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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

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

v.

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

FINAL BRIEF OF APPELLANT

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### STATEMENT OF ISSUES ON APPEAL

1. DID THE SCDPPPS ARBITRARILY FAIL TO PROVIDE APPELLANT WITH ADEQUATE NOTICE OF THE TIME, DATE AND PLACE OF HIS SCHEDULED PAROLE HEARING?
2. DID THE DEPARTMENT ARBITRARILY AND WITHOUT DUE PROCESS OF LAW, DEPRIVE APPELLANT OF HIS LIBERTY INTERESTS IN GAINING ACCESS TO THE PAROLE BOARD, TO FAIR PAROLE PROCEEDINGS AND HIS RIGHT TO BE HEARD AT A MEANINGFUL TIME AND IN A MEANINGFUL MANNER?
3. DID THE ADMINISTRATIVE LAW COURT ERR IN DISMISSING APPELLANT'S APPEAL FROM THE DECISION OF THE SCDPPPS BASED ON A FINDING THAT APPELLANT'S APPEAL WAS UNTIMELY AND THEREFORE DEPRIVED THE ALC OF APPELLATE JURISDICTION?

## STATEMENT OF THE CASE/FACTS

This case is before the South Carolina Court of Appeals on an Appeal of Michael J. Pettinato ("Appellant" or "Pettinato"), filed on March 4, 2024 from a decision of the Administrative Law Court ("ALC"), Judge Ralph King Anderson, III, Administrative Law Judge, holding that the ALC lacked jurisdiction. ROA., p.1.

In November of 1994, Appellant Pettinato entered a plea of Guilty But Mentally Ill ("GBMI") through Plea Negotiations that were entered into after three days of trial. The Plea Negotiations resulted in the Solicitor and Defense Counsel convincing Pettinato that he would be sentenced to life without parole if he did not enter the plea and would be eligible for parole after serving 20 years only if he entered the guilty plea. Pettinato was informed that he would be paroled, and "probably the first time up if he kept a clean prison record," but, "it might possibly be the second time up because he could easily meet the statutory criteria."

Pettinato became eligible for parole on April 9, 2014 after serving the twenty year (20) mandatory minimum. He appeared before the Board the first time on June 12, 2014, although his hearing was scheduled for April and it was re-scheduled until June.

Thereafter, Pettinato appeared before the Board on October 11, 2016, February 27, 2019, and April of 2021. He was denied Parole on all four (4) occasions for improper reasons and based upon fabricated information being provided to the Board.

Pettinato was due to appear before the Board again on April 12, 2023. The SCDPPPS sent him a Notice Document dated March 8, 2023 giving him 23 days Notice of the Hearing, but informing him the hearing would be held at Ridgeland C.I. and not Allendale, where he is housed. ROA., p.1.

Pettinato sent a hand-written letter to the SCDPPPS on or about March 27, 2023, requesting to have his hearing re-scheduled due to not being prepared, a change in circumstances and being given inadequate Notice, but received no reply. ROA., p.2.

On April 12, 2023, at about 3:45 PM, Pettinato was informed by his daughter, that the hearing had just been held in his absence after the Board Chairwoman was informed that the law did not require thirty (30) days Notice.

On April 20, 2023, Pettinato received a NOTICE OF REJECTION Letter dated April 12, 2023. ROA., p.3. as a result, on April 26, 2023, Pettinato sent the Department a letter inquiring into being sent a Notice of Appeal and other matters. ROA., p.4. Based upon information and belief, the next day, on or about April 27, 2023, Appellant filed a self-styled Motion To Vacate, Rehear or Reconsider with the Department and also asked about having his Parole Hearings every two (2) years instead of a longer period. (Appellant doesn't have a copy of this letter).

Pettinato sent a letter to the Department on June 1, 2023, inquiring into his Motion To Vacate, Rehear or Reconsider and he received a Final Decision dated June 12, 2023, on June 15, 2023. ROA., pp.5-6.

