

March 7, 2025

The Honorable Crystal Rookard  
1205 Pendleton St  
Suite 224  
Columbia, SC 29202

RE: *Joseph Kelsey v. South Carolina Department of Probation, Parole, and Pardon Services*, Docket No. 24-ALJ-24-p027

Dear Judge Rookard,

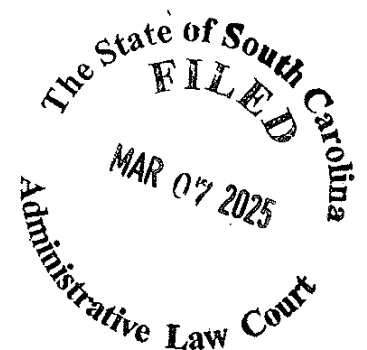
Please find enclosed the Motion to Reinstate Appeal. The originals have been filed with the Clerk's office. If you should have any questions, please do not hesitate to contact me.

Warm Regards,

  
Cierra Negron-Saullo  
Paralegal

Enclosure

**Motions for Reconsideration  
are Prohibited.  
See ALC Rule 65.**



STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Honorable Crystal Rookard, Administrative Law Judge  
Docket No: 24-ALJ-24-P0027

JOSEPH KELSEY, #217218 .....Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION,  
PAROLE, & PARDON SERVICES.....Respondent.

**MOTION TO REINSTATE APPEAL**

Appellant, Joseph Kelsey, by and through undersigned counsel, makes the following motion to reinstate the above-captioned appeal following this Court's order of dismissal dated February 24, 2025. In support of this motion, Appellant submits the following:

1. On February 24, 2025, this Court entered an Order dismissing Appellant's appeal on the grounds that his Notice of Appeal had been untimely filed. Order at 4. In its order, the Court stated that Appellant's Notice of Appeal was due on July 1, 2024, but not filed until July 9, 2024.

2. That is incorrect. Appellant's Notice of Appeal was mailed to the Administrative Law Court and to opposing counsel on June 27, 2024, prior to the deadline of July 1, 2024. Exhibit A (Notice of Appeal and Certificate of Service dated June 27, 2024). Appellant's Notice of Appeal included the ALC's form Notice of Appeal, Appellant's statement of the grounds for appeal, and exhibits.

**Motions for Reconsideration  
are Prohibited.  
See ALC Rule 65.**

3. On July 2, 2024, after the deadline for Appellant to file his Notice of Appeal had already passed, the ALC Clerk's Office mailed a letter to undersigned counsel advising that counsel had included the incorrect form with the Notice of Appeal filed on June 27, 2024, and providing a different form for counsel to resubmit the appeal.<sup>1</sup> Exhibit B (Letter from ALC dated July 2, 2024). There were no material differences between the form notice counsel originally submitted on June 27 and the form notice provided by the Clerk.

4. Undersigned counsel was out of the state at the time that the Clerk's letter was mailed and received the letter upon returning to the office. Upon receipt of the letter, counsel immediately contacted the Clerk to clarify which form was needed and to confirm that the appeal should be resubmitted as timely even though the Clerk's letter had been mailed after the submission deadline had passed. The Clerk's Office confirmed that the Notice of Appeal could be resubmitted with the corrected form.

5. Consequently, on July 9, 2024, undersigned counsel mailed the corrected form notice, along with the statement of the grounds for appeal and exhibits, back to the Clerk. The only difference between the materials submitted on June 27 and July 9 was the cover letter form notice received from the Clerk. *Compare* Exhibit A *with* Exhibit C (Notice of Appeal dated July 9, 2024). Counsel then received the judge assignment assigning this Court to preside over the appeal on July 18, 2024, without further incident.

6. A similar clerical error has occurred in at least one other parole case at the ALC and resulted in erroneous dismissal of a timely appeal before briefs were filed. *Karen Bennett, #117590 v. SCDPPPS, 24-ALJ-15-0003-AP*. In *Bennett*, Judge Durden reinstated Bennett's

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<sup>1</sup> The form that counsel originally filed on June 27 was the form for general appeals from agency decisions, which is available on the ALC's website. *See* Exhibit D (ALC Notice of Appeal Non-DEW Form). The form provided by the Clerk's Office was the specific form for special appeals from decisions by PPP, which, to the best of counsel's knowledge, is not available on the ALC's website. *See* ALC Forms, <https://www.scalc.net/forms.aspx>.

appeal pursuant to SCALC Rule 67 after counsel brought the clerical misunderstanding to the Court's attention. Exhibit E (Order to Reinstate Case, *Bennett v. SCDPPPS*, 24-ALJ-15-0003-AP (Jan. 31, 2024)). Rule 67 provides:

Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the administrative law judge at any time of his own initiative or on the motion of any party and after such notice, if any, as the administrative law judge orders.

Similar correction is appropriate in this case.

7. Further, multiple courts, including the United States and South Carolina Supreme Courts, have recognized that “imperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment, to which appellate court.” *Becker v. Montgomery*, 532 U.S. 757, 767 (2001); *see also Perkins v. Douglass*, 46 S.C. 6, 6, 24 S.E. 42, 43 (1896) (noting, in a case that was dismissed because proof of service of the notice of appeal had not been filed in the record, that the “appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits” and remanding for a decision on the merits). The United States Supreme Court has similarly recognized that federal courts should permit notices of appeal “technically at variance with the letter of a procedural rule” but that amount to “the functional equivalent of what the rule requires.” *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 316–17 (1988); *see also Clark v. Cartledge*, 829 F.3d 303, 305 (4th Cir. 2016). Technical defects in a notice of appeal affecting no matter of substance do not deprive the appellate court of jurisdiction nor the appellant of his right to appeal and access to the courts. *See, e.g., Turnbull v. United States*, 929 F.2d 173, 177 (5th Cir. 1991) (noting that technical defects “should not bar an appeal as long as the intent to appeal a specific judgment can be fairly inferred and the appellee is not prejudiced or misled by the mistake.”); *Contino v. United States*, 535 F.3d 124, 126-27 (2d Cir. 2008) (holding that counsel's failure to

transmit an electronic notice of appeal with the proper event code did not render it untimely); *Bisher v. Lehigh Valley Health Network, Inc.*, 265 A.3d 383, 407 (Pa. 2021) (“[T]echnical defects should not frustrate the goal of adjudicating cases on the merits.”); *Horton v. Stovall*, 591 S.W.3d 567, 568, 570 (Tex. 2019) (in the interests of justice, fair play, and judicial economy, “[r]ather than disposing of appeals based on harmless procedural defects, appellate courts should reach the merits of an appeal whenever reasonably possible.” (internal citation omitted)); *Willis v. Donnelly*, 199 S.W.3d 262, 270 (Tex. 2006) (“[A] party should not lose its right to appeal based on an unduly technical application of procedural rules.”); *Boydston v. Strole Dev. Co.*, 969 P.2d 653, 656 (Ariz. 1998) (“A defective notice of appeal does not necessarily deprive the court of appeals of jurisdiction. It will be sufficient as a notice if it is neither misleading nor prejudicial to the appellee.”); *Wilhelm v. Owens Enterprises, Inc.*, 790 P.2d 467, 468 (Mont. 1990) (“[T]echnical defects of procedure should not bar a party from access to the courts.”); *Kelly v. Kelly*, 371 N.W.2d 193, 196 (Minn. 1985) (“A notice of appeal is not insufficient due to clerical errors or defects which could not have been misleading.”); *Aguiar v. Doral Hotel & Country Club*, 599 So. 2d 698, 701 (Fla. Ct. App. 1992) (“[S]o long as the notice of appeal gives sufficient information from which it can reasonably be determined which order is being appealed, technical defects in the notice that neither affect jurisdiction nor mislead or prejudice the other party will not require dismissal.”); *Hanna v. American Int’l Land Corp.*, 289 So. 2d 756, 757 n.1 (Fla. 2d DCA 1974) (deficiencies in form or substance of notice of appeal shall not be jurisdictional or require dismissal unless opposing party was misled or prejudiced).

8. Here, Appellant’s Notice of Appeal filed on June 27, 2024 clearly stated that Appellant was appealing the decision of the Parole Board to this Court, set forth a clear statement of the ground for appeal, and provided notice to Respondent (*see* Exhibit A), upon which

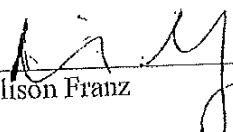
Respondent briefed the issues. *See Becker*, 532 U.S. at 767; *U.S. v. Henneberger*, 592 Fed. Appx. 233, 236 (5th Cir. 2014) (finding that a notice of appeal was effective, even if marred by a technical defect, where “[the appellant’s] intent to appeal his sentence was clear, and the government has fully briefed the correct sentencing issue.”). Thus, Respondent cannot point to any prejudice arising from the initial inclusion of the incorrect (but materially identical) form notice. There is no material difference between the two forms—the information counsel provided was the same on both forms, and the statements of the issues on appeal that counsel filed on June 27 and on July 9 were identical.

### CONCLUSION

In light of the foregoing events, Appellant’s appeal should be reinstated and decided on the merits. Appellant’s Notice of Appeal was initially timely submitted with the form appeal provided on the ALC’s website, and when the PPP-specific form was provided, counsel promptly corrected the error. Given that there is no material difference between the form Notice of Appeal submitted on June 27 and the form submitted on July 9, the defect in this notice of appeal is clearly a matter of form, not substance, and such an error, assuming there was an error, should not deprive Appellant of his right to appeal constitutional and statutory violations by the agency or his access to the courts.

*[signature block appears on following page]*

Respectfully submitted,

  
Allison Franz

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**ROSALIND MAJOR**

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*Counsel for Appellant*

March 7, 2025.

