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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Robert L. Reibold, Administrative Law Judge

Case No. 24-ALJ-15-0028-AP

Appellate Case No. 2025-000565

Charles J. Madden, #00182326, Appellant,

v.

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

APPELLANT'S INITIAL BRIEF

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TABLE OF CONTENTS

Table of Authorities iii

Statement of Issues on Appeal 1

Introduction..... 1

Statement of the Case..... 2

Standard of Review 2

Arguments

 1. THIS COURT’S DECISION IN *KELSEY* AND DEPARTMENT FORM 1212
 IMPLICITLY REQUIRE THE DEPARTMENT PROVIDE INMATES THE
 OPPORTUNITY TO REVIEW AND CORRECT THEIR PAROLE FILE PRIOR
 TO THEIR PAROLE HEARING.....4

Conclusion.....24

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<i>Barton v. S.C. Dep't of Probation Parole & Pardon Servs.</i> , 404 S.C. 395, 745 S.E.2d 110 (2013).....	3, 6
<i>Blackwell v. S.C. Dep't of Prob., Parole, & Pardon Servs.</i> , No. 2021-001162, 2024 WL 2956900 (S.C. Ct. App. 2024).....	5
<i>Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.</i> , 377 S.C. 489, 661 S.E.2d 106 (2008).....	5
<i>Dep't of Prob., Parole, & Pardon Servs.</i> , No. 2021-001162, 2024 WL 2956900 (S.C. Ct. App. June 12, 2024).....	1, 5
<i>Geohaghan v. S.C. Dep't of Emp. & Workforce</i> , 439 S.C. 14, 885 S.E.2d 422 (Ct. App. 2023).....	3
<i>Kelsey v. S.C. Dep't of Prob., Parole, & Pardon Servs.</i> , 441 S.C. 373, 893 S.E.2d 588 (Ct. App. 2023).....	1, 4, 5
<i>Olson v. S.C. Dep't of Health & Env'tl. Control</i> , 379 S.C. 57, 663 S.E.2d 497 (Ct. App. 2008).....	3
<i>Schwiers v. S.C. Dep't of Health & Env't Control</i> , 429 S.C. 43, 837 S.E.2d 730 (Ct. App. 2019).....	3
<u>Statutes</u>	
S.C. Code Ann. § 1-23-610(B).....	2, 3
<u>Other Authorities</u>	
South Carolina Board of Parole and Pardons, Policy and Procedures Manual.....	4

**STATEMENT OF ISSUES ON
APPEAL**

- 1. Whether This Court’s Decision in *Kelsey* and South Carolina Department of Probation, Parole, and Pardon Services Form 1212 Require the Department to Provide an Inmate His or Her Parole File in Advance of His or Her Parole Hearing.**

INTRODUCTION

In this appeal, an inmate challenges an Administrative Law Court Order finding (1) the Parole Board’s most recent decision denying parole was a “routine denial of parole” which the ALC lacks jurisdiction to review and (2) that this Court’s decision in *Kelsey v. S.C. Dep’t of Prob., Parole, & Pardon Servs.*, 441 S.C. 373, 893 S.E.2d 588 (Ct. App. 2023) permits the South Carolina Department of Probation, Parole, and Pardon Services (“the Department”) to provide Inmates limited access to their Parole File the morning of their Parole Hearing. Appellant is not, as misinterpreted by the ALC, challenging the Board members’ decision to deny him parole but is instead challenging the procedure employed by the Board in rendering its decision. Appellant therefore seeks an order from the Court directing the Department to grant a new Parole Hearing and allow Appellant access to his Parole File with sufficient time to (1) identify inaccuracies, (2) obtain evidence to support their contentions, and (3) for the Department to conduct an investigation and correct substantiated inaccuracies prior to his new hearing.

This appeal raises a single issue: Whether *Kelsey* and Form 1212 mandate inmates be provided their Parole File with sufficient time to identify and correct errors before the Parole File is presented to members of the Board.¹

¹ On appeal to the Administrative Law Court, Appellant also argued that the Board’s decision to deny parole based on his “failure to successfully complete a community supervision program” was erroneous. As that issue is being separately decided (*See* Case No. 22-ALJ-15-0013-AP)

STATEMENT OF THE CASE

Appellant Charles J. Madden appeared before the Parole Board (the “Board”) for his most recent parole hearing on July 24, 2024. Appellant was permitted to review his Parole File the morning of his hearing. Appellant found several discrepancies in his Parole File, most notably inclusion of a statement, taken from an arrest warrant, indicating Appellant committed murder during the commission of an armed robbery. Appellant raised each of these issues with the Board during his hearing. (See August 20, 2024 Letter to Appellant, R._). The Board voted unanimously to deny parole and informed Appellant of its decision on July 25, 2024. (Notice of Rejection, R._).

On August 20, 2024, the Department issued a letter noting the various discrepancies raised by Appellant and noting as to each that he was given the opportunity to discuss this with the Board during his hearing. (August 20, 2024 Letter to Appellant, R._). Appellant appealed the Board’s decision to the Administrative Law Court (“ALC”), the ALC affirmed the Board’s decision to deny parole, holding that it lacked jurisdiction to hear two of Appellant’s arguments and that *Kelsey* does not specify the time at which an inmate must be granted access to his or her parole file. (ALC Order of February 20, 2025, R._). This appeal followed.