On June 23, 2023, Pettinato sent a letter to the Clerk of the ALC, asking for forms and explaining the situation. ROA., p.7. On July 5, 2023, Pettinato filed a Notice Of Appeal with the ALC and served same upon the Department. ROA., pp.8-10.

Pettinato's copies of the Notice of Appeal and attached documents were not returned to him from the ALC although he enclosed a self-addressed postage prepaid envelope, and so began a huge mess.

Pettinato began making inquiries into the whereabouts of his copies and the Notice of Appeal forms he had requested since prior to filing the Self-styled Notice of Appeal. See ROA., pp.11-13, and Post-it-Note.

In September of 2023, Pettinato received Notice Of Appeal Forms from the ALC Clerk and a confirmation that the ALC received his Notice of Appeal Documents on July 10, 2023, but also requested that he complete the Blank Form and return it, which he did. ROA, pp.14-15.

In a letter from the Department dated September 25, 2023, Mr. Buchanan verified inter alia, that he received the Notice of Appeal on July 12, 2023 and he sent Appellant some of the documents that Appellant requested. ROA., p. 16.

Pettinato filed a "Combination Motion" with the Court on November 29, 2023, which was denied on December 14, 2023, with the Court referring to misplaced postage prepaid envelopes and letters and stating that Pettinato challenged the Court regarding the missing postage prepaid envelopes. ROA., pp.17-18. Pettinato did not challenge the Court on anything, but merely reaffirmed that he sent a postage prepaid envelope with his copies to be returned to him when he filed his Notice of Appeal on July 5, 2023 and later sent an SCDC Debit form to the court as evidence.

On February 6, 2023, Judge Ralph King Anderson, III, dismissed the Appeal after finding among other things, "... because Appellant's appeal was untimely, this Court does not have jurisdiction to address his claim and this case must be dismissed." ROA., p.19.

On February 26, 2024, Pettinato filed with the South Carolina Court of Appeals and served upon the Department and the Clerk of the ALC, a Notice of Appeal, Motion To Proceed In Forma Pauperis, an Affidavit of Indigency, and Proof of Service. ROA., p.20.

On April 9, 2024, Appellant filed a Motion For Extension Of Time in which to file his Initial Brief and Designation of Matter to be included in the Record On Appeal and served upon Respondent.

On April 2, 2024, Pettinato received an Order of the Court dated March 28, 2024, denying his Motion To Proceed In Forma Pauperis and requiring Appellant to pay the filing fee within twenty days of the date of the Order or the Appeal would be dismissed. ROA., p.21.

On April 22, 2024, Pettinato filed a Renewed Motion And Affidavit To Proceed In Forma which the Court declined to consider. ROA., p.22.

The Court dismissed the Appeal on June 10, 2024. ROA., p.23, and on June 24, 2024, Appellant filed a document entitled "Appellant's Petition For Rehearing/Reconsideration," which the Court construed as a Motion To Reinstate the Appeal and after careful consideration Granted the Motion and provided Appellant until August 1, 2024 in which to file and serve his Initial Brief of Appellant and Designation of Matter. ROA., pp. 24-27.

Pettinato filed his Initial Brief and Designation of Matter on July 29, 2024. Pettinato received Respondent's Brief on August 12, 2024 and filed a Reply Brief and Record On Appeal, on August 19, 2024. He now files this Final Brief Of Appellant.

#### **STANDARD OF REVIEW**

The Administrative Procedures Act (APA) establishes the standard of review in appeals from the Administrative Law Court (ALC). S.C. Code Ann. § 1-23-610(B) (Supp. 2020); Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014). S.C. Code Ann. § 1-23-610 (Supp. 2020), sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency. See S.C. Dep't of Corr. v. Mitchell, 377 S.C. 56, 258, 659 S.E.2d 233, 234 (Ct. App. 2008). "The review of the

[ALC's] order must be confined to the record." S.C. Code Ann. § 1-23-610(B) (Supp. 2020). "This court may not substitute its judgment for the judgment of the ALC as to the weight of the evidence on questions of fact." Id. In determining whether the ALC's decision is supported by substantial evidence this Court need only find evidence from which reasonable minds could reach the same conclusion as the ALC. See Kiawah, 411 S.C. at 28, 766 S.E.2d at 715. However, when the issue on review raises a question of law, this court may reverse the decision of the ALC when it is in violation of a statutory provision or it is affected by an error of law. Id.

