, 2023

SCDPPPS

Attn: Matthew Buchanan, Esq.  
General Counsel  
P.O. Box 207  
Columbia, SC 29202

RE: Michael J. Pettinato  
Motion TO Vacate, Or Rehearing, or Reconsideration  
dated on or about April 27, 2023

Dear Mr. Buchanan:

As you should be aware, I sent a MOTion as referenced above on or about the date specified above and included a true copy of the Notice Of Rejection, along with a copy of the envelope that the Notice came in, to show that I did not receive 30 days Notice of the Date and Place that the Parole Hearing was suppose to be held.

I never received any reply whatsoever to my Letter Motion.

Once again, the Notice Of Rejection failed to provide at least 30 days Notice of the date and place of the hearing as required by law and by your own policy.

It is my understanding, that your Parole Board Chairman told the Victim/Witness at the hearing, that she received my Letter dated March 27, 2023 in which I requested that the hearing be postponed and rescheduled because I did not receive adequate Notice as required and a change of circumstances existed, however, she stated that "the parole statute does not require 30 days notice!"

That is essentially correct, however, the APA Act requires at least 30 days Notice, your own Parole Manual of 2019 requires same, and each Notice of Rejection Letter states that the person being DENIED Parole will be notified 30 days prior to the next hearing (in my case, in about 2 years). Furthermore, the place of the hearing was Allendale and NOT Ridgeland as asserted in the Notice, and the time of the hearing was about 3:30 p.m., and not 7:45 A.M.

Additionally, I will point out that the Parole Statute requires a hearing to be held every two years. My last hearing was in June of 2021, so April 12, 2023 would not be two years from June of 2021.

I also asked you about your APpeal procedures in that the SCDPPPS is a State Agency and there must be some procedures available when the Board fails to abide by the law.

I am attempting to exhaust my state remedies as to the procedure used to DENY me parole and the fact that the SCDPPPS fails to follow its own procedures as set out in its Parole Manual, as well as routinely fails to provide Due Process prior to, during and after the hearing.

Once again, I requesting that your Agency take this Letter Motion as a

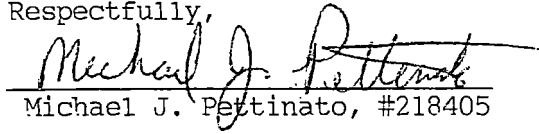
Amended or Supplement Motion to either Vacate the Parole Board's Order and set a new Parole Hearing date in which I be provided adequate Notice, or set a date for a Rehearing, or for Reconsideration, so I may have a Hearing at which I am lawfully entitled to be present and speak my peace in the matter.

I do not understand the delay in responding to my letter Motion, however, it may be because your Agency is also short staffed, but I need to proceed in this matter so as to protect my rights.

Please reply with a FINAL DECISION in this matter so I may proceed with my appeal or other litigation, as this is not acceptable.

Thank you in advance for any assistance you may be able to provide in this matter.

Respectfully,

A handwritten signature in cursive script that reads "Michael J. Pettinato". The signature is written in black ink and is positioned above a horizontal line.

Michael J. Pettinato, #218405

**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.dppps.sc.gov/](http://www.dppps.sc.gov/)

June 12, 2023

Michael J. Pettinato #218405  
Allendale Correctional Institute  
P.O. Box 1151  
Fairfax, South Carolina 29827

Dear Mr. Pettinato:

This letter is in response to your June 1, 2023 letter regarding your request for a reconsideration. Please be aware that the Parole Board grants requests for reconsideration at its own discretion.

The grounds for your request appear to be that you did not receive 30 days notice before your scheduled hearing. Please be aware that there is no statutory requirement that inmates receive precisely thirty days notice. Your correspondence with the Department shows that you did in fact receive notice of the hearing. Your own refusal to appear on your behalf was your decision, not the Board's.

As an additional matter, your 2021 hearing was conducted on April 14, not in June as you assert. You were heard two years from the date of your last hearing.

Furthermore, the agency's "final decision" regarding your parole denial was contained within your letter of rejection dated April 12, 2023.

I hope this addresses your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan", written over a horizontal line.

Matthew C. Buchanan  
General Counsel

Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A-27  
1059 Revolutionary Trail  
P.O. Box 1151  
Fairfax, SC 29827

June 23, 2023

Honorable Jana E. Shealy  
Clerk  
South Carolina Administrative Law Court  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

RE: Appeal Forms For Appealing SCDPPPS  
Decisions and Other Information

Dear Ms. Shealy:

I would appreciate it if you would please send me FOUR (4) NOTICE OF APPEAL Forms for filing Appeals from the Decisions of the Parole Board and the SCDPPPS.

I have asked Matthew Buchanan, General Counsel for SCDPPPS, to please send me the Notice Of Appeal forms so I may appeal the unlawful Decisions and unlawful Procedure Used regarding my Parole Hearing and the Decision to Deny Parole as well as the Decision To Deny My Motion To Vacate, To Reconsider or To Hold a Rehearing, however, in an attempt to deprive me of my right to Judicial Review, Mr. Buchanan has refused to send me any Appeal Forms and none are available here at Allendale.

I also request please, that you send me any forms I may need to seek an Injunction and/or Order requiring the Board to SetUp and Hold a Parole Hearing For Me Immediately, with me being permitted to be present, argue my case and exercise my Constitutional and Statutory Rights.

To briefly explain, the Board held a Hearing without me being present and without a voluntary waiver from me, on April 12th at about 3:30 P.M. The hearing was held because the DPPPS provided me with a NOTICE OF HEARING dated March 8, 2023, stating that the hearing would be held at Ridgeland C.I., although I am at Allendale C.I., and I received the letter on March 20th, thereby providing me with only 23 days Notice instead of the 30 days required by law and providing me Notice that the Hearing would be held at Ridgeland (an Institution that I was not housed at), which it wasn't.

I wrote a letter to the SCDPPPS dated on or about March 27, 2023, in which I asked to have the Hearing re-scheduled because of having inadequate Notice and a change in circumstances. I never received a reply. I spoke with the Allendale Parole Examiner (Ms. Collins) on or about Monday, April 10th, advised her of the situation and told her I haven't heard back from anyone at the SCDPPPS. She said she would check in and let me know but she didn't think the Board would allow it. I asked her if I should have my daughter look into it because the law requires at least 30 days Notice and I received a Postponement in 2014 when I was provided only 29 days Notice, due to a medical situation. She said again, she would look into it and let me know.

On Wednesday, April 12, 2023, no one came to get me to transfer me to

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Ridgeland C.I. for the hearing and I had heard from no one, so I understood that the hearing date would be reset. At about 2:30 p.m., I was told to go see the Classification Supervisor, Ms. Kreb and I did. She simply asked me, "what do you want me to tell the Board?" I explained everything to her and said I haven't heard anything in response and Ms. Collins said she would let me know. Ms. Kreb said that Ms. Collins wasn't here and asked again, what she should tell the Board. I thought she was sending the Board a message on the Computer and I said again that I asked for a postponement and to have it re-scheduled because of Inadequate Notice and a change in circumstances whereas I was not planning on going back into the community (Spartanburg), but instead was taking the MEN IN TRANSITION Class offered by Freshstart and I was planning to go to Charleston when Paroled. She said OK. At about 3:40 p.m., if I recall correctly, I spoke with my daughter Tracy on the phone and she said that my other daughter Melissa told her that they had the hearing without me, that I was denied, that at the hearing, the Chairman stated that she had my letter and stated, among other things, that the law does not require 30 days Notice.