STANDARD OF REVIEW

The Administrative Procedures Act sets forth the standard of appellate review for cases decided by the ALC in S.C. Code Ann. § 1–23–610(B):

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment

with an opinion forthcoming, Appellant does not re-raise those arguments here. Appellant also argued below that because the Board’s decision was based upon inaccurate information in his Parole File, the decision was necessarily violative of due process. Given the Court’s recent decision in *Blackwell v. S.C. Dep’t of Prob., Parole, & Pardon Servs.*, No. 2021-001162, 2024 WL 2956900 (S.C. Ct. App. June 12, 2024) Appellant does not re-raise that argument here.

for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

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

S.C. Code Ann. § 1-23-610(B). “Thus, [the Court of Appeals] can reverse the ALC if the findings are affected by error of law, are not supported by substantial evidence, or are characterized by abuse of discretion or clearly unwarranted exercise of discretion.” *Schwiers v. S.C. Dep't of Health & Env't Control*, 429 S.C. 43, 49, 837 S.E.2d 730, 733 (Ct. App. 2019) (quoting *Olson v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 64, 663 S.E.2d 497, 501 (Ct. App. 2008)).

This appeal presents a single question of law: whether this Court’s decision in *Kelsey* and the Department’s Form 1212 mandate the Department provide inmates the opportunity to review their Parole File with adequate time to correct deficiencies before their Parole File is presented to the Board for review. Because this appeal raises question of law, the “substantial evidence” test does not apply and the court “may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law.” *Geohaghan v. S.C. Dep't of Emp. & Workforce*, 439 S.C. 14, 28, 885 S.E.2d 422, 429 (Ct. App. 2023); *Barton v. S.C. Dep't of Probation Parole & Pardon Servs.*, 404 S.C. 395, 414, 745 S.E.2d 110, 120 (2013).

ARGUMENT

This Court's Decision in *Kelsey* and the Department's Form 1212 Implicitly Require the Department Provide Inmates the Opportunity to Review and Correct Their Parole File Prior to Their Parole Hearing:

In *Kelsey* this Court held that “the language of Form 1212 requiring an inmate to notify the Board if his or her file is incorrect necessarily implies the right to review the file,” finding the Department’s position that it could require an inmate to notify the board of errors in a file he or she was unable to review was “logically and legally absurd.” *Kelsey*, 441 S.C. 373, 378, 893 S.E.2d 588, 591. The Department’s position here, affirmed by the ALC, that an inmate’s ability to review his or her parole file is limited to viewing the record the morning of his or her hearing, and the inmate’s ability to correct his or her file is limited to discussing inaccuracies with the Parole Board during his or her hearing, similarly defies law and logic.

a. *Allowing Inmates to Only View their Parole File the Day of Their Parole Hearing is Counter to This Court's Opinion in *Kelsey* and the Requirements of Department Form 1212.*

While South Carolina’s parole laws leave the decision to deny or grant parole to the discretion of the Parole Board, eligible prisoners are entitled to certain procedural due process rights during the parole process, including the right “to have the Board or panel carefully consider the complete record before, during, and after imprisonment.” *See* SOUTH CAROLINA BOARD OF PAROLE AND PARDONS, POLICY AND PROCEDURES MANUAL, 20. Inherent in an inmate’s right to have the Parole Board carefully consider their record is the right to have only correct, accurate, and factually proven information considered.

While neither Form 1212 nor the opinion in *Kelsey* explicitly state as much, the purpose of permitting inmates the ability to review and, if necessary, correct their Parole File is unquestionably to ensure that the Board considers only accurate information when rendering

decisions to grant or deny parole. Form 1212 states that “[i]f the inmate thinks his/her file is somehow incomplete or contains some errors or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. ***The Board will investigate the inquiry and notify the inmate of the action taken.***” (Form 1212, R._ , *emphasis added*). Further, this Court’s decision in *Kelsey* notes that key to its decision was the fact that because Kelsey had not been provided an opportunity to review his Parole File, he was not provided the “opportunity to notify the Board of any errors or inaccuracies” in his file. *Kelsey*, 441 S.C. 373, 378–79, 893 S.E.2d 588, 591; *See also Blackwell v. S.C. Dep’t of Prob., Parole, & Pardon Servs.*, No. 2021-001162, 2024 WL 2956900, at *5 (S.C. Ct. App. June 12, 2024) (Reversing and remanding for the appellant to review his file and report inaccuracies).

Whether viewed from the perspective of the limited due process rights guaranteed inmates in the parole process (*see Cooper v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008)), or from the perspective of plain common sense, the only logical reading of Form 1212 and this Court’s decision in *Kelsey* requires inmates be able to identify and correct errors in their Parole File *prior to* the Department submitting the inmate’s Parole File to the Board for review. Put plainly, an inmate’s right to review his or her Parole File is meaningless without the ability to correct inaccuracies, and an inmate’s right to correct inaccuracies in his or her Parole File is similarly meaningless unless those corrections are made before the Parole File is presented to the Board for review and consideration.