# Exhibit A

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Joseph Kelsey, #217210  
(Your Name)

Appellant,

v.

S.C. Dept of Probation, Parole, & Pardon Services  
(Agency Name)

Respondent(s).

DOCKET NO. ALJ-AP  
(To be completed by the Court)

NOTICE OF APPEAL

Notice is hereby given that Joseph Kelsey, #217210 (your name), does hereby appeal the final decision of the S.C. Dept of Probation, Parole, & Pardon Services (agency name), dated April 24, 2024 and received May 30, 2024 (reconsideration decision), a copy of which is attached.

In accordance with SCALC Rule 33(B), please provide a general statement of the grounds for appeal below:

Please see attached.

Also attached is the request for transcript to the agency dated April 24, 2024.

Filing Fee (See SCALC Rule 71) is being submitted today to the Court via:

Check  Money Order  Cash  Waiver Form/Affidavit

[Signature]  
Your Signature or Signature of Attorney

April 24, 2024 CE 27/2024  
Date

800 Elmwood Ave., Suite 200

Columbia, SC

Mailing Address

City, State, Zip code


billson@justice360sc.org

(716) 408-6167

\*Email Address

Phone Number

\*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

| REPRESENTATION  |  |                          |
|---|--|--------------------------|
| Are you representing yourself? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |  |                          |
| Are you represented by an Attorney? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   | Name of Attorney: Allison Franz                      |                          |
| Attorney Mailing Address:<br>900 Elmwood Ave., Suite 200  | City, State and Zip: Columbia, SC 29201              |                          |
| Attorney Work Number and Cell Number:<br>(803) 765-1044   | Attorney E-Mail Address:<br>allison@justice360sc.org |                          |
| PROOF OF SERVICE (MUST BE COMPLETED)  |  |                          |
| Your Name: Allison Franz  | Date: 6/27/2024                                      | City: Columbia State: SC |
| I hereby certify that on the date and place listed above, I served a copy of the foregoing Notice of Appeal on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names): |  |                          |
| Matthew Buchanan, SCDPPPS   | PO Box 207   | Columbia, SC 29202       |
| Name and/or Agency Name   | Address  | City, State and Zip      |
|   |  |                          |
| Name and/or Agency Name   | Address  | City, State and Zip      |
|   |  |                          |
|    |  | Date: 6/27/2024          |
| <i>Your Signature or Signature of Attorney</i>  |  | Date                     |

**Attention:** All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website [www.scaic.net](http://www.scaic.net) or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Joseph Glen Kelsey, #217218,  
Appellant,  
vs.  
South Carolina Department of  
Probation, Parole & Pardon Services,  
Respondent.

NOTICE OF APPEAL

Docket No.: \_\_\_\_\_-ALJ-\_\_\_\_\_

The primary question presented in this appeal is whether Respondent South Carolina Department of Probation, Parole, and Pardon Services ("PPP") is permitted to knowingly and intentionally present demonstrably false information to the Parole Board. The facts are as follows.

Joseph Glen Kelsey (Joe) hereby appeals his April 24, 2024 parole denial from the South Carolina Department of Probation, Parole & Pardon Services and the South Carolina Parole Board. Joe was sentenced to life in prison for a murder that he participated in at the age of 16 in 1994, along with an older, more culpable codefendant, Geoffrey Payne. The Supreme Court of South Carolina has twice considered the facts of the offense and has held that the evidence "overwhelmingly prove[d]" that the victim died at Payne's hands, either "by Payne strangling her to death, or by Payne lighting the fuse of [a] pipe bomb that exploded in her mouth." *Payne v. State*, 355 S.C. 642, 586 S.E.2d 857 (2003); see also *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998). Payne, in other words, was indisputably the primary perpetrator of the murder.

On August 30, 2023, the Court of Appeals ruled that PPP must give parole-eligible inmates access to their parole files and an opportunity to correct any inaccurate information in their files before their parole hearings. *Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 441 S.C. 373, 379, 893 S.E.2d 588, 591-92 (2023). The court specifically found that PPP's "Form 1212 requires the inmate to notify the Board if there is an error in his or her file and to require the inmate to do so when he/she has no right to see the file is logically and legally absurd." *Id.* at 378, 893 S.E.2d at 591 (Internal quotation marks omitted). "[T]he language of Form 1212 requiring an inmate to notify the Board if his or her file is incorrect necessarily implies the right to review the file." *Id.* On March 5, 2024, the Court of Appeals remanded the case for Mr. Kelsey "to review his file, report any inaccuracies, and be given a new parole hearing." *Id.* at 379, 893 S.E.2d at 591-92. The case was remanded to PPP on March 8, 2024. Order of Remand, *Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, No. 19-ALJ-15-0061-A-AP (Mar. 8, 2024).

Immediately after the Court of Appeals' decision, on March 5 and March 7, 2024, undersigned counsel sent email requests to PPP for Mr. Kelsey's parole file and for a new parole hearing. PPP did not respond until March 25, 2024, when PPP notified counsel that Mr. Kelsey's new parole hearing had been set for April 24, 2024, but still did not provide Mr. Kelsey's file. Mr. Kelsey, like all other parole-eligible inmates since *Kelsey* was decided, was not allowed to review his file until the morning of his April 24 hearing (well after the file had been submitted to the Parole Board), when he was instructed to handwrite any necessary corrections on the file and

address inaccuracies orally to the Board during his hearing. Mr. Kelsey was then informed by a PPP employee that he would not be marked "present" for his parole hearing until he signed a form acknowledging that he had reviewed the file and that PPP "is not obligated to alter facts or details which are unsubstantiated by official records."

Upon reviewing the file, Mr. Kelsey learned that PPP has been providing the Board members with two different versions of the facts of the offense. The first description of the facts of the underlying offense—the version that PPP endorsed—sets forth a version of the crime that is conclusively refuted by a comprehensive SLED investigation report, sworn trial testimony, and detailed findings contained in two opinions of the Supreme Court of South Carolina. *See Payne v. State*, 355 S.C. 642, 586 S.E.2d 857 (2003); *State v. Kelsey*, 331 S.C. 50, 59-60, 502 S.E.2d 63, 67 (1998). While the source of this flagrantly false version of the case is unknown (and unstated in the parole file), it portrays Mr. Kelsey as the primary perpetrator and aggressor the night of the offense. In fact, it completely flips the roles of Mr. Kelsey and his co-defendant Payne, rejecting the Supreme Court's finding that "the testimony overwhelmingly proves that Payne murdered [the victim]."<sup>1</sup> *Payne*, 355 S.C. at 646, 586 S.E.2d at 859. *See also Kelsey*, 331 S.C. at 59-61, 502 S.E.2d at 67-68. Only after the inclusion of this inflammatory description of the offense did PPP include the findings of fact as made by the Supreme Court of South Carolina, which PPP itself did not endorse.

As instructed by PPP, at Mr. Kelsey's parole hearing, Mr. Kelsey and counsel called the Board's attention to the incorrect facts of the offense and informed the Board that PPP's false version of the offense had been proven untrue by multiple sources, including sworn testimony and the South Carolina Supreme Court. Mr. Kelsey also presented unconverted evidence of his prison record, which has only continued to improve: Since his 2023 hearing, Mr. Kelsey has continued to pursue his master's degree, maintained a perfect disciplinary record, and volunteer thousands of hours to serve suicidal inmates, and he has become one of only a handful of SCDC inmates certified as a Peer Support Counselor. Nonetheless, the damage from PPP's false information was already done, and Mr. Kelsey was denied parole by a vote of two in favor to three against. As in Mr. Kelsey's previous hearings, the Board cited as its reasons for denial exclusively factors related to his offense, the only thing Mr. Kelsey can never change: "nature and seriousness of current offense"; "indication of violence in this or previous offense"; and "use of deadly weapon in this or previous offense."<sup>2</sup>

Subsequently, Mr. Kelsey submitted a request for reconsideration to PPP along with a request that PPP correct his parole file. Mr. Kelsey detailed various inaccuracies in his file,

<sup>1</sup> In fact, even the victim's family acknowledges that the PPP version is false. Melanie Richey's father has repeatedly stated that Payne was the most culpable—"the instigator, the organizer, the leader." *See Geoffrey Payne Parole Hearings* (Feb. 25, 2017 and Mar. 3, 2019).

<sup>2</sup> The Board's "Findings of Fact" as listed in Mr. Kelsey's denial letter are taken neither from the criteria specified in S.C. Code § 24-21-640 nor the factors listed in Form 1212, which § 24-21-640 authorized PPP to create. Instead, the findings of fact are taken from a set of six "reasons for rejection" that appear nowhere in case law or statute but only in the Board's internal Policy and Procedure Manual. S.C. Board of Pardons & Paroles Policy and Procedure Manual at 31 (Nov. 2019).

Including the false information about the offense, and provided PPP with the "official records" that it required in order to change information in the file. Specifically, Mr. Kelsey provided copies of the trial transcript in his case in which the third codefendant, Jamie Lee, testified under oath that the version of the offense that PPP provided to the Board was false, along with the findings from the South Carolina Supreme Court that refuted PPP's false version and found that "the testimony overwhelmingly proves that Payne murdered [the victim]." In response, on May 30, 2024, PPP Associate Deputy Director Valerie Suber denied reconsideration and not only refused to remove the false information in Mr. Kelsey's file, but further claimed that PPP had never provided false information in the first place:

You assert that the Board was provided with false information about the facts of the crime. The facts were and continue to be contested by the involved parties and their representatives. The Agency provided the investigative findings as well as the Supreme Court findings for the Board's review. During the hearing, you were able to provide your version of the facts as well. The Board has allowed extensive testimony regarding the facts of the offense during the hearing process.