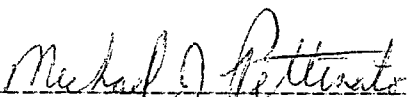
I researched the law and prepared to appeal or take other legal measures when I received the NOTICE OF REJECTION on or about April 20th, if I recall correctly. I then sent a self-styled MOTION TO VACATE, REHEAR OR RECONSIDER dated around April 25th and explained once again, that I had a change of circumstances and I received inadequate Notice. After receiving No Reply, I sent another letter dated June 1, 2023, and Mr. Buchanan responded in a letter dated June 14, 2023, however, his letter was non-responsive to my Motion other than to state that the Board holds a Rehearing in its own discretion.

As far as I am concerned, while the self-styled Motion was filed with the Agency, that tolled the time for filing an Appeal despite Matthew Buchanan's attempts to stop me from appealing by failing to provide the forms that I requested and his failing to provide a straight answer to my self-styled Letter Motion. Mr. Buchanan has the two letters that I sent to him and I don't have copies of those letters.

So what I am asking you for, are any necessary forms that I may need in order to file Appeals with the ALC and to seek Injunctive Relief or an Expedited Order because I am being prejudiced since I must wait two years for another Parole Hearing and the SCDPPPS has already deviated from the required two years for each hearing. In other words, my first hearing was 2014, the next was 2016, then 2019 instead of 2018, then 2021, and then in 2023 without me being present and being permitted to exercise my Statutory and Constitutional Rights and without any kind of a valid waiver.

Thank You in advance for any and all assistance that you may be able to provide in this matter.

Sincerely,

  
Michael J. Pettinato

cc: File

Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A-27  
1057 Revolutionary Trail  
Fairfax, SC 29827

July 5, 2023

Honorable Jana E. Shealy  
Clerk  
S.C. Administrative Law Court  
1205 Pendleton St., Suite 224  
Columbia, SC 29201

RE: Notice of Appeal of Final Decision;  
Appeal of Decision Denying Motion To  
Vacate, Rehear or Reconsider; and copies of  
Envelopes showing dates Decisions arrived at  
Allendale Corr., Inst. Mail Room

Dear Ms. Shealy:

Enclosed for filing please find a Notice of Appeal and other documents as referenced above.

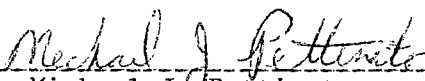
Also enclosed please find a copy of each of the documents referenced above of which, after being clock-stamped and having a Docket Number placed on them, I ask that you please send copies of same to me for my records.

I have enclosed a self addressed, postage prepaid envelope as is customary.

I also ask that you please provide me with any forms that may be available for me to have this case expedited or to seek an injunction because I am being prejudiced and irreparably harmed by the Quasi-Judicial decision of the Board to Deny me Parole without allowing me to be present and argue my case as I have a right to do by law, of which the Parole Members all know very well, and of which was caused by their own Agency's unlawful failure to provide me with adequate Notice of the time, date and place of the hearing and the fact that I won't have another hearing for two (2) years.

Thank you in advance for your assistance in this matter.

Respectfully,

  
Michael J. Pettinato

cc: File

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

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APR 22 2024

SC Court of Appeals

Michael J. Pettinato, #218405,

Appellant,

vs.

South Carolina Dep't of Probation,  
Parole and Pardon Servs.,

Respondent.

NOTICE OF APPEAL

DOCKET NO. \_\_\_\_\_

Notice is hereby given that Michael J. Pettinato does hereby appeal the NOTICE OF REJECTION of the S.C. Dep't of Probation, Parole and Pardon Servs., dated April 12, 2023 and received by Appellant on April 20, 2023 and the Final Decision of the S.C. Dep't of Probation, Parole and Pardon Servs., dated June 12, 2023 and received by Appellant on June 15, 2023, both of which are attached hereto and incorporated into the record by reference.

A General Statement of the grounds and issues for appeal is:

The Findings, Inferences, Decisions, Actions and Omissions of the Agency violate all provisions of S.C. Code § 1-23-380(5)(a)-(f), as amended (2008) and deprive Appellant of his rights guaranteed and Protected by U.S.C.A. 14th Amend.; S.C. Const., art. I, § 3; & Art. I, § 22; and S.C. Statutes; Federal Case Law; State Case Law; and SCDPPPS Regulations, Policy and Procedure.

I. Pettinato was Arbitrarily DENIED: (a) Adequate Notice of the Time Date and Place that his Parole Hearing was to be held whereas he received Notice of only twenty three (23) days of the hearing Date, Was Provided with the wrong Place where the hearing would be held, and the wrong Time the hearing would be held; (b) Right Of Access To The Board; (c) Right To An Opportunity To Be Heard At A Meaningful Time And In A Meaningful Manner; (d) Right To Argue His Case To The Board; (e) Right To Require The Board To Adhere To Statutory Requirements; (f) Right To Have The Board Consider All Letters/Evidence Sent In Support Of Him Being Paroled; (g) Right To Compel The Agency To Follow Its Own Procedures; (h) Right To Compel The Board To Adhere To State Parole Statutes and The Intent Of The Legislature; and, (i) Right to a full, fair and meaningful parole hearing which, inter alia, includes a Board consisting of all unbiased members having no conflict of interests.

II. Pettinato was prejudiced and continues to be irreparably harmed where the unlawful and arbitrary actions and omissions of the Board and its agents, deprived him of his Constitutional and Statutory rights asserted above and deprived him of a full, fair and meaningful opportunity to obtain conditional release and the benefits of conditional release, of which he has rightfully earned.

Michael J. Pettinato, #218405  
Appellant's Name

Michael J. Pettinato  
Signed

Allendale Corr., Inst., F3 A-27  
Mailing Address  
1057 Revolutionary Trail

June 26, 2023  
Date

Fairfax, SC 29827

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

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APR 22 2024

SC Court of Appeals

Michael J. Pettinato, #218405, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
South Carolina Dep't of Probation, )  
Parole and Pardon Servs., )  
 )  
Respondent. )


CERTIFICATE OF SERVICE

Docket No. \_\_\_\_\_

I, Michael J. Pettinato, hereby, do Swear under penalty of perjury, that I have on this date, served a True Copy of a NOTICE OF APPEAL, a NOTICE OF HEARING dated March 8, 2023 and copy of the Envelope showing that it was received by the Institutional Mail Room on Mar 17, 2023; a NOTICE OF REJECTION dated April 12, 2023 and copy of the Envelope showing that it was received by the Institutional Mail Room on April 20, 2023; and the FINAL DECISION DENYING APPELLANT's self-styled Letter Motion To Vacate, Rehear, or Reconsider the Decision and a copy of the envelope showing that it was received by the Institutional Mail Room on June 14, 2023; by hand delivering same to the Allendale Corr., Inst., Mail Room Clerk, for deposit into the U.S. Mail, First Class Postage prepaid, addressed as follows:

S.C. Dept. of Probation,  
Parole & Pardon Servs.  
Matthew Buchanan, Esq.  
General Counsel  
293 Greystone Blvd.  
P.O. Box 207  
Columbia, SC 2902

July 5<sup>th</sup>, 2023  
Fairfax, South Carolina

  
Michael J. Pettinato, #218405  
Allendale C.I., F3 A-27  
1057 Revolutionary Trail  
Fairfax, SC 29827

Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A-27  
1057 Revolutionary Trail  
Fairfax, SC 29827

August 3, 2023

Honorable Jana E. Shealy  
Clerk  
S.C. Administrative Law Court  
1205 Pendleton St., Suite 224  
Columbia, SC 29201

RE: Notice of Appeal of Final Decision;  
Appeal of Decision Denying Motion To  
Vacate, Rehear or Reconsider; and copies of  
Envelopes showing dates Decisions arrived at  
Allendale Corr., Inst. Mail Room

Dear Ms. Shealy:

I sent a Notice of Appeal and other documents to your office as referenced above, on or about July 5, 2023. I have not received my copies back or any other document in reference to this matter.