Finding otherwise results in the legally and logically perplexing situation presented here – where an inmate identifies inaccuracies in his Parole File, the board renders a decision based on the inaccurate information contained in the Parole File, and then afterwards, without providing the inmate further opportunity to substantiate his claims, “investigates” whether the

information that formed the basis of its decision was correct or not and issues a summarily decided letter claiming its information was accurate.

Critically, under the Department's current policies Appellant had no opportunity to substantiate his claims that their Parole File is inaccurate when he appeared before the Parole Board; how could he considering he was only permitted to review the file hours beforehand? Appellant's only recourse was to raise his or her concerns with the Board during the Parole Hearing and hope the Parole Board believed his version of the facts over the version presented by the Department in the Parole File. Perhaps Appellant could have attempted to support and corroborate his claims after the fact rather than appealing the Board's decision. Of course, assuming Appellant was able demonstrate that the information in the Parole File was inaccurate, the question remains whether the Department would grant him a new hearing *sua sponte*. Given the Department's history of litigating common-sense issues such as how to count, that proposition seems unlikely. *See Barton*, 404 S.C. 395, 417–419, 745 S.E.2d 110, 122–123.

Even more problematically for inmates denied parole, the Department's current policies effectively abrogate the ability to obtain judicial review of decisions rendered based on inaccurate information. Stated simply, after identifying an error in his or her Parole File the day of his or her Parole Hearing, locating corroborating evidence and submitting it to the Department, and waiting for the Department to investigate and notify the inmate of what action has been taken, an inmate's 30-day deadline to request a rehearing or appeal the Department's decision is almost certain to have passed. The result of the Department's policy will undoubtedly become a mass of unnecessary appeals to the ALC as inmates who perceive their Parole File contained incorrect information are likely to immediately appeal the Board's decision rather than wait for the Department to conduct an after-the-fact investigation that is not

likely to result in obtaining a new hearing, even if the Department finds the information contained in the Parole File was inaccurate.

b. Allowing Inmates to Review Their Parole File and Correct Inaccuracies Prior to Presenting the Parole File to the Parole Board Will Not, as the ALC Suggests, Result in Parole Hearings Being Indefinitely Delayed.

In its opinion, the ALC opined that if the Department is required to conduct an investigation each time an inmate finds an inaccuracy in his or her Parole File, Parole Hearings, could “be indefinitely delayed” resulting in the Department potentially violating the statutory requirement that inmates be considered for parole at statutorily-set intervals. (ALC Order of February 20, 2025, pp. 7–8, R._). Not so.

While investigating claimed inaccuracies in inmates’ Parole Files will certainly require effort on the Department’s behalf, that does not mean Parole Hearings will be delayed (much less delayed indefinitely) or that the Board will be required to pause hearings to conduct investigations. Obviously if the Department’s policy of allowing inmates to view their Parole File only the morning of their hearing is maintained *and* the Department attempts to investigate claimed inaccuracies that same day between when an inmate reviews his or her file and the Parole Hearing is held, chaos would ensue. However, this problem is easily solved by the commonsense solution of providing inmates their Parole Files for review, and adjudicating any claimed inaccuracies, before the Parole File is presented to the Board for review.

In fact, establishing a set schedule where inmates are provided their Parole File far enough in advance of their hearing to identify inaccuracies, gather and submit evidence, and have the Department determine whether corrections are warranted before presenting the Parole File to the Board for review would eliminate the issues the ALC foresees. Moreover, providing a meaningful opportunity for inmates to identify inaccuracies in their Parole File along with an

established, pre-hearing process to determine whether corrections to the Parole File is warranted will likely reduce, rather than increase, parole litigation.

CONCLUSION

The Department's current policy of only allowing inmates to review their Parole File the morning of their Parole Hearing deprives inmates of a meaningful opportunity to identify and correct inaccuracies and effectively guts this Court's decision in *Kelsey*. This Court's decision in *Kelsey*, the Department's Form 1212, and simple logic implicitly require not only that inmates be permitted to review their Parole File, but also that they be afforded an opportunity to notify the Department of inaccuracies, and that the Department investigate the claimed inaccuracies and notify the inmate of the action taken, before the file is presented to members of the Parole Board for consideration. Because Appellant was not permitted to review his Parole File until the morning of his hearing, he was deprived of a meaningful opportunity to correct deficiencies in his Parole File, a right implicit in Department Form 1212 and this Court's decision in *Kelsey*. The ALC's determination that neither *Kelsey* nor Department Form 1212 require Appellant be provided his Parole File on a timeline that permits a meaningful opportunity to correct deficiencies in the Parole File is based on an error of law and is clearly erroneous. Consequently, the ALC's Order should be reversed and this Court should issue an order directing the Department to grant Appellant a new Parole Hearing after providing him with his parole file with sufficient time to identify inaccuracies, locate corroborating and supporting evidence and present it to the Department, and for the Department to perform an investigation into the claimed inaccuracies.

Signature Page Follows

Respectfully submitted,

April 21, 2025

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