An Appellate Court may reverse or modify a decision if the ALC's findings or conclusions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Id.

This Initial Brief and Designation of Matter follow:

#### ARGUMENTS

1. THE SCDPPPS ARBITRARILY FAILED TO PROVIDE APPELLANT WITH ADEQUATE NOTICE OF THE TIME AND PLACE OF HIS SCHEDULED PAROLE HEARING.

The S.C. Supreme Court has held that Article 1, § 22 requires an Administrative agency to give procedural due process to parties that come before it even though a matter may not be a "contested case" as defined by the APA. League of Women Voters of Georgetown County v. Litchfield-by-the-Sea, 305 S.C. 424, 46, 409 S.E.2d 378, 380 (1991) (finding that League was not entitled to a hearing under the APA, but concluding League was entitled

to Notice, a Hearing and Judicial Review under Article I, Section 22); See Stono River Env'tl. Protection Ass'n v. South Carolina Dep't of Health and Env'tl. Control, 305 S.C. 90, 93, 406 S.E.2d 340, 342 (1992) (stating same principle).

The S.C. Department of Probation, Parole and Pardon Services, DIVISION OF PAROLES AND PARDONS AND RELEASE SERVICES manual of November 2019 states:

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

Id. at p.20, ¶ 2(a) "Notice to the Offender." See "PROCEDURAL REQUIREMENTS UNDER THE CONSTITUTION," including provisions that require "Fair written notice of the date, time and place of the parole hearing." Id.

Pettinato requests that this Court take judicial Notice of the Parole Manual mentioned above, which can be found using the search engine "google" and typing in "South Carolina Parole Manual." The Manual appearing should be the November 2019 manual. See e.g., Philips v. Pitt Cnty. Mem. Hosp., 572 F.3d 176, 180 (4th Cir., 2009) (Courts "may take judicial notice of matters of public record.").

The Department failed to follow its own policies and procedures to the detriment of Appellant wherein it failed to provide adequate Notice of the time and place of the hearing, thereby preventing him from exercising his right to appear and argue his case for parole.

In Accardi v. Shaughnessy, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed.681 (1954), the Supreme Court of the United States held that an Administrative decision is subject to invalidation because of the agency's failure to exercise its own discretion[,] contrary to existing valid regulations.' Id., 347 U.S. at 268, 74 S.Ct. at 504, 98 L.Ed. ay 687.

Subsequently, in a series of cases, the Supreme Court, relying on the Accardi case has recognized a rule of federal administrative law that, with some exceptions, an administrative agency is required to follow its own procedures or regulations. See e.g. United States v. Caceres, 440 U.S. 741, 751 n.14, 99 S.Ct. 1465, 1471 n.14, 59 L.Ed.2d 733, 743 n.14. (1979)("while a violation of agency regulations did not raise a constitutional question under the circumstances, [i]t does not necessarily follow, however, as a matter of either logic or law, that the agency had no duty to obey them"); Morton v. Ruiz, 415 U.S. 199, 235, (1994) ("where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required."). See Service v. Dulles, 354 U.S. 363, 372, (1957)("[R]egulations validly prescribed by a government administrator are binding upon him as well as the citizen and ... this principle holds even when the administrative action under review is discretionary in nature").

"An agency does not have carte blanche to violate its own procedural policy merely because it is not subject to the Accardi doctrine. An Agency's failure to follow its 'internal administrative procedures' may require reversal of the agency's action if 'the complaining party can show substantial prejudice.'" Thus, 'even if an agency rule does not have the force and effect of law (that is, even if it is simply interpretive, a statement of policy, or any other, lesser rule of agency organization, procedure, or practice), a violation of that rule will still invalidate an agency action if the complainant can show that he was substantially prejudiced by the violation.'" Pollock v. Patuxent Institution Bd. of Review, 146 Md.App. 54, 76-77, 806 A.2d 388, 401, 405 (2002).