Previous to filing the above mentioned Notice of Appeal, I had also sent a letter asking for some NOTICE OF APPEAL FORMS and again, I have received nothing.

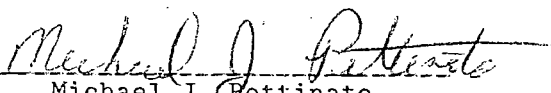
Please return my copies of the above documents after they are clock stamped and assigned a case number, in the envelope that I have provided please. And I would appreciate the other information that I requested as well.

If there is some problem and I am not going to be permitted to go forward with my case, please let me know and I will consider any other options that I may have,

I note again that I am trying to expedite this case because I am being irreparably harmed in that I am arbitrarily being denied access to the Parole Board, being denied my parole hearings I am entitled to as of right, being denied the right to be heard, and, among other things the Board is failing to adhere to statutory requirements and otherwise exceeding its authority.

Thank you in advance for your assistance in this matter.

Respectfully,

  
Michael J. Pettinato

cc: File

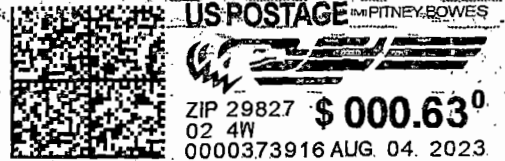
Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A-27  
1059 Revolutionary Trail  
P.O. Box 151  
Fairfax, SC 29827

This matter will be  
looked into.

ADMINISTRATIVE LAW COURT

Attn: Clerk of Court

1205 Pendleton St., Suite 224  
Columbia, SC 29201

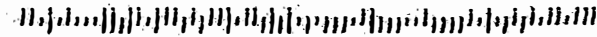


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SC ADMIN. LAW COURT

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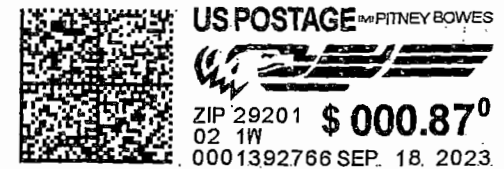


STATE OF SOUTH CAROLINA  
Administrative Law Court  
EDGAR A. BROWN BUILDING  
1205 PENDLETON STREET, SUITE 224  
COLUMBIA, SOUTH CAROLINA 29201

Hello,  
You must use the Notice  
of Appeal form (for  
your copy). Attached  
are some extras. Once  
they are sent back  
properly, I can send  
them back to you.

419927

Michael Pettinato, # 218405  
Allendale Correctional Inst.  
P.O. Box 1151  
Fairfax, SC 29827

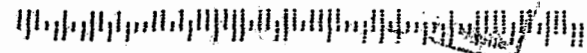


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MAILROOM  
- ACI

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Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A-27  
1057 Revolutionary Trail  
Fairfax, SC 29827

August 17, 2023

Honorable Jana E. Shealy  
Clerk  
S.C. Administrative Law Court  
1205 Pendleton St., Suite 224  
Columbia, SC 29201

RE: Notice of Appeal of Final Decision Of SCDPPPS  
Appeal of Final Decision of SCDPPPS Denying Motion To  
Vacate, Rehear or Reconsider; and copies of  
Envelopes showing dates the Decisions arrived at  
Allendale Corr., Inst. Mail Room and approximate  
dates that I received the decisions.

Dear Ms. Shealy:

On or about July 5, 2023, I delivered to the Allendale Corr., Inst., Mail Room, the above referenced documents to be filed with your Office. My Notice of Appeal and other documents were considered FILED when they were delivered to the Institutional Mail Room.

On that same date, I served a true and legible copy of each document on Matthew Buchanan, General Counsel for the SCDPPPS.

I waited for my copies to be returned to me, however they never were sent back to me in the postage prepaid envelope that I provided.

I sent your office other letters also, inquiring into the whereabouts of my copies and asking for BLANK NOTICE OF APPEAL FORMS for Appealing a Final Decision of the SCDPPPS.

Last week, I received 2 Forms for filing appeals from Final Decisions of the SCDC and a post-it-note- stating that "this will be looked into."

I do not recall the exact date that I sent your office the above documents and served Matthew Buchanan, however, Matthew Buchanan knows because he received the documents and the Certificate of Service. Michael Buchanan will not reply to my letters, In fact, when I wrote him about my parole situation, I specifically asked him for Notice of Appeal forms and he failed to send them to me. In fact, he refuses to send me the self-styled Motion that I filed with his Agency asking for the Final Decision to Be VACATED, FOR A REHEARING, OR RECONSIDERATION, since that document would be evidence of the improprieties that occur within that Department.

I am unable to proceed because I do not have my copies that I sent to be filed with the ALC. I do not even know if your office did finally receive them or not. I do not know what "is being looked into," because I received no further information.

I do not wish to file another appeal because it will be considered untimely and there should be no need since I already delivered the above

referenced Notice of Appeal and other Documents to the Mail room and served them on Matthew Buchanan, albeit without a file number because I never received my copies from your agency.

Is it possible for you or someone from your Office to obtain copies of the Notice of Appeal and other documents from Matthew Buchanan at the SCDPPPS and send me copies after they are file stamped, or do I need to try to start the whole process over again, or am I just simply denied a remedy because someone screwed up?

I point out that the Chairman of the Parole Board DENIED me parole without allowing me to appear before the Board, denied me adequate Notice of the Time, Date and Place of the hearing and failed to adhere to SCDPPPS own Policy and Procedures.


I have also attempted to obtain assistance from SCDC Staff at Allendale to no avail, as they claim that they sent any mail out that I took to the mail room. The date that I took it to the mail room can be verified by their Mail Room, or Financial Department since they had to pay my postage for the letter to your office and the SCDPPPS, and then debit my account later when I receive some funds. So they they should have a record of the date that the Notice of Appeal and other Documents referenced above, were hand delivered to them as well, however, they will not cooperate with my efforts to obtain the date and the amount of postage placed on each envelope so I can verify that what I say is true. That is what SCDC is all about I guess.

Again, I am at a loss as to how to proceed and what, if anything, the ALC knows about this or is doing about it, if anything.

In replying to this, if you or an Administrative Law Judge will please do so, please send me two (2) Notice of Appeal Forms for Final Decisions from the SCDPPPS as well.

Thank you in advance for your assistance in this matter.