It is worth noting that the "investigative findings" to which Ms. Suber referred (presumably, the findings of law enforcement, although the sources underlying PPP's false version of events have not been disclosed or provided to Mr. Kelsey) contain specific findings, including a SLED report, that the version of events which PPP endorsed are false. Notably, however, those "investigative findings" were excluded from PPP's file.

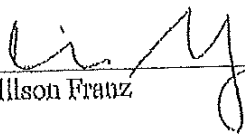
This appeal raises the following claims based on violations of due process, Article I, § 8 of the South Carolina Constitution, and the South Carolina Administrative Procedure Act:

1. Whether PPP violated due process and the South Carolina Administrative Procedures Act by:
  - a. Knowingly and willfully providing information to the Parole Board in its parole file that PPP knows to be false—specifically, information that was directly refuted by sworn trial testimony, a SLED investigative report, and two opinions of the South Carolina Supreme Court; and
  - b. Refusing to remove that information from the parole file when informed that it was false and provided with records proving that it was false.
2. Whether the Board has failed to consider the required factors of S.C. Code § 24-21-640 and PPP's Form 1212, in violation of due process and *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008).
3. Whether the Board's decision is arbitrary and capricious, and therefore a violation of the South Carolina Administrative Procedures Act and due process, given that:
  - a. The Board granted parole to Payne but repeatedly denied parole to Joe and has done so based on the nature of the offense, even though Payne was significantly more culpable as a matter of fact and law;

- b. The decision to deny Mr. Kelsey parole on the basis of the nature of his offense was based on false information, provided by PPP, that the Board members were aware was untrue;
  - c. Multiple members of the Board who had previously voted to parole Joe changed their votes, flip-flopping between 2019, 2021, 2023, and 2024, while continuing to cite only the (unchanged) nature and circumstances of Joe's offense as the Board's reason to deny parole;
  - d. The Board members reached a decision about Joe's parole without considering the packet of information Joe presented to the Board before the parole hearing;
  - e. The decision to deny Joe parole in 2024 was, like the decisions in 2023, 2021, and 2019, based on factors directly contradicted by the record before the Board;
  - f. None of the Board members engaged in any fact-finding or "offered an explanation [or] indicated that [they] had considered the statutory criteria of section 24-21-640" as required by *Cooper*; and
  - g. The sum total of the evidence indicates that the Board vindictively denied Joe parole in 2021, 2023, and 2024 in part or in whole, because he appealed its 2019, 2021, and 2023 decisions to deny him parole and won favorable rulings from this Court, the Court of Appeals, and the South Carolina Supreme Court.
4. Whether PPP violated Mr. Kelsey's right to due process by:
- a. Refusing to give Mr. Kelsey access to his parole file until roughly one hour before his parole hearing, two weeks after the file had been submitted to the Board, with no opportunity to correct the false information before it infected the Board's decision-making, *contra Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 441 S.C. 373, 893 S.E.2d 588 (2023); and
  - b. Redacting statements of purported victims in their entirety rather than making only "necessary redactions" of victim contact information, *contra Kelsey*, 441 S.C. at 379, 893 S.E.2d at 591.
5. Whether the Agency and the Board otherwise violated the South Carolina Administrative Procedures Act and due process by:
- a. Making findings of fact that are not "based exclusively on the evidence" or "on matters officially noticed," S.C. Code Ann. § 1-23-320(I); and
  - b. Reaching a decision that is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *Id.* § 1-23-380(5)(e).
6. Whether the Agency and the Board acted arbitrarily and capriciously, in violation of due process, the South Carolina Administrative Procedures Act, and S.C. Code § 24-21-640, where:
- a. The Agency and the Board have imposed an arbitrary page limit on materials submitted by parole-eligible inmates, and the Board refuses to consider (or is permitted to ignore at will) any information, including exhibits, that exceeds that page limit, regardless of whether consideration of that information is required by S.C. Code § 24-21-640;
  - b. There is no corresponding page limit on materials submitted by the Agency; and

- o. The Board is allowed to base its decision to deny parole exclusively on its own internal set of six factors, *see* Parole Board Manual at 31, that appear neither in S.C. Code § 24-21-640 nor in the Criteria for Parole Consideration (Form 1212) that § 24-21-640 authorizes PPP to create, and are not rationally related to the criteria set forth in § 24-21-640.
7. Whether the Board violated the First Amendment when it retaliated against Mr. Kelsey by denying him parole in 2024, in whole or in part because Mr. Kelsey appealed his 2023, 2021, and 2019 denials, acts that are protected First Amendment conduct.

Respectfully submitted,

By:   
Allison Franz

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June 27, 2024.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Joseph Glen Kelsey, #217218,  
Appellant, )  
vs. )  
South Carolina Department of  
Probation, Parole & Pardon Services,  
Respondent. )

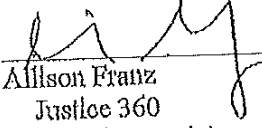
CERTIFICATE OF SERVICE

Docket No.: \_\_\_\_-ALJ-\_\_\_\_

The undersigned hereby certifies that a copy of Appellant's Notice of Appeal was served on opposing counsel by first-class United States mail, postage prepaid, at the address provided in the Attorney Information System:

Matthew C. Buchanan  
S.C. Department of Probation, Parole and Pardon Services  
PO Box 207  
Columbia, SC 29202

Service was made on June 27, 2024.

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

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

HENRY McMASTER  
Governor



JODI D. GALLMAN  
Acting 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 24, 2024

Mr. Joseph Kelsey #00217218  
Broad River Correctional Institution  
4460 Broad River Rd.  
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Kelsey:

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  
02 Indication Of Violence In This Or Previous Offense  
03 Use Of Deadly Weapon In This Or Previous Offense  
Vote Count: 3 Rejected - 2 Parole

Sincerely,

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

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

4/24/2024

SCDPPPS  
293 Greystone Blvd.  
Columbia, SC 29210

KELSEY, JOSEPH GLEN (SCDC ID: 00217218)  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210,

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

HENRY McMASTER  
Governor



JODI GAILMAN  
Acting Director

293 GREYSTONE BOULEVARD  
COLUMBIA, SOUTH CAROLINA 29210  
Telephone: (803) 734-9220 / Facsimile: (803) 734-9440  
[www.dpps.sc.gov](http://www.dpps.sc.gov)  
MAILING ADDRESS: P.O. BOX 207  
COLUMBIA, SOUTH CAROLINA 29202

May 30, 2024  
Allison Franz (via e-mail)  
KELSEY, JOSEPH GLEN (SCDC ID: 00217218)  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

This letter is in response to your correspondence which was received in our office on 05/24/2024. We have received your correspondence as an official request for reconsideration of the Board's decision handed down on 04/24/2024, which denied parole. Your request is based on the following assertions.

First, you assert that the parole file contains inaccurate information, including information about your demand to review the file 30 days prior to the scheduled hearing. As you are aware, the file is not complete 30 days prior to the hearing. You agree that the Agency supplied the attorney with the file prior to the hearing; and that the inmate was given the opportunity to review the file prior to the hearing. Both the attorney and the inmate were given the opportunity to report what they perceive to be inaccuracies in the file during the hearing and in writing after the hearing. The Agency has responded to those reports. See attached.

You assert that the Board was provided with false information about the facts of the crime. The facts were and continue to be contested by the involved parties and their representatives. The Agency provided the investigative findings as well as the Supreme Court findings for the Board's review. During the hearing, you were able to provide your version of the facts as well. The Board has allowed extensive testimony regarding the facts of the offense during the hearing process.

You assert that the prior offenses listed in the parole file are not prior offenses. As I stated in the Agency's response to the parole file review, the presentation of the prior criminal history includes all criminal convictions found as part of the investigative process, which are not part of the active sentence for which parole is being considered. This compiles a complete picture of the inmate's criminal involvement. The crimes in question are prior offenses, in that they occurred in the past. Your interpretation of our use of the word prior is not sufficient for reconsideration of our process or the inclusion of the criminal history. You were given the opportunity to discuss your interpretation of the



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term prior offense during the hearing.

You assert that the statement of Solicitor Rick Hubbard is incorrect. Without first-hand knowledge or participation in the conversation between the Solicitor and Mr. Kelsey, there is insufficient cause to entertain this assertion. You were given the opportunity to state your disagreement with the statement during the hearing.

You assert that the COMPAS assessment is incorrect in that the inmate will likely return to an area of high crime or victimization. Again, these conclusions are derived from the tool, which is designed to identify criminogenic needs of individuals possibly returning to society, in an effort to minimize future criminal involvement. The information stems from answers provided during the interview. You were given the opportunity to discuss this during the hearing.

You continue to assert that the parole file references Mr. Kelsey's daughter. This is inaccurate. The file indicates the inmate has no children. You were given the opportunity to discuss this at the hearing.

You assert that the file omits several of Mr. Kelsey's academic credentials and program participation. As I previously advised, the listing of academic courses and behavioral programs is generated from the official records of the SC Department of Corrections. You were provided the opportunity to discuss these achievements during the hearing.

Next, you assert the Board's decision-making is "arbitrary and capricious."

Section 24-21-640 of the SC Code of laws describes the circumstances warranting parole.

The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board; that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

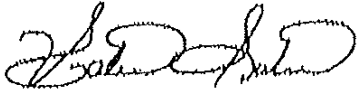
While it is evident that you are satisfied the required circumstances exist, it is also evident the Board is not.

Finally, you present additional information to which you assert the Board did not have access at the hearing because of a twenty-page limit imposed by its members. Be advised, the Agency continues to present each submission regarding parole and/or pardon consideration to the Board in its entirety. If the information you reference in your request for reconsideration was not presented to the Board, it was because you did not include it with your submission. You were also given the opportunity to discuss this with the Board during the hearing.