Pettinato was due to appear before the Board for the fifth time on April 14, 2023, according to Pettinato's SCDC Profile. However, on March 20, 2023, he received a "NOTICE OF HEARING" dated March 8, 2023, sent to him at Allendale Corr., Inst., where he is housed, ROA., p.1.

The Notice Document provided that the Parole Hearing was to be held on Wednesday, April 12, 2023, arrival time 7:45 a.m. and the Location being (Ridgeland Correctional Institution). ROA., p.1. The Parole Hearing was held on April 12, 2023, but at 3:40 PM at Allendale C.I., where Appellant is housed. From March 20, 2023 to April 12, 2023, is not thirty (30) days, but rather, only 23 days. Ridgeland is not Allendale and is about two (2) hours away from Allendale.

The Notice was inadequate and the Department was required to provide Appellant with adequate Notice as a matter of Due Process and its own Rules and Regulations. The requirement of adequate Notice is a matter of common sense that is at least implicit in the statute requiring the Board to provide a hearing and to permit Appellant to "appear and argue his case" for parole. See § 24-21-50 (Supp. 2009).

Furthermore, Pettinato did not receive an Order to Report ("OTR") to authorize him to report to Operations for a Parole Hearing as is standard procedure.<sup>1</sup> Thus, Pettinato cannot appear at a hearing when he does not have the correct time and place, no authorization from Prison Officials, and no Officers arrived to transport him to Ridgeland C.I. See ROA., p.1.

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1. SCDC Form 19-45 is an ORDER TO REPORT, that is issued to Inmates in order to authorize them to proceed to a specific area of the prison at a designated date and time and is issued to the Inmate the day before the event that he is required to attend, such as a medical appointment, Mail Room to pick up legal mail, and Parole Hearings.

Had Pettinato known of the correct time and place of the hearing or, had the DPPPS answered his letter requesting his hearing to be re-scheduled with a definite answer, or sent him an OTR, Pettinato would have appeared at his Hearing and argued his case for parole. He could not do so without NOTICE of the correct time and place. ROA., p.2.

Each Notice of Rejection Letter states that "you will be notified 30 days prior to your next scheduled parole consideration date." ROA, p.3. Appellant fails to see what rationale leads the Department's Staff to feel that they are not required to provide adequate Notice of the Time, Date and Place of the hearing when required by their own rules, if not by statute.

Appellant requests that this Court remand this case to the ALC with instructions to remand the case to the Department to provide Pettinato with adequate Notice of a Hearing followed by a fair parole hearing where the Board carefully reviews Pettinato's records and considers Pettinato's individual situation.

2. THE DEPARTMENT ARBITRARILY AND WITHOUT DUE PROCESS OF LAW, DEPRIVED APPELLANT OF HIS LIBERTY INTERESTS IN GAINING ACCESS TO THE PAROLE BOARD, TO FAIR PAROLE PROCEEDINGS AND HIS RIGHT TO BE HEARD AT A MEANINGFUL TIME AND IN A MEANINGFUL MANNER.

Pettinato reasserts the facts and argument in the above issue as if repeated verbatim herein. 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).

Liberty is a Fundamental Right. Foucha v. Louisiana, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992) (Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.") Id., 504 U.S. 71, 80, 122 S.Ct. 1780. "freedom from bodily restraint means more than freedom from handcuffs, straitjackets, or detention cells. A person's core liberty interest is also implicated when he is confined in a prison, a mental hospital or some other form of custodial institution, even if the conditions of confinement are liberal. This is clear beyond cavil at least where adults are concerned. "In the substantive due process analysis, it is the state affirmative act of restraining the individual's freedom to act on his own behalf - through incarceration, institutionalization or other similar restraint on personal liberty - which is the deprivation of liberty in triggering the protection of the due process clause..." Deshaney v. Winnebago County Dept of Social Services, 489 U.S. 189, 200, 109 S.Ct. 998, 1006, 103 L.Ed.2d 249 (1989).

For now, South Carolina only purports to enforce that part of its law that provides him with a "liberty interest" in gaining access to the Board. See 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).