Sincerely & Respectfully,

  
-----  
Michael J. Pittinato

cc: FILE

Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A-27  
1057 Revolutionary Trail  
Fairfax, SC 29827

September 17, 2023

Honorable Chief Judge  
S.C. Administrative Law Court  
1205 Pendleton St., Suite 224  
Columbia, SC 29201

RE: Notice of Appeal of Final Decision of Parole Agency;  
Appeal of Decision Denying Motion To  
Vacate, Rehear or Reconsider Final Decision; and copies of  
Envelopes showing dates Both of the above Decisions arrived  
at Allendale Corr., Inst. Mail Room

Your Honor:

This is my THIRD ATTEMPT as appealing this matter since I originally filed an appeal on July 5, 2023 and served a copy of same upon the SCDPPPS on that same date.

Enclosed for filing please find a Notice of Appeal, the Final Decision of the Parole Board being appealed and other documents as referenced above.

Also enclosed please find a copy of each of the documents referenced above of which, that I ask that, after being clock-stamped and having a Docket Number placed on them, you please return them to me in the Postage Prepaid Envelope that I have provided.

AGAIN, this is complicated by the fact that the Original Notice Of Appeal, the CERTIFICATE OF SERVICE, and other documents that I filed by delivering them to the Institutional Mail room on July 5, 2023, apparently were not received by your Office, however, I did serve Matthew Buchanan with a copy of each document on that same day, a long with his Certificate of Service, of which I maintain electronic copies.

I don't know what happened to the Originals as I filed them according to the rules and since I did not have any money in my account, the Mail room placed postage on the letter to your Office and the one addressed to Matthew Buchanan, which together totaled \$1.92.

I also placed a postage prepaid envelope inside the letter so the Clerk could return my copies that I also provided. I am doing so again.

I am also sending you copies of my July 5th cover letter.

Please let me know how to proceed in this matter since, once again, I did timely deliver the documents to the mail room and I had no control after that, as far as what became of those documents. I also sent a letter to SCDPPPS General Counsel with a postage prepaid envelope seeking copies of letters I had sent General Counsel (Matthew Buchanan) earlier, but also received no reply.

Once again, the only reply that I have received from the ALC is a letter I received on or about August 7, 2023, which contained two Notice Of

Appeal Forms (SCDC APPEAL), my August 3, letter and a post-it-note stating that this will be looked into.

I do not know if the SCDFPPS is receiving my letters or not since I receive no reply from that office. I note that my sister ordered type writer ribbons with permission from the Warden here at Allendale, and when they were delivered here, on FIVE (5) different occasions and from FIVE different companies, in the past two months, they were rejected or sent back to the companies with the Mail room attendant here denying knowledge of the matter and insisting that its a USPS Issue. We checked and it is not an issue with the Post Office, and the address is correct. Others here have had trouble with the mail room mishandling of the mail whereas letters from the ALC sent in postage prepaid envelopes are opened out of the presence of the Inmate and the Mail room attendant claims that since the address on the envelope is hand written, it didn't come from the ALC and instead came from the Inmate's home.

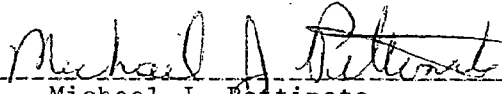
I would just like to know if I am able to go forward with my appeal or not.

It is fairly simple since the Parole Board sent me a Notice of Hearing that my hearing would be held at Ridgeland C.I. while I was at Allendale, gave me only 23 days notice instead of 30 as required by law and their own Policy and, had the hearing out of my presence instead of replying to my timely letter seeking a postponement because of lack of adequate notice and a change in circumstances.

The Board is not authorized to hold a hearing out of my presence, must send a Notice Of Hearing at least 30 days prior to the hearing and most certainly must let me know WHERE the hearing is being held. It was held at Allendale on April 12th and not at Ridgeland and no one came to get me for the hearing. It also took Matthew Buchanan two months to reply to my self-styled Motion To Vacate, Rehear or Reconsider that I filed with that agency after receiving the Rejection letter.

Thank You in advance for any assistance you may be able to provide in this matter.

Sincerely & Respectfully,

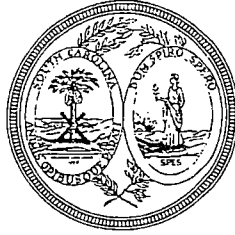
  
Michael J. Reitano

cc: FILE

STATE OF SOUTH CAROLINA  
**Administrative Law Court**

RALPH K. "TRIPP" ANDERSON, III  
*Chief Judge*

JANA E. SHEALY  
*Clerk*



(803) 734-0550  
FAX: (803) 734-6400  
WEB: WWW.SCALC.NET

**Memorandum**

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To: Appellant  
From: Clerk's Office, Administrative Law Court  
Date: September 18, 2023  
Re: Compliance with ALC Special Appeals Rule

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The Administrative Law Court received your information on July 10, 2023.  
According to ALC Rule 59:

Any notice of appeal which is incomplete or not in compliance with this rule or Rule 71 will not be assigned to an administrative law judge until all required information is received and any applicable filing fee is processed.

Accordingly, your case will not be assigned until the following information is received:

- You must use the attached Notice of Appeal form to submit your appeal (See ALC Rule 57 and 59).
- A copy of the final decision which is the subject of the appeal (i.e., Step 2 Grievance Form from the DOC or the final decision from PPS) pursuant to ALC Rule 59(C).
- A brief factual basis for each expressly and specifically asserted constitutional violation in accordance with ALC Rule 59(B).
- The Notice of Appeal form you submitted must be signed and dated.
- Filing Fee of \$25 in accordance with ALC Rule 71 for your 4<sup>th</sup> and subsequent appeal this calendar year.
- Please return the appropriate information within 10 days of the date of this Memorandum or your case will be returned to you unprocessed.
- Other:

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Michael J. Pettinato, #218405, )

Appellant, )

vs. )

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

Respondent. )

NOTICE OF APPEAL

DOCKET NO 23 -ALJ-15-0030 -AP

Notice is hereby given that Michael J. Pettinato does hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated 4/12/23 & 6/12/23 and received on 4/20/23 & 6/15/23, a copy of which is attached. A **general** statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): The Findings, Inferences, Decisions, Actions and Omissions of the Agency violate all provisions of S.C. Code § 1-23-380(5)(a)-(f), as amended 2008 and deprive Appellant of his rights guaranteed and Protected by U.S.C.A. 14th Amend.; S.C. Const., art. I, § 3 & Art. I, § 22; S.C. Statutes; Federal and State Case Law; and SCDPPPS Regulations, Policy and Procedure.

I. Pettinato was arbitrarily DENIED: (a) Adequate Notice of the Time, Date and Place that his Parole Hearing was to be held whereas he received Notice of only twenty three (23) days of the hearing date, was provided with the wrong Place where the hearing would be held, and the wrong Time the hearing would be  
CONTINUED ON PAGE 2, ATTACHED HERETO.