The hearing and file have been reviewed. There is no evidence to support reconsideration of the Board's ruling in this case. This decision is final.

Please note, there is no rehearing/appeal process for the routine denial of parole.

Sincerely,



Valeria Suber

Associate Deputy Director of Paroles, Pardons and Release Services  
SC Department of Probation, Parole and Pardon Services



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Department of Probation, Parole and Pardon Services

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JERRY B. ADGER  
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COLUMBIA, SOUTH CAROLINA 29202

## HOW TO REQUEST A CD OF YOUR PAROLE/PARDON HEARING

CD'S may be obtained from Ms. Patricia Gunter, Department of Probation,  
Parole and Pardon Services, P.O. Box 207 Columbia, SC 29202.

Please include a money order, cashier's check, or cooper trust fund check (for  
inmates) (no personal checks will be accepted) made out to Department of  
Probation and Parole for 17.50 per CD along with the following information.

1. Name and SCDC or SID#:

Joseph Kelsey, # 00217218

2. Date of the parole hearing:

04/24/2024

3. Please send the CD to:

Justice 360, Attn: Cierra Negron-Sau 110  
900 Elmwood Ave, Ste. 200  
Columbia, SC 29201  
Cierra@justice360sc.org

JUSTICE 800  
OPERATING ACCOUNT  
(008) 700-1044  
800 BLANCKWOOD AVE, STE 200  
COLUMBIA, SC 29201

PALMETTO CITIZENS  
NATIONAL GOLF UNION  
COLUMBIA, SC  
07-700112000

19042

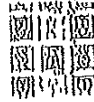
4/24/2024

PAY TO THE ORDER OF SC DIPS  
Seventeen + 50/100

\$ 17.50

DOLLARS

JUSTICE 800  
OPERATING ACCOUNT



*[Signature]*

INTERNATIONAL UNION OF GOLF PLAYERS

MEMO

MEMORANDUM FOR THE RECORD

19042

JUSTICE 800  
COLUMBIA, SC 29201

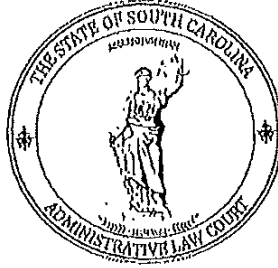
19042

JUSTICE 800  
COLUMBIA, SC 29201

*Big Easy Hare (Kelsey)*

# Exhibit B

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT



Memorandum

---

To: Appellant/Appellant's Attorney  
From: Clerk's Office, Administrative Law Court  
Date: July 2, 2024  
Re: Kelsey v. SC DPPPS, Compliance with ALC Rules

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The Administrative Law Court (ALC) received a Notice of Appeal from you on July 1, 2024.  
According to SCALC 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 Notice of Appeal form required pursuant to SCALC Rule 57 and 59. A copy of the form previously provided to your office is attached for your convenience.
- 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 SCALC Rule 59(C).
- The Notice of Appeal form you submitted must be signed and dated.
- Filing Fee of \$25 in accordance with SCALC Rule 71 for your 4<sup>th</sup> and subsequent appeal this calendar year.
- Your documents are being returned to you. The ALC does not handle Post Conviction Relief (PCR) matters.
- Other: The Notice of Appeal you submitted on July 1, 2024, is for an appeal to the ALC in accordance with SCALC Rule 33.
- Please return the appropriate information within 10 days of the date of this Memorandum or your case will be returned to you unprocessed.

C: SC DPPPS

Edgar A. Brown Building • 1205 Pendleton St., Suite 224 • Columbia, South Carolina 29201

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Joseph Glen Kelsey, #217218,  
Appellant,  
  
vs.  
  
South Carolina Department of  
Probation, Parole & Pardon Services,  
Respondent.

NOTICE OF APPEAL

Docket No.: 19-ALJ-15-0061-A-AP

The primary question presented in this appeal is whether Respondent South Carolina Department of Probation, Parole, and Pardon Services ("PPP") is permitted to knowingly and intentionally present demonstrably false information to the Parole Board. The facts are as follows.

Joseph Glen Kelsey (Joe) hereby appeals his April 24, 2024 parole denial from the South Carolina Department of Probation, Parole & Pardon Services and the South Carolina Parole Board. Joe was sentenced to life in prison for a murder that he participated in at the age of 16 in 1994, along with an older, more culpable codefendant, Geoffrey Payne. The Supreme Court of South Carolina has twice considered the facts of the offense and has held that the evidence "overwhelmingly prove[d]" that the victim died at Payne's hands, either "by Payne strangling her to death, or by Payne lighting the fuse of [a] pipe bomb that exploded in her mouth." *Payne v. State*, 355 S.C. 642, 586 S.E.2d 857 (2003); see also *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998). Payne, in other words, was indisputably the primary perpetrator of the murder.

On August 30, 2023, the Court of Appeals ruled that PPP must give parole-eligible inmates access to their parole files and an opportunity to correct any inaccurate information in their files before their parole hearings. *Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 441 S.C. 373, 379, 893 S.E.2d 588, 591-92 (2023). The court specifically found that PPP's "Form 1212 requires the inmate to notify the Board if there is an error in his or her file and to require the inmate to do so when he/she has no right to see the file is logically and legally absurd." *Id.* at 378, 893 S.E.2d at 591 (internal quotation marks omitted). "[T]he language of Form 1212 requiring an inmate to notify the Board if his or her file is incorrect necessarily implies the right to review the file." *Id.* On March 5, 2024, the Court of Appeals remanded the case for Mr. Kelsey "to review his file, report any inaccuracies, and be given a new parole hearing." *Id.* at 379, 893 S.E.2d at 591-92. The case was remanded to PPP on March 8, 2024. Order of Remand, *Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, No. 19-ALJ-15-0061-A-AP (Mar. 8, 2024).

Immediately after the Court of Appeals' decision, on March 5 and March 7, 2024, undersigned counsel sent email requests to PPP for Mr. Kelsey's parole file and for a new parole hearing. PPP did not respond until March 25, 2024, when PPP notified counsel that Mr. Kelsey's new parole hearing had been set for April 24, 2024, but still did not provide Mr. Kelsey's file. Mr. Kelsey, like all other parole-eligible inmates since *Kelsey* was decided, was not allowed to review his file until the morning of his April 24 hearing (well after the file had been submitted to the Parole Board), when he was instructed to handwrite any necessary corrections on the file and

address inaccuracies orally to the Board during his hearing. Mr. Kelsey was then informed by a PPP employee that he would not be marked "present" for his parole hearing until he signed a form acknowledging that he had reviewed the file and that PPP "is not obligated to alter facts or details which are unsubstantiated by official records."

Upon reviewing the file, Mr. Kelsey learned that PPP has been providing the Board members with two different versions of the facts of the offense. The first description of the facts of the underlying offense—the version that PPP endorsed—sets forth a version of the crime that is conclusively refuted by a comprehensive SLED investigation report, sworn trial testimony, and detailed findings contained in two opinions of the Supreme Court of South Carolina. *See Payne v. State*, 355 S.C. 642, 586 S.E.2d 857 (2003); *State v. Kelsey*, 331 S.C. 50, 59-60, 502 S.E.2d 63, 67 (1998). While the source of this flagrantly false version of the case is unknown (and unstated in the parole file), it portrays Mr. Kelsey as the primary perpetrator and aggressor the night of the offense. In fact, it completely flips the roles of Mr. Kelsey and his co-defendant Payne, rejecting the Supreme Court's finding that "the testimony overwhelmingly proves that Payne murdered [the victim]."<sup>1</sup> *Payne*, 355 S.C. at 646, 586 S.E.2d at 859. *See also Kelsey*, 331 S.C. at 59-61, 502 S.E.2d at 67-68. Only after the inclusion of this inflammatory description of the offense did PPP include the findings of fact as made by the Supreme Court of South Carolina, which PPP itself did not endorse.

As instructed by PPP, at Mr. Kelsey's parole hearing, Mr. Kelsey and counsel called the Board's attention to the incorrect facts of the offense and informed the Board that PPP's false version of the offense had been proven untrue by multiple sources, including sworn testimony and the South Carolina Supreme Court. Mr. Kelsey also presented unconverted evidence of his prison record, which has only continued to improve: Since his 2023 hearing, Mr. Kelsey has continued to pursue his master's degree, maintained a perfect disciplinary record, and volunteer thousands of hours to serve suicidal inmates, and he has become one of only a handful of SCDC inmates certified as a Peer Support Counselor. Nonetheless, the damage from PPP's false information was already done, and Mr. Kelsey was denied parole by a vote of two in favor to three against. As in Mr. Kelsey's previous hearings, the Board cited as its reasons for denial exclusively factors related to his offense, the only thing Mr. Kelsey can never change: "nature and seriousness of current offense"; "indication of violence in this or previous offense"; and "use of deadly weapon in this or previous offense."<sup>2</sup>

Subsequently, Mr. Kelsey submitted a request for reconsideration to PPP along with a request that PPP correct his parole file. Mr. Kelsey detailed various inaccuracies in his file,

<sup>1</sup> In fact, even the victim's family acknowledges that the PPP version is false. Melanie Richey's father has repeatedly stated that Payne was the most culpable—"the instigator, the organizer, the leader." *See Geoffrey Payne Parole Hearings* (Feb. 25, 2017 and Mar. 3, 2019).