Appellant 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 and in a meaningful manner. See Art. 1, § 3 and Art. 1, § 22 of the S.C. Constitution; 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 Constitution of South Carolina guarantees persons the right to notice and an opportunity to be heard by an administrative agency).

The Court of Appeals in Bowling v. Director of 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." S.C. Code Ann. § 24-21-50 (Supp. 2009)(stating that the board "shall grant hearings and permit arguments...." § 24-21-640 (Supp. 2009) ("Circumstances warranting parole."); § 24-21-620 (Supp. 2009).

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 follow its own rule or to take reasonable steps necessary to provide Pettinato with adequate and proper NOTICE of the time and place of his hearing when it had several opportunities to do so.

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.

It is undisputed that the Board failed to "... permit arguments and appearances by [Pettinato] ... at any such hearing while considering a case for parole..." in April of 2023 as required by § 24-21-50.

The U.S. Supreme Court 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. Swarthout v. Cooke, 562 U.S. 216, 220 (2011) (citing Greenholtz v. Inmates of Neb. Penal & Corr., Complex, 442 U.S. 1, 16 (1979)).

In this case, that standard was not satisfied. Appellant was deprived of his statutory and Constitutional right to be heard. See League of Women Voters, supra; S.C. Const. Art. I, § 3, and Art. I, § 22; § 24-21-50.

The substantial prejudice suffered by Appellant was compounded by the ALC's dismissal of his Appeal based on the erroneous determination that Pettinato did not file his Notice of Appeal in a timely manner, where such finding is unsupported by the evidence in the whole record.

Appellant respectfully requests that this Court remand this case to the ALC with instructions to remand the case to the Department for the Department to provide Pettinato with adequate Notice of the time, date and place of his parole hearing, followed by a proper and fair parole hearing.

3. THE ADMINISTRATIVE LAW COURT ERRED IN DISMISSING APPELLANT'S APPEAL FROM THE DECISION OF THE SCDPPPS BASED ON A FINDING THAT APPELLANT'S APPEAL WAS UNTIMELY AND THEREFORE DEPRIVED THE ALC OF APPELLATE JURISDICTION.

The ALC's jurisdiction to hear this appeal is derived in part, from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). In Al-Shabazz, the Court held: "[A]n inmate may seek review of Department's final decision in an administrative matter under the APA. Placing review of these cases within the ambit of the APA will ensure that an inmate receives due process, which consists of notice, a hearing and judicial review. It also will provide an orderly and consistent framework for resolving such matters." Id. at 369, 527 S.E.2d at 750. Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 333, 605 S.E.2d 506, 509 (2004) ("We hold that the ALJD has jurisdiction over all properly perfected inmate appeals, but clarify that it may summarily decide those appeals that do not implicate an inmate's state-created liberty or property interest."). In Al-Shabazz, the Court held: "[A]n inmate may seek review of Department's final decision in an administrative matter under the APA. Placing review of these cases within the ambit of the APA will ensure that an inmate receives due process, which consists of notice, a hearing and judicial review. It also will provide an orderly and consistent framework for resolving such matters." Id. at 369, 527 S.E.2d at 750. Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 333, 605 S.E.2d 506, 509 (2004) ("We hold that the ALJD has jurisdiction over all properly perfected inmate appeals, but clarify that it may summarily decide those appeals that do not implicate an inmate's state-created liberty or property interest.").

In Allen v. S.C. Dep't of Corr., 439 S.C. 164, 170, 886 S.E.2d 671, 674 (2023), the South Carolina Supreme Court, clarified again, that the ALC has jurisdiction over all properly perfected inmate appeals and went on to

state: "We now clarify-again-that the ALC has subject matter jurisdiction over inmate grievance appeals that have been properly filed. See Slezak, 361, S.C. at 331, 605 S.E.2d at 507 ("We now clarify that the AL[C] has subject matter jurisdiction to hear appeals from the final decision of [SCDC] in ... [an] administrative matter.")" Allen, 439 S.C. at 170, 886 S.E.2d at 674.