Michael J. Pettinato  
Appellant's Name

Michael J. Pettinato  
Signed

1057 Revolutionary Trail  
Mailing Address

9/26/2023  
Dated

Fairfax, SC 29827  
City, State, Zip Code

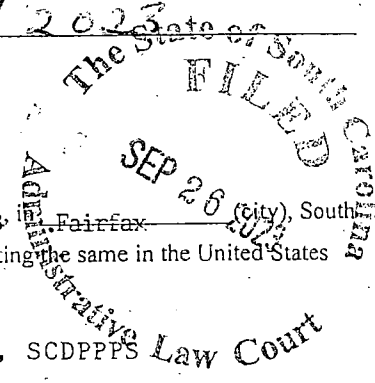
CERTIFICATE OF SERVICE

I hereby certify that I, Michael J. Pettinato (your name), on the 26 day of September, 2023, in Fairfax (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Name of person/Agency served: Matthew Buchanan, Esq. General Counsel, SCDPPPS Law Court  
Address: 293 Greystone Blvd, P.O. Box 207  
City, State, Zip Code: Columbia, SC 29250

Michael J. Pettinato  
Print your name  
(See reverse side for instructions)

Michael J. Pettinato  
Sign your name

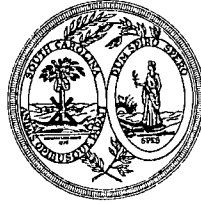


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Instructions for filing an appeal of the final agency decision from the South Carolina Department of

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

**HENRY McMASTER**  
Governor



**MELVIN WARREN**  
Acting 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](http://www.state.sc.us/ppp)

September 25, 2023

Michael Pettinato, #218405  
Allendale Correctional Institution  
1057 Revolutionary Trail  
Fairfax, S.C. 29827


Dear Mr. Pettinato:

I am responding to your letter dated September 18, 2023, in which you have asked for copies of correspondence sent to the Department regarding your request to have your April 23, 2023, hearing postponed as well as other documentation. Please find this information enclosed. You have also asked if the Department received your Notice of Appeal. The Department received your notice of appeal on July 12, 2023. The Department will not respond to any Notice of Appeal filed in the Administrative Law Court until the Court files your appeal and assigns a Judge. To date, the Department has not received this notice of filing.

In reference to obtaining access to your parole file, if your request is made pursuant to the recent opinion in the case of Kelsey v. SCDPPPS, this opinion is not final and therefore, the Department will not take any action regarding the opinion until the remittitur has been issued by the court.

Thank you for your inquiry.

Sincerely,

  
Matthew C. Buchanan  
General Counsel

MCB:dn

Michael J. Pettinato, #219405  
Glendale Conn., INSt., FB A-27  
1007 Revolutionary Trail  
Fairfax, SC 29927

November 29, 2023

Honorable Ralph King Anderson, III  
Judge, S.C. Administrative Law Court  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

RE: Michael J. Pettinato v. SCOPPPS  
Combined Motion For Enlargement Of Time  
And Other Relief  
Case No. 23P0031

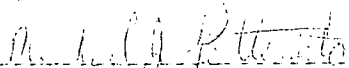
Honorable Judge Anderson:

Enclosed for filing, please find the above referenced Motion, seven (7) letters to the ALC during the period of time that I was trying to obtain the forms to file a Notice Of Appeal and that I was trying to have my copies sent back to me so I may proceed, and, a Certificate Of Service of same upon the SCOPPPS's counsel of record, Matthew Buchanan, Esq.

Please return my copies to me after being clock-stamped. I have also included a self-addressed postage prepaid envelope.

Thank you in advance for your assistance in this matter.

Respectfully,

  
-----  
Michael J. Pettinato

cc: FILE

STATE OF SOUTH CAROLINA  
In The Administrative Law Court  
Docket No. 23-P-0031

---

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

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Honorable Ralph King Anderson, III, Administrative Law Judge

Michael J .Pettinato,.....Appellant,

v.

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

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**COMBINED MOTION FOR ENLARGEMENT  
OF TIME AND OTHER RELIEF**

---

The Appellant, Michael J. Pettinato, pursuant to Rule 6(b) of the South Carolina Rules of Civil Procedure hereby moves that the Court enter an Order extending the time for Appellant to serve his Initial Brief by ninety (90) days from the date he receives his copies of Documents from the Clerk of the ALC and clarification from this Court as to the timeliness of his Notice of Appeal.

In support of this motion, Appellant would respectfully show this Honorable Court the following:

1. This motion is being submitted outside the period prescribed for filing the Initial Brief because:

(A) Pettinato has not been receiving his copies of documents that he files with the Administrative Law Court although he sends extra copies, postage prepaid envelopes, and follow up letters inquiring into the whereabouts of his copies;

(B) Pettinato has been attempting to convey to the Court that his Notice of Appeal was timely filed on July 5, 2023 and not September 26, 2023 as shown in the form depicting the assignment of this case to the Honorable Ralph King Anderson, III, in that if the appeal is deemed to be untimely, this Court will not have jurisdiction over this case, as Pettinato wrote in a letter to the ALC Clerk dated October 17, 2023, and asked that a copy of same be provided to Judge Ralph King Anderson, III.

(C) Pettinato has been dealing with high blood pressure and other health problems over the course of the past five (5) months which have a detrimental impact on his ability to even think clearly, much more or less to perform tasks necessary to prosecute his appeal, and he has been dealing with trying to protect his rights as it pertains to SCDC's refusal to pay him the "prevailing wages" he is due for labor he completed in the Prison Industries about 15 years ago.

2. The requested extension is not intended as a delay and no party will be prejudiced by the granting of this motion in that the SCDPPPS has clearly failed to provide Pettinato with a Parole hearing as contemplated by the Parole Statutes and Art. I, § 22 of the S.C. Constitution, or proper and adequate NOTICE of the Time, Date and Place of the hearing, despite the Department's frivolous assertions to the contrary.

3. If the Parole Board wanted to hold the hearing at Allendale, where Pettinato is housed, it should have said so in the Notice Of Hearing that is on file with this court instead of Notifying Pettinato that his hearing was scheduled to be held at Ridgeland C.I., an Institution where Pettinato has never even been housed.

4. Furthermore, the SCDPPPS's own Parole Manual of November of 2019, which Pettinato intends to Request this Court to take Judicial Notice of in

his Brief if he is permitted to continue with his appeal, states:

**"The Board Support Services Director is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the offender."**

South Carolina Department of Probation, Parole and Pardon Services, DIVISION OF PAROLES AND PARDONS AND RELEASE SERVICES, manual, November 2019, p.20, ¶ 2(a) Notice to the Offender, (emphasis added). Pettinato had twenty-three (23) days Notice.

Additionally, on Page 20 of the manual under the section captioned as "PROCEDURAL REQUIREMENTS UNDER THE CONSTITUTION," it includes provisions that require among other things, "Fair written notice of the date, time and place of the parole hearing," which Pettinato clearly was not provided.

The SCDPPPS failed to send the Notice of Appeal Forms, even after two requests, sent a flawed Notice Of Rejection Letter, ignored the Motion To Vacate, Rehear or Reconsider based on a change of circumstances and has continued to make frivolous claims that Pettinato was given adequate Notice and failed to attend the hearing that was scheduled at Ridgeland C.I., but secretly held at Allendale.

4. Pettinato also could not proceed in this matter when his copies of documents are not being sent back to him from the ALC, and it appears that there is a problem with Pettinato's appeal being deemed to be untimely because he did not use the "mandatory appeal form" in July, but did on September 26th after he was able to finally able to obtain the "mandatory" Notice Of Appeal from the Clerk of the ALC.