<sup>2</sup> The Board's "Findings of Fact" as listed in Mr. Kelsey's denial letter are taken neither from the criteria specified in S.C. Code § 24-21-640 nor the factors listed in Form 1212, which § 24-21-640 authorized PPP to create. Instead, the findings of fact are taken from a set of six "reasons for rejection" that appear nowhere in caselaw or statute but only in the Board's internal Policy and Procedure Manual. S.C. Board of Pardons & Paroles Policy and Procedure Manual at 31 (Nov. 2019).

including the false information about the offense, and provided PPP with the "official records" that it required in order to change information in the file. Specifically, Mr. Kelsey provided copies of the trial transcript in his case in which the third codefendant, Jamie Lee, testified under oath that the version of the offense that PPP provided to the Board was false, along with the findings from the South Carolina Supreme Court that refuted PPP's false version and found that "the testimony overwhelmingly proves that Payne murdered [the victim]." In response, on May 30, 2024, PPP Associate Deputy Director Valerie Suber denied reconsideration and not only refused to remove the false information in Mr. Kelsey's file, but further claimed that PPP had never provided false information in the first place:

You assert that the Board was provided with false information about the facts of the crime. The facts were and continue to be contested by the involved parties and their representatives. The Agency provided the investigative findings as well as the Supreme Court findings for the Board's review. During the hearing, you were able to provide your version of the facts as well. The Board has allowed extensive testimony regarding the facts of the offense during the hearing process.

It is worth noting that the "investigative findings" to which Ms. Suber referred (presumably, the findings of law enforcement, although the sources underlying PPP's false version of events have not been disclosed or provided to Mr. Kelsey) contain specific findings, including a SLED report, that the version of events which PPP endorsed are false. Notably, however, those "investigative findings" were excluded from PPP's file.

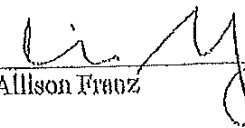
This appeal raises the following claims based on violations of due process, Article I, § 8 of the South Carolina Constitution, and the South Carolina Administrative Procedure Act:

1. Whether PPP violated due process and the South Carolina Administrative Procedures Act by:
  - a. Knowingly and willfully providing information to the Parole Board in its parole file that PPP knows to be false—specifically, information that was directly refuted by sworn trial testimony, a SLED investigative report, and two opinions of the South Carolina Supreme Court; and
  - b. Refusing to remove that information from the parole file when informed that it was false and provided with records proving that it was false.
2. Whether the Board has failed to consider the required factors of S.C. Code § 24-21-640 and PPP's Form 1212, in violation of due process and *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008).
3. Whether the Board's decision is arbitrary and capricious, and therefore a violation of the South Carolina Administrative Procedures Act and due process, given that:
  - a. The Board granted parole to Payne but repeatedly denied parole to Joe and has done so based on the nature of the offense, even though Payne was significantly more culpable as a matter of fact and law;

- b. The decision to deny Mr. Kelsey parole on the basis of the nature of his offense was based on false information, provided by PPP, that the Board members were aware was untrue;
  - c. Multiple members of the Board who had previously voted to parole Joe changed their votes, flip-flopping between 2019, 2021, 2023, and 2024, while continuing to cite only the (unchanged) nature and circumstances of Joe's offense as the Board's reason to deny parole;
  - d. The Board members reached a decision about Joe's parole without considering the packet of information Joe presented to the Board before the parole hearing;
  - e. The decision to deny Joe parole in 2024 was, like the decisions in 2023, 2021, and 2019, based on factors directly contradicted by the record before the Board;
  - f. None of the Board members engaged in any fact-finding or "offered an explanation [or] indicated that [they] had considered the statutory criteria of section 24-21-640" as required by *Cooper*; and
  - g. The sum total of the evidence indicates that the Board vindictively denied Joe parole in 2021, 2023, and 2024 in part or in whole, because he appealed its 2019, 2021, and 2023 decisions to deny him parole and won favorable rulings from this Court, the Court of Appeals, and the South Carolina Supreme Court.
4. Whether PPP violated Mr. Kelsey's right to due process by:
- a. Refusing to give Mr. Kelsey access to his parole file until roughly one hour before his parole hearing, two weeks after the file had been submitted to the Board, with no opportunity to correct the false information before it infected the Board's decision-making, *contra Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 441 S.C. 373, 893 S.E.2d 588 (2023); and
  - b. Redacting statements of purported victims in their entirety rather than making only "necessary redactions" of victim contact information, *contra Kelsey*, 441 S.C. at 379, 893 S.E.2d at 591.
5. Whether the Agency and the Board otherwise violated the South Carolina Administrative Procedures Act and due process by:
- a. Making findings of fact that are not "based exclusively on the evidence" or "on matters officially noticed," S.C. Code Ann. § 1-23-320(1); and
  - b. Reaching a decision that is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *Id.* § 1-23-380(5)(e).
6. Whether the Agency and the Board acted arbitrarily and capriciously, in violation of due process, the South Carolina Administrative Procedures Act, and S.C. Code § 24-21-640, where:
- a. The Agency and the Board have imposed an arbitrary page limit on materials submitted by parole-eligible inmates, and the Board refuses to consider (or is permitted to ignore at will) any information, including exhibits, that exceeds that page limit, regardless of whether consideration of that information is required by S.C. Code § 24-21-640;
  - b. There is no corresponding page limit on materials submitted by the Agency; and

- c. The Board is allowed to base its decision to deny parole exclusively on its own internal set of six factors, *see* Parole Board Manual at 31, that appear neither in S.C. Code § 24-21-640 nor in the Criteria for Parole Consideration (Form 1212) that § 24-21-640 authorizes PPP to create, and are not rationally related to the criteria set forth in § 24-21-640.
7. Whether the Board violated the First Amendment when it retaliated against Mr. Kelsey by denying him parole in 2024, in whole or in part because Mr. Kelsey appealed his 2023, 2021, and 2019 denials, acts that are protected First Amendment conduct.

Respectfully submitted,

By:   
Allison Franz

Allison Franz  
Rosalind Major  
Justice 360  
900 Elmwood Ave., Suite 200  
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Jon Ozmlnt  
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PO Box 17554  
Greenville, SC 29606  
(803) 429-9331  
jon@ozmlnt.com

June 27, 2024.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Joseph Glen Kelsey, #217218,  
Appellant, )  
vs. )  
South Carolina Department of  
Probation, Parole & Pardon Services, )  
Respondent. )

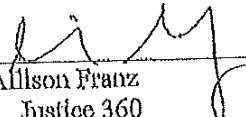
CERTIFICATE OF SERVICE

Docket No.: \_\_\_\_-ALJ-\_\_\_\_

The undersigned hereby certifies that a copy of Appellant's Notice of Appeal was served on opposing counsel by first-class United States mail, postage prepaid, at the address provided in the Attorney Information System:

Matthew C. Buchanan  
S.C. Department of Probation, Parole and Pardon Services  
PO Box 207  
Columbia, SC 29202

Service was made on June 27, 2024.

  
Allison Franz  
Justice 360  
900 Elmwood Ave., Suite 200  
Columbia, SC 29201  
(803) 765-1044  
allison@justice360so.org

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

HENRY McMASTER  
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JODY D. GALLMAN  
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Telephone: (803) 734-9220  
Fax: (803) 734-9440  
www.dppps.sc.gov

April 24, 2024

Mr. Joseph Kelsey #00217218  
Broad River Correctional Institution  
4460 Broad River Rd.  
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Kelsey:

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  
02 Indication Of Violence In This Or Previous Offense  
03 Use Of Deadly Weapon In This Or Previous Offense  
Vote Count: 3 Rejected - 2 Parole

Sincerely,

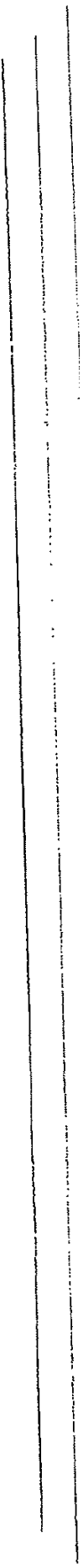
A handwritten signature in black ink, appearing to read "Valerie Suber".

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

4/24/2024

SCDPPPS  
293 Greystone Blvd.  
Columbia, SC 29210

KELSEY, JOSEPH GLEN (SCDC ID: 00217218)  
Broad River Correctional Institution  
4460 Broad River Road  
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May 30, 2024  
Allison Franz (via e-mail)  
KELSEY, JOSEPH GLEN (SCDC ID: 00217218)  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

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You assert that the Board was provided with false information about the facts of the crime. The facts were and continue to be contested by the involved parties and their representatives. The Agency provided the investigative findings as well as the Supreme Court findings for the Board's review. During the hearing, you were able to provide your version of the facts as well. The Board has allowed extensive testimony regarding the facts of the offense during the hearing process.

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term prior offense during the hearing.

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You continue to assert that the parole file references Mr. Kelsey's daughter. This is inaccurate. The file indicates the inmate has no children. You were given the opportunity to discuss this at the hearing.

You assert that the file omits several of Mr. Kelsey's academic credentials and program participation. As I previously advised, the listing of academic courses and behavioral programs is generated from the official records of the SC Department of Corrections. You were provided the opportunity to discuss these achievements during the hearing.

Next, you assert the Board's decision-making is "arbitrary and capricious."

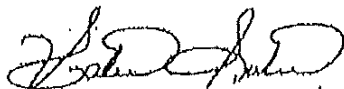
Section 24-21-640 of the SC Code of laws describes the circumstances warranting parole. The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board; that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

While it is evident that you are satisfied the required circumstances exist, it is also evident the Board is not.

Finally, you present additional information to which you assert the Board did not have access at the hearing because of a twenty-page limit imposed by its members. Be advised, the Agency continues to present each submission regarding parole and/or pardon consideration to the Board in its entirety. If the information you reference in your request for reconsideration was not presented to the Board, it was because you did not include it with your submission. You were also given the opportunity to discuss this with the Board during the hearing.