There is no question that the ALC has subject matter and Appellate jurisdiction over this matter. Appellant timely filed his Notice of Appeal with the Administrative Law Court on July 5, 2023 and served same upon the Department. See ROA., pp.8-10.

The question of subject matter jurisdiction is a question of law for the court. Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). An Appellate Court "may reverse the decision of the ALC where it is in violation of a statutory provision or is affected by other error of law." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env'tl. Control, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014).

In reaching the conclusion that the Administrative Law Court ("ALC") lacked jurisdiction, the Honorable Ralph King Anderson erred as follows:

A) The Court found that Appellant filed a "Motion to Vacate, or Rehearing, or Reconsideration in a letter dated June 1, 2023. See Order at Page 1 (ROA., p.27.)

Respectfully, that finding is incorrect and unsupported by the record.

Appellant filed his Motion To Vacate on or about April 27, 2023 and does not have a copy of that Motion, however, Respondent referred to it in the Department's June 12, 2023 letter to Pettinato. See ROA., p. 6.

Although Respondent's June 12, 2023 letter (ROA., p.6), seems to imply that Pettinato made a Rehearing request in his June 1, 2023 letter to the Department (ROA., p.5), the record shows that Appellant's letter of June 1, 2023 references the Motion to Vacate, Or Rehearing, or Reconsideration that he had filed on or about April 27, 2023. See ROA., p.5, top left corner. The April 27th Motion was sent the day after the April 26th letter, after Pettinato thought about it over night. (ROA, p.4). Pettinato's June 1, 2023 letter was an inquiry into why Pettinato had not received a Final Decision in reply to his self-styled Motion To Vacate, Rehear, or Reconsider.

B) The ALC erred in finding that Pettinato filed a Notice of Appeal on September 26, 2023, when it was merely a copy that the ALC asked him to complete (ROA., pp.14-15). Appellant did not backdate it as he felt it was unlawful to do so and he informed the ALC Clerk of that fact.

Pettinato filed and served his Notice of Appeal on July 5, 2023. See ROA., pp.9-10. Prior to doing so however, he made attempts to obtain the Notice Of Appeal Form. See ROA., p.4(¶ 3) (Showing Pettinato and another person requesting a Notice of Appeal Form). Pettinato referred to being unable to obtain the form several times. ROA., pp.11-13; The ALC received Appellant's timely filed Notice of Appeal on July 10, 2023, ROA., p.14, and the Department received it on July 12, 2023, ROA., p.16. Pettinato's Notice of Appeal was filed within thirty (30) days of receiving the denial of his Motion To Vacate, on July 15, 2023. ROA., p.6; SCALC Rule 59; S.C. Code Ann. § 1-23-380(1).

Thus, this issue is about the fact that Pettinato was unable to use Mandatory Notice of Appeal ("NOA") forms because they were withheld from him and not about jurisdiction, of which Respondent and the ALC are aware.

Additionally, Pettinato's June 1, 2023 letter asked Respondent to take that letter as an Amended Or Supplement Motion to vacate the Parole Board's Order and set a new Parole Hearing date so he may be heard, if necessary. See ROA., p.5 (second to last paragraph).

Pettinato seeks only to be provided with a Fair Parole Hearing where among other things, the Board is compelled to provide him with adequate Notice and permit him to argue his case for parole as required by law.

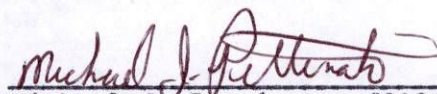
I, Michael J. Pettinato, herein Swear under penalty of perjury that the foregoing facts are true and correct.

#### **CONCLUSION**

Pettinato respectfully requests that this Court find that he timely filed and served his Notice of Appeal, that he was deprived of his liberty interests and statutory rights as argued herein, that he was substantially prejudiced, that the ALC had jurisdiction, and that this Court remand this Appeal to the ALC for further proceedings that include ensuring Pettinato is provided a fair parole hearing, and that this Court GRANT any such other and further relief this Court deems fair and just.

September 6, 2024  
Fairfax, South Carolina

Respectfully Submitted,



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