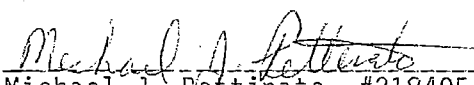
Whether the form is mandatory or not should not be a problem whereas Pettinato's Notice Of Appeal was filed on July 5, 2023 with a Certificate of Service, and Pettinato's self-styled Notice Of Appeal provided sufficient Notice to the SCDPPPS of his intent to appeal.

Pettinato is requesting 1) that this Court order the Clerk to send Pettinato a copy of the Notice Of Appeal and his documents that he filed with the Notice Of Appeal on or about September, 26, 2023; 2) That this Court determine if Pettinato's Notice Of Appeal was timely when filed on July 5th and if this Court has jurisdiction over this matter; and, 3) That this Court, if it determines that Pettinato's Notice Of Appeal was timely even though not on the prescribed form, that this Court restart the clock so that Pettinato will have ninety (90) days from the time he receives his copies of the documents he seeks from the Clerk, to file and serve his Initial Brief in this matter and prosecute this appeal.

Pettinato attaches hereto and incorporates into the record by reference, copies of Letters to the Clerk of the ALC dated June 23, 2023, July 5, 2023, August 3, 2023, August 17, 2023, September 17, 2023, September 26, 2023, and October 17, 2023, which detail the problems Pettinato has had with trying to proceed with this Appeal, of which there should be no doubt that he is entitled to relief.

WHEREFORE, Appellant requests that this Honorable Court take such action as is necessary to ensure that copies of all documents Pettinato filed on or about September 26, 2023 are file stamped and returned to him, that this Court determine the proper date that Pettinato filed his Notice Of Appeal and the matter of this Court's jurisdiction over this matter, and, if this Court determines that it has jurisdiction, that the time for Pettinato to file his Initial Brief be extended by ninety (90) days from the date that copies of the Documents are mailed to him so he may continue with his appeal.

November 29, 2023  
Fairfax, South Carolina

  
Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A27  
1057 Revolutionary Trail  
Fairfax, SC 29827

Appellant Pro Se

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MAR 04 2024  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Michael Pettinato, #218404, )  
)  
Appellant, )  
)  
v. )  
)  
South Carolina Department of Probation, )  
Parole and Pardon Services, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. 23-ALJ-15-0031-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Michael Pettinato (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. By letter dated April 12 2023, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) denied him parole. In a letter dated June 1, 2023, Appellant filed a “Motion to Vacate, or Rehearing, or Reconsideration.” The Department responded to Appellant’s motion in a letter dated June 12, 2023 advising Appellant that the “Board grants requests for reconsideration at its own discretion.”<sup>1</sup> Appellant received the letter on June 15, 2023. Thereafter, on September 26, 2023, Appellant filed a Notice of Appeal with the Court seeking review of the Board’s denial of parole.

On November 8, 2023, the Department filed the Record on Appeal. Thereafter, on January 8, 2023, Appellant filed his brief. On January 19, 2024, the Department filed its Brief and a Motion to Dismiss.

Pursuant to the Rules of Procedure for the Administrative Law Court (SCALC Rules), an inmate must file an appeal from a decision of the Department within thirty days of receipt of the decision. SCALC Rule 59. In this case, Appellant received the Department’s letter responding to his request for a rehearing on June 15, 2023. Thirty days from June 15, 2023 was July 17, 2023.<sup>2</sup> Appellant did not file an appeal until September 26, 2023. Therefore, because Appellant did not

<sup>1</sup> This Court views the Department’s letter as a denial of Appellant’s request to reconsider its decision.

<sup>2</sup> Thirty days from June 15, 2023, is July 15, 2023, however, because that falls on a Saturday, Appellant had until the next business day, or until Monday, July 17, 2023, to file and serve his Notice of Appeal. See SCALC Rule 52.

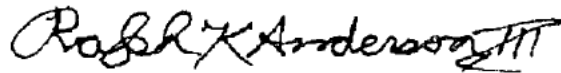
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02/06/2024  
SC Admin. Law Court

file and serve his notice of appeal by July 17, 2023, his appeal is untimely. SCALC Rule 59. Our courts have held that “[t]he service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended” by the court. *Hill v. S.C. Dep't of Health & Env't Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010); *see also Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (“Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.”). Therefore, because Appellant’s appeal was untimely, this Court does not have jurisdiction to address his claim and this case must be dismissed. *See id.*

**ORDER**

**IT IS THEREFORE ORDERED** that this matter is **DISMISSED WITH PREJUDICE**.  
**AND IT IS SO ORDERED.**



---

Ralph K. Anderson, III  
Chief Administrative Law Judge

February 6, 2024  
Columbia, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

-----  
APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

-----  
Docket No. 23-ALJ-15-0031-AP  
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Michael J. Pettinato, #218405,.....Appellant,

v.

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

-----  
NOTICE OF APPEAL  
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Michael J. Pettinato, appeals the Order of Judge Ralph King Anderson, III, dated February 6, 2024 which dismissed his Appeal from a decision of the South Carolina Department of Probation, Parole and Pardon Services with prejudice. Appellant received the written Order on February 9, 2024, the Original of which is attached hereto.

February 19, 2024  
Fairfax, South Carolina

*Michael J. Pettinato*  
-----  
Michael J. Pettinato, #218405  
Allendale C.I., F3 A-27  
1057 Revolutionary Trail  
Fairfax, SC 29827  
(NO PHONE)  
Appellant, Pro Se

OTHER COUNSEL OF RECORD:  
Matthew C. Buchanan, Esq.  
Legal Counsel For SCDPPPS  
293 Greystone Blvd.  
P.O. Box 207  
Columbia, South Carolina 29202  
(803) 734-9220

Attorney for Respondent

# The South Carolina Court of Appeals

Michael Pettinato, #218405, Appellant,

v.

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

Appellate Case No. 2024-000295

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## ORDER

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Appellant filed a notice of appeal from an order issued by the Administrative Law Court dismissing his appeal from a denial of parole. Appellant also filed a motion to proceed *in forma pauperis*. Appellant has not met his burden of establishing he has a statutory or constitutional right to proceed *in forma pauperis*. See *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995); *James v. S.C. Dep't of Probation, Parole, and Pardon Servs.*, 377 S.C. 564, 660 S.E.2d 288 (Ct. App. 2008) (holding the denial of an inmate's parole request absent a permanent denial of parole eligibility does not implicate a state-created liberty interest). Accordingly, Appellant's motion is denied.

Appellant has twenty days from the date of this order to pay the \$250 filing fee. Failure to provide the filing fee will result in the dismissal of this appeal.

  
\_\_\_\_\_  
FOR THE COURT

Columbia, South Carolina

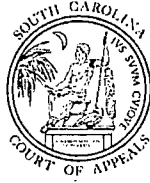
cc:

Michael Pettinato, 218405

Matthew C. Buchanan, Esquire

**FILED**  
**Mar 28 2024**

21



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

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CHIEF DEPUTY CLERK

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May 8, 2024

Michael Pettinato, 218405  
Allendale Correctional Institution  
P. O. Box 1151, Hwy 47  
Fairfax SC 29827

Re: Michael Pettinato, #218405 v. SCDPPPS  
Appellate Case No. 2024-000295

Dear Mr. Pettinato:

The Court received your renewed motion to proceed in forma pauperis. On March 28, 2024, the Court issued an order denying your motion to proceed in forma pauperis. Pursuant to Rule 221(c), SCACR, we will not consider your motion. You must pay the \$250.00 filing fee within ten (10) days of the date of this letter or your appeal will be dismissed.