The hearing and file have been reviewed. There is no evidence to support reconsideration of the Board's ruling in this case. This decision is final. Please note, there is no rehearing/appeal process for the routine denial of parole.

Sincerely,



Valeria Suber  
Associate Deputy Director of Paroles, Pardons and Release Services  
SC Department of Probation, Parole and Pardon Services



"Nation's First Probation Agency accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA)."



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

HENRY McMASTER  
Governor



JERRY B. ADGER  
Director

293 GREYSTONE BOULEVARD  
COLUMBIA, SOUTH CAROLINA 29210  
Telephone: (803) 734-9220  
Facsimile: (803) 734-9440  
WWW.DPPPS.SC.GOV  
MAILING ADDRESS: P.O. BOX 207  
COLUMBIA, SOUTH CAROLINA 29202

## HOW TO REQUEST A CD OF YOUR PAROLE/PARDON HEARING

CD'S may be obtained from Ms. Patricia Gunter, Department of Probation,  
Parole and Pardon Services, P.O. Box 207 Columbia, SC 29202

Please include a money order, cashier's check, or cooper trust fund check (for  
inmates) (no personal checks will be accepted) made out to Department of  
Probation and Parole for 17.50 per CD along with the following information

1. Name and SCDC or SID#:

Joseph Kelsey, # 00217218

2. Date of the parole Hearing:

04/24/2024

3. Please send the CD to:

Justice 360, ATTN: Cierra Negron-Samilo  
900 Elmwood Ave, Ste. 200  
Columbia, SC 29201  
Cierra@justice360sc.org

JUSTICE 800  
OPERATING ACCOUNT  
(008) 700-1044  
800 ELMWOOD AVE, 8TH 200  
COLUMBIA, SC 29201

PAYMENT TO ORDER OF  
MEMBER CREDIT UNION  
COLUMBIA, SC

07-700112030

19042

4/21/2024

PAY TO THE  
ORDER OF

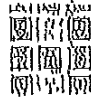
SC DIPS

\$ 17.00

Spencer + 50/XX

DOLLARS

JUSTICE 800  
OPERATING ACCOUNT



*[Signature]*

MEMO

MEMO LINE

JUSTICE 800  
COLUMBIA, SC 29201

19042

JUSTICE 800  
COLUMBIA, SC 29201

19042

*Bring From Home (Kelsey)*

# Exhibit C

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Joseph Kelsey # 217218

Docket No. 24-ALI-15-0027AP

Appellant,

v.

NOTICE OF APPEAL

South Carolina Department of Probation,  
Parole and Pardon Services,

Respondent.

Notice is hereby given that Joseph Kelsey # 217218 appeals the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated and received on May 30, 2024 (reconsideration) a copy of which is attached. In accordance with Rule 59(B) of the Rules of Procedure for the South Carolina Administrative Law Court (SCALC Rules) please provide a brief factual basis for each expressly and specifically asserted constitutional violation:

Please see attached.

Allison Franz (Attorney for appellant)  
Appellant's Name

[Signature]  
Signed

900 Elmwood Ave., Suite 200  
Mailing Address

7/9/2024  
Dated

Columbia, SC 29201  
City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Allison Franz (your name), on the 9 day of July, 2024 in Columbia (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, S.C. Dept of Probation, Parole and Pardon

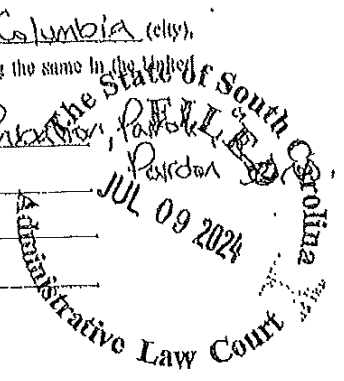
Address: PO Box 207

City, State, Zip Code: Columbia, SC 29201

Allison Franz  
Print your name

[Signature]  
Sign your name

(See reverse side for instructions)



Instructions for filing an appeal of the final agency decision from the South Carolina Department of Probation, Parole and Pardon Services:

- 1) You must complete the Notice of Appeal on the reverse side of these instructions and mail it to the Administrative Law Court at the following address:

Clarke's Office  
South Carolina Administrative Law Court  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

A copy of the Notice of Appeal must also be forwarded to the Division of Legal Services at the Department of Probation, Parole and Pardon Services at the following address:

Division of Legal Services  
S.C. Dept. of Probation, Parole & Pardon Services  
293 Greystone Boulevard  
Post Office Box 207  
Columbia, SC 29202

- 2) In order for your case to be processed by the ALC, a copy of the final decision from the Department of Probation, Parole and Pardon Services must be attached to the Notice of Appeal.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Joseph Glen Kelsey, #217218, )  
Appellant, )  
vs. )  
South Carolina Department of )  
Probation, Parole & Pardon Services, )  
Respondent. )

NOTICE OF APPEAL

Docket No.: \_\_\_-ALJ-\_\_\_

The primary question presented in this appeal is whether Respondent South Carolina Department of Probation, Parole, and Pardon Services ("PPP") is permitted to knowingly and intentionally present demonstrably false information to the Parole Board. The facts are as follows.

Joseph Glen Kelsey (Joe) hereby appeals his April 24, 2024 parole denial from the South Carolina Department of Probation, Parole & Pardon Services and the South Carolina Parole Board. Joe was sentenced to life in prison for a murder that he participated in at the age of 16 in 1994, along with an older, more culpable codefendant, Geoffrey Payne. The Supreme Court of South Carolina has twice considered the facts of the offense and has held that the evidence "overwhelmingly prove[d]" that the victim died at Payne's hands, either "by Payne strangling her to death, or by Payne lighting the fuse of [a] pipe bomb that exploded in her mouth." *Payne v. State*, 355 S.C. 642, 586 S.E.2d 857 (2003); see also *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998). Payne, in other words, was indisputably the primary perpetrator of the murder.

On August 30, 2023, the Court of Appeals ruled that PPP must give parole-eligible inmates access to their parole files and an opportunity to correct any inaccurate information in their files before their parole hearings. *Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 441 S.C. 373, 379, 893 S.E.2d 588, 591-92 (2023). The court specifically found that PPP's "Form 1212 requires the inmate to notify the Board if there is an error in his or her file and to require the inmate to do so when he/she has no right to see the file is logically and legally absurd." *Id.* at 378, 893 S.E.2d at 591 (internal quotation marks omitted). "[T]he language of Form 1212 requiring an inmate to notify the Board if his or her file is incorrect necessarily implies the right to review the file." *Id.* On March 5, 2024, the Court of Appeals remanded the case for Mr. Kelsey "to review his file, report any inaccuracies, and be given a new parole hearing." *Id.* at 379, 893 S.E.2d at 591-92. The case was remanded to PPP on March 8, 2024. Order of Remand, *Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, No. 19-ALJ-15-0061-A-AP (Mar. 8, 2024).

Immediately after the Court of Appeals' decision, on March 5 and March 7, 2024, undersigned counsel sent email requests to PPP for Mr. Kelsey's parole file and for a new parole hearing. PPP did not respond until March 25, 2024, when PPP notified counsel that Mr. Kelsey's new parole hearing had been set for April 24, 2024, but still did not provide Mr. Kelsey's file. Mr. Kelsey, like all other parole-eligible inmates since *Kelsey* was decided, was not allowed to review his file until the morning of his April 24 hearing (well after the file had been submitted to the Parole Board), when he was instructed to handwrite any necessary corrections on the file and

address inaccuracies orally to the Board during his hearing. Mr. Kelsey was then informed by a PPP employee that he would not be marked "present" for his parole hearing until he signed a form acknowledging that he had reviewed the file and that PPP "is not obligated to alter facts or details which are unsubstantiated by official records."

Upon reviewing the file, Mr. Kelsey learned that PPP has been providing the Board members with two different versions of the facts of the offense. The first description of the facts of the underlying offense—the version that PPP endorsed—sets forth a version of the crime that is conclusively refuted by a comprehensive SLED investigation report, sworn trial testimony, and detailed findings contained in two opinions of the Supreme Court of South Carolina. See *Payne v. State*, 355 S.C. 642, 586 S.E.2d 857 (2003); *State v. Kelsey*, 331 S.C. 50, 59-60, 502 S.E.2d 63, 67 (1998). While the source of this flagrantly false version of the case is unknown (and unstated in the parole file), it portrays Mr. Kelsey as the primary perpetrator and aggressor the night of the offense. In fact, it completely flips the roles of Mr. Kelsey and his co-defendant Payne, rejecting the Supreme Court's finding that "the testimony overwhelmingly proves that Payne murdered [the victim]."<sup>1</sup> *Payne*, 355 S.C. at 646, 586 S.E.2d at 859. See also *Kelsey*, 331 S.C. at 59-61, 502 S.E.2d at 67-68. Only after the inclusion of this inflammatory description of the offense did PPP include the findings of fact as made by the Supreme Court of South Carolina, which PPP itself did not endorse.