Very truly yours,

A handwritten signature in cursive script that reads "Jenny A. Kitchings".

CLERK

cc: Matthew C. Buchanan, Esquire

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# The South Carolina Court of Appeals

Michael Pettinato, #218405, Appellant,

v.

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

Appellate Case No. 2024-000295

The Honorable Ralph King Anderson, III  
Trial Court Case No. 2023ALJ150031AP

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## ORDER

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Appellant has failed to provide the notice of appeal filing fee, as required by Rule 203 of the South Carolina Appellate Court Rules (SCACR) and this Court's letter dated May 8, 2024. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT  
BY Catherine Hannibal, Deputy  
CLERK

Columbia, South Carolina

cc:

Michael Pettinato, 218405

Matthew C. Buchanan, Esquire

**FILED**  
**Jun 10 2024**

23

RECEIVED

JUN 24 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Administrative Law Judge

Appellate Case No. 2024-000295  
ALC Docket No. 23-ALJ-04-0031-AP

Michael Pettinato, #218405,.....Appellant,

v.

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

**APPELLANT'S PETITION FOR REHEARING/RECONSIDERATION**

Michael Pettinato, the above Appellant, pursuant to Rule 221, SCACR, moves the Court to reconsider its Order dated and Filed June 10, 2024, in which the Court dismissed Appellant's Appeal from an Order of the ALC due to Appellant's inability to pay the \$ 250.00 filing fee. In support of this Motion, Appellant ("Appellant" or "Pettinato") would respectfully show this Honorable Court the following:

1. In denying Appellant's Motion To Proceed In Forma Pauperis, this Court cited to Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995) and James v. S.C. Dept. of Probation, Parole, and Pardon Servs., 377 S.C. 564, 660 S.E.2d 288 (Ct. App. 2008) (holding the denial of an Inmate's parole request absent a permanent denial of parole eligibility does not implicate a state-created liberty interest).

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Appellant respectfully asserts that this was error, as shown below and in his "Renewed Motion And Affidavit To Proceed In Forma Pauperis" (hereinafter "Renewed Motion") dated April 15, 2024 and filed with this Court on April 22, 2024.

1. Appellant submits that Ex parte Martin does not apply.

The Ex parte Martin case involved a civil action in the Circuit Court where the Clerk of Court returned the Inmate's summons and complaint. The South Carolina Supreme Court held that the appeal was premature in that the Circuit Court never ruled on whether the Inmate would be allowed to proceed in forma pauperis. The Court also held inter alia, that when a complaint does not appear to fit within one of the statutory or constitutional exceptions to the requirement of a filing fee, the Clerk must submit the motion to a judge for a ruling as to whether the complaint does fit within one of the statutory exceptions or whether the cause of action concerns a fundamental right that requires waiver of the filing fee. Ex parte Martin, supra, 321 S.C. at 536, 474 S.E.2d at 135. The Court also noted in its footnote, that "Other statutory exceptions and other fundamental rights may require the waiver of filing fees for indigents." Id.

This is another exception to the rule in that Appellant challenges the denial of his statutory right to appear before the Parole Board and the denial of his "fundamental right to be heard at a meaningful time and in a meaningful manner. See also Renewed Motion, p.3.

S.C. Code Ann. § 24-21-50 states:

"The board **shall** grant hearings and permit arguments and appearances by counsel or any individual before it at any such hearing while considering a case for parole, pardon, or any other form of clemency provided for under law."

S.C. Ann. § 24-21-50 (Supp. 2009) (emphasis added).

It is undisputed that the Board failed to "... grant hearings and permit arguments and appearances by [Pettinato] ... at any such hearing while considering a case for parole..." in April of 2023 as required.

2. Pettinato has a liberty interest in gaining access to the Parole Board. James v. S.C. Dep't of Prob., Parole & Pardon Servs., 376 S.C., 392, 396, 656 S.E.2d 399, 401 (Ct. App. 2008). He has a statutory right to appear before the Board to argue his case. S.C. Code Ann. § 24-21-50 (Supp. 2009) as well as a right to be heard at a meaningful time, in a meaningful manner. Art. 1, § 3 & Art. 1, § 22 of the S.C. Constitution. See Ross v. Med. Univ. of S.C., 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997) (holding art., 1, § 22 of the S.C. Constitution guarantees persons the right to notice and an opportunity to be heard by an administrative agency).

The Court of Appeals in Bowling v. Director v. Virginia Department of Corrections, 920 F.3d 192, 200 (4th Cir. 2019), stated that, "because Virginia Law gives rise to an expectation of parole proceedings, the Commonwealth has created a liberty interest in parole consideration." Nevertheless, to satisfy the due process requirements triggered by this liberty interest, a parole board need only provide an offender with an opportunity to be heard and a statement of reasons ... why parole has been denied. Bloodgood v. Garraghty, 783 F.2d 470, 473 (4th Cir. 1986).

South Carolina Law also "gives rise to an expectation of Parole proceedings. See S.C. Code Ann. § 24-21-50 (Supp. 2009) (stating that the board "shall grant hearings and permit arguments...." See also § 24-21-640 (Supp. 2009) ("Circumstances warranting parole.").

Pettinato has a liberty interest in his parole proceedings and gaining access to the Board to argue his case for parole. He has been substantially prejudiced by the Board's failure to allow him to attend his Parole Hearing

to argue his case for parole, solely because the SCDPPPS failed to take any reasonable steps necessary to provide Pettinato with adequate and proper NOTICE of the time and place of the hearing or to even inform him that his request to have his case re-scheduled was denied.

3. The ALC Judge's facts are not supported by the record and are contrary to the evidence that Appellant was able to put before that court.

In this case, the ALC dismissed Appellant's appeal whereas the ALC arbitrarily held that it lacked jurisdiction, based on a false assertion that Appellant did not timely file his Notice of Appeal and whereas the ALC arbitrarily found, contrary to the evidence, that Appellant filed his Notice of Appeal on September 26, 2023, when in fact, the Court, its Clerk, and Respondent, all had in their possession, Appellant's Notice of Appeal and Certificate of Service, establishing by clear and convincing evidence, that Appellant filed and served his Notice of Appeal on July 5, 2023, which is on file with this Court.

The fact that Appellant did not file the Notice of Appeal on the Form specified by Court rules does not change the fact that the Notice of Appeal was filed and properly served. The reason why this occurred was another matter that the ALC should have made inquiries into if that court did not understand Appellant's letters explaining that neither Respondent, the ALC Clerk nor anyone else would provide those forms. Appellant cannot use a form, mandatory or not, when it is not provided to him upon his requests.

The ALC, as well as the ALC Clerk(s) were alerted to the fact that Pettinato was not being sent the so called "mandatory Forms" (Notice of Appeal) even though Pettinato diligently sought to obtain same through letters to Respondent, the ALC Clerk and the ALC Judge, which they all have on file and of which Appellant has for his records.