As instructed by PPP, at Mr. Kelsey's parole hearing, Mr. Kelsey and counsel called the Board's attention to the incorrect facts of the offense and informed the Board that PPP's false version of the offense had been proven untrue by multiple sources, including sworn testimony and the South Carolina Supreme Court. Mr. Kelsey also presented unconverted evidence of his prison record, which has only continued to improve: Since his 2023 hearing, Mr. Kelsey has continued to pursue his master's degree, maintained a perfect disciplinary record, and volunteer thousands of hours to serve suicidal inmates, and he has become one of only a handful of SCDC inmates certified as a Peer Support Counselor. Nonetheless, the damage from PPP's false information was already done, and Mr. Kelsey was denied parole by a vote of two in favor to three against. As in Mr. Kelsey's previous hearings, the Board cited as its reasons for denial exclusively factors related to his offense, the only thing Mr. Kelsey can never change: "nature and seriousness of current offense"; "indication of violence in this or previous offense"; and "use of deadly weapon in this or previous offense."<sup>2</sup>

Subsequently, Mr. Kelsey submitted a request for reconsideration to PPP along with a request that PPP correct his parole file. Mr. Kelsey detailed various inaccuracies in his file,

<sup>1</sup> In fact, even the victim's family acknowledges that the PPP version is false. Melante Richey's father has repeatedly stated that Payne was the most culpable—"the instigator, the organizer, the leader." See Geoffrey Payne Parole Hearings (Feb. 25, 2017 and Mar. 3, 2019).

<sup>2</sup> The Board's "Findings of Fact" as listed in Mr. Kelsey's denial letter are taken neither from the criteria specified in S.C. Code § 24-21-640 nor the factors listed in Form 1212, which § 24-21-640 authorized PPP to create. Instead, the findings of fact are taken from a set of six "reasons for rejection" that appear nowhere in caselaw or statute but only in the Board's internal Policy and Procedure Manual, S.C. Board of Pardons & Paroles Policy and Procedure Manual at 31 (Nov. 2019).

including the false information about the offense, and provided PPP with the "official records" that it required in order to change information in the file. Specifically, Mr. Kelsey provided copies of the trial transcript in his case in which the third codefendant, Jamie Lee, testified under oath that the version of the offense that PPP provided to the Board was false, along with the findings from the South Carolina Supreme Court that refuted PPP's false version and found that "the testimony overwhelmingly proves that Payne murdered [the victim]." In response, on May 30, 2024, PPP Associate Deputy Director Valerie Suber denied reconsideration and not only refused to remove the false information in Mr. Kelsey's file, but further claimed that PPP had never provided false information in the first place:

You assert that the Board was provided with false information about the facts of the crime. The facts were and continue to be contested by the involved parties and their representatives. The Agency provided the investigative findings as well as the Supreme Court findings for the Board's review. During the hearing, you were able to provide your version of the facts as well. The Board has allowed extensive testimony regarding the facts of the offense during the hearing process.

It is worth noting that the "investigative findings" to which Ms. Suber referred (presumably, the findings of law enforcement, although the sources underlying PPP's false version of events have not been disclosed or provided to Mr. Kelsey) contain specific findings, including a SLED report, that the version of events which PPP endorsed are false. Notably, however, those "investigative findings" were excluded from PPP's file.

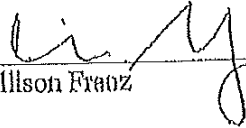
This appeal raises the following claims based on violations of due process, Article I, § 8 of the South Carolina Constitution, and the South Carolina Administrative Procedure Act:

1. Whether PPP violated due process and the South Carolina Administrative Procedures Act by:
  - a. Knowingly and willfully providing information to the Parole Board in its parole file that PPP knows to be false—specifically, information that was directly refuted by sworn trial testimony, a SLED investigative report, and two opinions of the South Carolina Supreme Court; and
  - b. Refusing to remove that information from the parole file when informed that it was false and provided with records proving that it was false.
2. Whether the Board has failed to consider the required factors of S.C. Code § 24-21-640 and PPP's Form 1212, in violation of due process and *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008).
3. Whether the Board's decision is arbitrary and capricious, and therefore a violation of the South Carolina Administrative Procedures Act and due process, given that:
  - a. The Board granted parole to Payne but repeatedly denied parole to Joe and has done so based on the nature of the offense, even though Payne was significantly more culpable as a matter of fact and law;

- b. The decision to deny Mr. Kelsey parole on the basis of the nature of his offense was based on false information, provided by PPP, that the Board members were aware was untrue;
  - c. Multiple members of the Board who had previously voted to parole Joe changed their votes, flip-flopping between 2019, 2021, 2023, and 2024, while continuing to cite only the (unchanged) nature and circumstances of Joe's offense as the Board's reason to deny parole;
  - d. The Board members reached a decision about Joe's parole without considering the packet of information Joe presented to the Board before the parole hearing;
  - e. The decision to deny Joe parole in 2024 was, like the decisions in 2023, 2021, and 2019, based on factors directly contradicted by the record before the Board;
  - f. None of the Board members engaged in any fact-finding or "offered an explanation [or] indicated that [they] had considered the statutory criteria of section 24-21-640" as required by *Cooper*; and
  - g. The sum total of the evidence indicates that the Board vindictively denied Joe parole in 2021, 2023, and 2024 in part or in whole, because he appealed its 2019, 2021, and 2023 decisions to deny him parole and won favorable rulings from this Court, the Court of Appeals, and the South Carolina Supreme Court.
4. Whether PPP violated Mr. Kelsey's right to due process by:
- a. Refusing to give Mr. Kelsey access to his parole file until roughly one hour before his parole hearing, two weeks after the file had been submitted to the Board, with no opportunity to correct the false information before it infected the Board's decision-making, *contra Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 441 S.C. 373, 893 S.E.2d 588 (2023); and
  - b. Redacting statements of purported victims in their entirety rather than making only "necessary redactions" of victim contact information, *contra Kelsey*, 441 S.C. at 379, 893 S.E.2d at 591.
5. Whether the Agency and the Board otherwise violated the South Carolina Administrative Procedures Act and due process by:
- a. Making findings of fact that are not "based exclusively on the evidence" or "on matters officially noticed," S.C. Code Ann. § 1-23-320(I); and
  - b. Reaching a decision that is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *Id.* § 1-23-380(5)(e).
6. Whether the Agency and the Board acted arbitrarily and capriciously, in violation of due process, the South Carolina Administrative Procedures Act, and S.C. Code § 24-21-640, where:
- a. The Agency and the Board have imposed an arbitrary page limit on materials submitted by parole-eligible inmates, and the Board refuses to consider (or is permitted to ignore at will) any information, including exhibits, that exceeds that page limit, regardless of whether consideration of that information is required by S.C. Code § 24-21-640;
  - b. There is no corresponding page limit on materials submitted by the Agency; and

- c. The Board is allowed to base its decision to deny parole exclusively on its own internal set of six factors, *see* Parole Board Manual at 31, that appear neither in S.C. Code § 24-21-640 nor in the Criteria for Parole Consideration (Form 1212) that § 24-21-640 authorizes PPP to create, and are not rationally related to the criteria set forth in § 24-21-640.
7. Whether the Board violated the First Amendment when it retaliated against Mr. Kelsey by denying him parole in 2024, in whole or in part because Mr. Kelsey appealed his 2023, 2021, and 2019 denials, acts that are protected First Amendment conduct.

Respectfully submitted,

By:   
Allison Franz

Allison Franz  
Rosalind Major  
Justice 360  
900 Blinwood Ave., Suite 200  
Columbia, SC 29201  
(803) 765-1044  
allison@justice360sc.org  
rosalind@justice360sc.org

John H. Blume  
Cornell Law School  
112 Myron Taylor Hall  
Ithaca, NY 14853  
(607) 255-1030  
jb94@cornell.edu

Jon Ozmint  
The Ozmint Firm, LLC  
PO Box 17554  
Greenville, SC 29606  
(803) 429-9331  
jon@ozmint.com

June 27, 2024.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Joseph Glen Kelsey, #217218,  
Appellant, )  
vs. )  
South Carolina Department of )  
Probation, Parole & Pardon Services, )  
Respondent. )

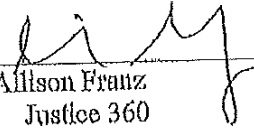
CERTIFICATE OF SERVICE

Docket No.: \_\_\_\_-ALJ-\_\_\_\_

The undersigned hereby certifies that a copy of Appellant's Notice of Appeal was served on opposing counsel by first-class United States mail, postage prepaid, at the address provided in the Attorney Information System:

Matthew C. Buchanan  
S.C. Department of Probation, Parole and Pardon Services  
PO Box 207  
Columbia, SC 29202

Service was made on June 27, 2024.

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

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

HENRY McMASTER  
Governor



JODI D. GALLMAN  
Acting 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 24, 2024

Mr. Joseph Kelsey #00217218  
Broad River Correctional Institution  
4460 Broad River Rd.  
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Kelsey:

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  
02 Indication Of Violence In This Or Previous Offense  
03 Use Of Deadly Weapon In This Or Previous Offense  
Vote Count: 3 Rejected - 2 Parole

Sincerely,

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

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

4/24/2024

SCDPFPS  
293 Greystone Blvd.  
Columbia, SC 29210

KELSEY, JOSEPH GLEN (SCDC ID: 00217218)  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210,

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

HENRY McMASTER  
Governor



JODI GALLMAN  
Acting Director

293 GRAYSTONE BOULEVARD  
COLUMBIA, SOUTH CAROLINA 29210  
Telephone: (803) 734-9220 / Facsimile: (803) 734-9440  
[www.dppps.sc.gov/](http://www.dppps.sc.gov/)  
MAILING ADDRESS: P.O. BOX 207  
COLUMBIA, SOUTH CAROLINA 29202

May 30, 2024  
Allison Franz (via e-mail)  
KELSEY, JOSEPH GLEN (SCDC ID: 00217218)  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

This letter is in response to your correspondence which was received in our office on 05/24/2024. We have received your correspondence as an official request for reconsideration of the Board's decision handed down on 04/24/2024, which denied parole. Your request is based on the following assertions.

First, you assert that the parole file contains inaccurate information, including information about your demand to review the file 30 days prior to the scheduled hearing. As you are aware, the file is not complete 30 days prior to the hearing. You agree that the Agency supplied the attorney with the file prior to the hearing; and that the inmate was given the opportunity to review the file prior to the hearing. Both the attorney and the inmate were given the opportunity to report what they perceive to be inaccuracies in the file during the hearing and in writing after the hearing. The Agency has responded to those reports. See attached.