4. Appellant, just like Cooper, also "has a right to require the Board to adhere to statutory requirements in rendering a decision." See Cooper v. S.C. Dep't of Probation, Parole, and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008) ("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."). Id. 377 S.C. at 499, 661 S.E.2d at 112.

One of those procedures is that "The Board **shall** grant hearings and permit arguments and appearances by counsel or any individual before it at any such hearing while considering a case for parole, pardon, or any other form of clemency provided for by law." S.C. Code Ann. § 24.21-50, supra.

5. Appellant asserts once again, that the United States Supreme Court in Boddie v. Connecticut, 401 U.S. 371 (1971), did not simply hold that the Due Process of Law prohibits a state from denying, solely because of inability to pay court fees and costs, access to the courts to indigents who, in good faith seek judicial dissolution of their marriages, but reaffirmed that, "absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." Id. 401 U.S. at 377. (Citing cases).

Respectfully, Appellant sees no countervailing state interest of overriding significance when compared to Appellant's rights to "gain access to the Board;" "Appear before the Board;" "argue his case" for Parole, compel the Agency to correct their files in that the Pettinato's record contains fabricated documents and statements, and to potentially correct errors and wrongs that occurred in the Administrative Law Court.

The South Carolina Supreme Court in Wicker v. South Carolina Dep't of Corrections, 360 S.C. 421, 424-425, 602 S.E.2d 56, 58 (2004) held that ("where as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of the law").

The S.C. Court of Appeals GRANTS In Forma Pauperis Status to Inmates appealing the ALC Orders denying relief in the Prevailing wage cases due to their "property interest," however, a poor person such as Pettinato is further denied access to the Courts because of his poverty, in order to challenge the deprivation of Constitutional and Statutory rights without Due Process of Law, of which he has a "liberty interest."

Finally, Appellant submits that the United States Supreme Court in Swarthout v. Cooke, 562 U.S. 216 (2011), held that, under the Constitution, all that is required when a prisoner eligible for parole consideration is denied release on parole is that the prisoner be "allowed an opportunity to be heard and [be] provided a statement of the reasons why parole was denied. Id. 562 U.S. at 220 (citing Greenholtz v. Inmates of Neb. Penal & Corr., Complex, 442 U.S. 1, 16 (1979)). In this case, that standard was not satisfied because Appellant was not permitted to attend his Parole Release Hearing, despite false assertions to the contrary.

This case is mainly about jurisdiction however, where the ALC seems to routinely hold that it lacks jurisdiction, so as to deny relief to an Inmate, as in this case. See e.g., Allen v. S.C. Dep't of Corr., 439 S.C. 164, 886 S.E.2d 671 (2023), where the Court once again, went into detail concerning jurisdiction.


Appellant avers under penalty of perjury that the facts stated herein are true and correct.

**CONCLUSION**

For the reasons stated and argued herein Appellant requests that this Court reconsider its Order denying Appellant In Forma Pauperis Status and either sustain this appeal by waiving the requirement that the fees be paid up front and allow those fees to be paid from Appellant's Prison Trust Account when he receives funds, or find that Appellant has a "liberty interest" sufficient to allow him to proceed in forma pauperis, or, that this Court Grant any such other and further relief this Court deems fair and just.

June 17, 2024  
Fairfax, South Carolina

Respectfully Submitted,

  
Michael J. Pettinato, #218405  
Allendale Corr., Inst., F3 A24  
1057 Revolutionary Trail  
Fairfax, SC 29827

Appellant, Pro Se

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

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JUN 24 2024

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Appellate Case No. 2024-000295

Docket No. 23-ALJ-15-0031-AP

Michael Pettinato, #218405,.....Appellant,

v.

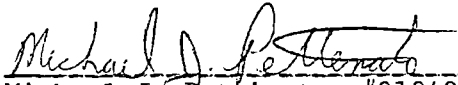
The South Carolina Department of Probation,  
Parole and Pardon Services,.....Respondent.

**PROOF OF SERVICE**

I, Michael J. Pettinato, herein CERTIFY under penalty of perjury that I have on this date, served a true and legible copy of APPELLANT'S PETITION FOR REHEARING/RECONSIDERATION in the above captioned case, upon the above Respondent by hand delivering same to the Allendale C.I. Mail Room for deposit into the U.S. Mail, First Class Postage prepaid, addressed to:

S.C. Dep't of Probation, Parole  
and Pardon Services  
Attn: Matthew C. Buchanan  
Office of General Counsel  
293 Greystone Blvd.  
P.O. Box 207  
Columbia, SC 29202

June 18, 2024  
Fairfax, South Carolina

  
Michael J. Pettinato, #218405  
Allendale C.I., F3 A-24  
1057 Revolutionary Trail  
Fairfax, SC 29827

Appellant, Pro Se

25

# The South Carolina Court of Appeals

Michael Pettinato, #218405, Appellant,

v.

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

Appellate Case No. 2024-000295

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## ORDER

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On March 28, 2024, this court denied Appellant's motion to proceed *in forma pauperis* and ordered Appellant to pay the required notice of appeal filing fee. When Appellant failed to pay the filing fee, this court dismissed his appeal on June 10, 2024. Subsequently, Appellant filed a petition for rehearing, which we construe as a motion to reinstate his appeal. After careful consideration, we grant the motion to reinstate the appeal.

Appellant further alleges he is entitled to proceed *in forma pauperis* because he was denied a state-created liberty interest when Respondent failed to provide him with notice of his parole hearing or refused to allow him an opportunity to appear at his parole hearing in violation of section 24-21-50 of the South Carolina Code (2007). Without deciding whether Appellant's allegation implicates a state-created liberty interest, we conclude Appellant has made a sufficient showing of an alleged violation of a state-created liberty interest to allow him to proceed *in forma pauperis*. See *Ex Parte Martin*, 321 S.C. 533, 535, 471 S.E.2d 134, 134-35 (1995) ("In the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed *in forma pauperis* may only be granted where specifically authorized by statute or required by constitutional provisions."); *James v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 377 S.C. 564, 567, 660 S.E.2d 288, 290 (Ct. App. 2008) (stating "the inquiry into whether an inmate is entitled to review of a parole board's final decision is based on whether the inmate 'has a liberty interest in gaining access to the parole board'" (quoting *Furtick v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149

(2003)); *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008), *abrogated on other grounds by Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 886 S.E.2d 671 (2023) (holding that "[i]f a [p]arole [b]oard 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"); § 24-21-50 ("The board shall grant hearings and permit arguments and appearances by counsel or any individual before it at any such hearing while considering a case for parole, pardon, or any other form of clemency provided for under law.").



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FOR THE COURT

Columbia, South Carolina

cc:  
Michael Pettinato, 218405  
Matthew C. Buchanan, Esquire

**FILED**  
**Jul 02 2024**

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## The South Carolina Court of Appeals

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July 02, 2024

Michael Pettinato, 218405  
Allendale Correctional Institution  
P. O. Box 1151, Hwy 47  
Fairfax SC 29827

Re: Michael Pettinato, #218405 v. SCDPPPS  
Appellate Case No. 2024-000295

Dear Mr. Pettinato:

Pursuant to the Court's order filed July 2, 2024, the initial brief of appellant and designation of matter are due to be served and filed by August 1, 2024 or this appeal will be dismissed.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine Harrison, deputy".

CLERK

cc: Matthew C. Buchanan, Esquire