You assert that the Board was provided with false information about the facts of the crime. The facts were and continue to be contested by the involved parties and their representatives. The Agency provided the investigative findings as well as the Supreme Court findings for the Board's review. During the hearing, you were able to provide your version of the facts as well. The Board has allowed extensive testimony regarding the facts of the offense during the hearing process.

You assert that the prior offenses listed in the parole file are not prior offenses. As I stated in the Agency's response to the parole file review, the presentation of the prior criminal history includes all criminal convictions found as part of the investigative process, which are not part of the active sentence for which parole is being considered. This compiles a complete picture of the inmate's criminal involvement. The crimes in question are prior offenses, in that they occurred in the past. Your interpretation of our use of the word prior is not sufficient for reconsideration of our process or the inclusion of the criminal history. You were given the opportunity to discuss your interpretation of the



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term prior offense during the hearing.

You assert that the statement of Solicitor Rick Hubbard is incorrect. Without first-hand knowledge or participation in the conversation between the Solicitor and Mr. Kelsey, there is insufficient cause to entertain this assertion. You were given the opportunity to state your disagreement with the statement during the hearing.

You assert that the COMPAS assessment is incorrect in that the inmate will likely return to an area of high crime or victimization. Again, these conclusions are derived from the tool, which is designed to identify criminogenic needs of individuals possibly returning to society, in an effort to minimize future criminal involvement. The information stems from answers provided during the interview. You were given the opportunity to discuss this during the hearing.

You continue to assert that the parole file references Mr. Kelsey's daughter. This is inaccurate. The file indicates the inmate has no children. You were given the opportunity to discuss this at the hearing.

You assert that the file omits several of Mr. Kelsey's academic credentials and program participation. As I previously advised, the listing of academic courses and behavioral programs is generated from the official records of the SC Department of Corrections. You were provided the opportunity to discuss these achievements during the hearing.

Next, you assert the Board's decision-making is "arbitrary and capricious."

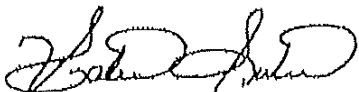
Section 24-21-640 of the SC Code of laws describes the circumstances warranting parole. The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

While it is evident that you are satisfied the required circumstances exist, it is also evident the Board is not.

Finally, you present additional information to which you assert the Board did not have access at the hearing because of a twenty-page limit imposed by its members. Be advised, the Agency continues to present each submission regarding parole and/or pardon consideration to the Board in its entirety. If the information you reference in your request for reconsideration was not presented to the Board, it was because you did not include it with your submission. You were also given the opportunity to discuss this with the Board during the hearing.

The hearing and file have been reviewed. There is no evidence to support reconsideration of the Board's ruling in this case. This decision is final. Please note, there is no rehearing/appeal process for the routine denial of parole.

Sincerely,



Valaria Suber  
Associate Deputy Director of Paroles, Pardons and Release Services  
SC Department of Probation, Parole and Pardon Services



"Nation's First Probation Agency accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA)."



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

HENRY McMASTER  
Governor



JERRY B. ADGER  
Director

291 GRIFFSTONE BOULEVARD  
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Inasmile: (803) 734-9140  
[www.djpps.sc.gov](http://www.djpps.sc.gov)  
MAILING ADDRESS: P.O. BOX 207  
COLUMBIA, SOUTH CAROLINA 29202

## HOW TO REQUEST A CD OF YOUR PAROLE/PARDON HEARING

CD'S may be obtained from Ms. Patricia Gunter, Department of Probation,  
Parole and Pardon Services, P.O. Box 207 Columbia, SC 29202

Please include a money order, cashier's check, or cooper trust fund check (for  
inmates) (no personal checks will be accepted) made out to Department of  
Probation and Parole for 17.50 per CD along with the following information

1. Name and SCDC or SID#:

Joseph Kelsey, #00217218

2. Date of the parole Hearing:

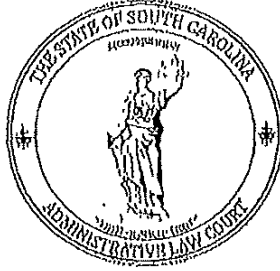
04/24/2024

3. Please send the CD to:

Justice 360, ATTN: Cierra Negron-Sau 110  
900 Elmwood Ave, Ste. 200  
Columbia, SC 29201  
[cierra@justice360sc.org](mailto:cierra@justice360sc.org)



STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT



Memorandum

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To: Appellant/Appellants' Attorney  
From: Clerk's Office, Administrative Law Court  
Date: July 2, 2024  
Re: Kelsey v. SC DPPPS, Compliance with ALC Rules

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The Administrative Law Court (ALC) received a Notice of Appeal from you on July 1, 2024. According to SCALC 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 Notice of Appeal form required pursuant to SCALC Rule 57 and 59. A copy of the form previously provided to your office is attached for your convenience.
- 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 SCALC Rule 59(C).
- The Notice of Appeal form you submitted must be signed and dated.
- Filing Fee of \$25 in accordance with SCALC Rule 71 for your 4<sup>th</sup> and subsequent appeal this calendar year.
- Your documents are being returned to you. The ALC does not handle Post Conviction Relief (PCR) matters.
- Other: The Notice of Appeal you submitted on July 1, 2024, is for an appeal to the ALC in accordance with SCALC Rule 33.
- Please return the appropriate information within 10 days of the date of this Memorandum or your case will be returned to you unprocessed.

C: SC DPPPS

Edgar A. Brown Building • 1205 Pendleton St., Suite 224 • Columbia, South Carolina 29201

# Exhibit D

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

\_\_\_\_\_, )  
(Your Name) )  
 )  
Appellant, )  
 )  
v. )  
 )  
\_\_\_\_\_, )  
(Agency Name) )  
 )  
Respondent(s). )  
\_\_\_\_\_ )

DOCKET NO. \_\_\_-ALJ-\_\_\_-\_\_\_-AP  
(To be completed by the Court)

**NOTICE OF APPEAL**

Notice is hereby given that \_\_\_\_\_ (your name), does hereby appeal the final decision of the \_\_\_\_\_ (agency name), dated \_\_\_\_\_ and received \_\_\_\_\_, a copy of which is attached.

In accordance with SCALC Rule 33(B), please provide a general statement of the grounds for appeal below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Also attached is the request for transcript to the agency dated \_\_\_\_\_.

Filing Fee (See SCALC Rule 71) is being submitted today to the Court via:  
 Check  Money Order  Cash  Waiver Form/Affidavit

\_\_\_\_\_  
Your Signature or Signature of Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip code

\_\_\_\_\_  
\*Email Address

\_\_\_\_\_  
Phone Number

\*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

| REPRESENTATION   |         |                          |        |
|--|---------|--------------------------|--------|
| Are you representing yourself? <input type="checkbox"/> Yes <input type="checkbox"/> No  |         |                          |        |
| Are you represented by an Attorney? <input type="checkbox"/> Yes <input type="checkbox"/> No   |         | Name of Attorney:        |        |
| Attorney Mailing Address:  |         | City, State and Zip:     |        |
| Attorney Work Number and Cell Number:  |         | Attorney E-Mail Address: |        |
| PROOF OF SERVICE (MUST BE COMPLETED)   |         |                          |        |
| Your Name:   | Date:   | City:                    | State: |
| I hereby certify that on the date and place listed above, I served a copy of the foregoing Notice of Appeal <u>on all other parties</u> to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names): |         |                          |        |
| _____  | _____   | _____                    |        |
| Name and/or Agency Name  | Address | City, State and Zip      |        |
| _____  | _____   | _____                    |        |
| Name and/or Agency Name  | Address | City, State and Zip      |        |
| _____  |         |                          | _____  |
| <i>X</i> Your Signature or Signature of Attorney   |         |                          | Date   |

**Attention:** All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website [www.scalc.net](http://www.scalc.net) or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

# Exhibit E

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Karen Bennett, #117590,

Appellant,

vs.

South Carolina Department of Probation  
Parole and Pardon Services,

Respondent.

Docket No. 24-ALJ-15-0003-AP

ORDER TO REINSTATE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Karen Bennett (Appellant), who is incarcerated with the South Carolina Department of Corrections. On October 26, 2023, the South Carolina Department of Probation, Parole and Pardon Services notified Appellant that she was denied parole. Appellant filed a notice of appeal with the ALC on January 6, 2024, and the appeal was assigned to me on January 19, 2024. On January 24, 2024, this Court issued an Order of Dismissal stating that the filing of Appellant's appeal is untimely. It has come to the Court's attention that an earlier timely filing was erroneously rejected by Court staff. Therefore, this Court will amend its previous judgment and reinstate the case.

ALC Rule 67 states:

Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the administrative law judge at any time of his own initiative or on the motion of any party and after such notice, if any, as the administrative law judge orders.

SCALC Rule 67.

**IT IS THEREFORE ORDERED** that this case be reinstated as of the date of this Order.

**IT IS ALSO ORDERED** that the Record shall be due no later than April 15, 2024. Appellant shall have until May 6, 2024 to submit Appellant's brief. Respondent shall have until May 28, 2024 to submit Respondent's brief. Any reply brief must be filed no later than June 4, 2024.

**AND IT IS SO ORDERED.**



Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

January 31, 2024  
Columbia, South Carolina



**CERTIFICATE OF SERVICE**

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

*Robin Coleman*

Robin E. Coleman  
Judicial Aide to Judge Deborah Brooks Durden

January 31, 2024  
Columbia, South Carolina

