

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from the Administrative Law Court  
The Honorable Robert L. Reibold, Administrative Law Judge  
Docket Number 24-ALJ-15-0028-AP

SC Court of Appeals

Appellate Case No.: 2025-000565

CHARLES MADDEN, #182326, ..... APPELLANT

v.

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

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**BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUE ON APPEAL

1. Whether the Administrative Law Court erred in concluding that inmates do not have a due process right to advance access to their parole files to have their files corrected prior to the parole hearing and that *Kelsey's* requirements are satisfied by the Board's current practices?

## **STATEMENT OF THE CASE**

Appellant, Charles Madden, is serving a life sentence for murder after satisfying sentences for assault and battery of a high and aggravated nature and burglary third degree. Per the arrest warrant, he killed his father during the commission of an armed robbery that was committed while he was out on bond for other offenses, although he was only indicted for the murder, assault, and burglary charges – offenses for which he pled guilty. Appellant initially became parole eligible in 2011 after service of twenty years.

Appellant appeared before the Parole Board for his seventh parole hearing on July 24, 2024. The following day, the Board issued its notice of rejection informing Appellant of its decision to deny parole. Included in the letter was the Board's findings of fact as reasons for rejection, which were nature and seriousness of the current offense, criminal record indicates poor community adjustment, and failure to complete a community supervision program. R\*.

Appellant appealed to the Administrative Law Court, raising among other issues<sup>1</sup> that the Court of Appeals' opinion in *Kelsey v. South Carolina Dept. of Probation, Parole and Pardon Services*, 441 S.C. 373, 893 S.E.2d 588 (Ct. App. 2023) inherently presumes inmates have a right of requiring the Board to investigate reported errors in the parole file and the right to adequate time to review the file and research purported errors prior to the parole hearing. The ALC declined to extend *Kelsey* in that way, and upheld the denial of parole.

Appellant now appeals the ALC's ruling. Respondent's brief follows.

### **STANDARD OF REVIEW**

In criminal cases the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. When reviewing a parole case, the

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<sup>1</sup> Respondent herein only addresses the issue contained within Appellant's Initial Brief. See Brief of Appellant, p. 1, fn 1.

ALC sits in an appellate capacity. *Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2004). Under the appellate standard of the Administrative Procedures Act, the ALC's review is limited to the record, absent irregularities in the procedure of the agency. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). However, "an administrative law judge shall not hear... an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services." S.C. Code Ann. § 1-23-600(D).

In an appeal from an ALC decision, the Administrative Procedures Act provides the standard of review. S.C. Code Ann. §1-23-610(B). This Court may only reverse the decision of the ALC if that 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.

*Id.*

"The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact." *Id.* In determining whether the ALC's decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached. *Hill v. S.C. Dep't of Health and Env'tl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

## ARGUMENT

- 1. The Administrative Law Court did not err when it concluded that *Kelsey* did not require inmates receive the opportunity to review and correct their parole file weeks in advance of the parole hearing.**

Respondent would submit that the ALC was correct in dismissing the appeal, and that this Court should affirm. Appellant advocates for a massive expansion of the limited holding in *Kelsey*, which was solely decided based upon the language found within the Department's Form 1212 and carefully written to not imply a due process right of access to parole files.

Appellant requests this Court remand this matter "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." Brief of Appellant, p. 1.

Respondent would respectfully submit that the ALC was correct in its analysis and dismissal of the appeal. The ALC is statutorily limited in its authority to weigh how the Board decided, and can only look to whether the Board followed the statutory procedures. Furthermore, Appellant failed to show prejudice and how a remand giving him additional time would have avoided that prejudice. Lastly, the ALC was correct in determining the Department followed the requirements of *Kelsey* and proper in declining to hold a more expansive reading of the opinion.

- a. The ALC has limited authority to review the Board's decision in a routine denial of parole.**

Respondent submits that every appeal from the Parole Board must first be viewed through the statutory limitation on the ALC judges. S.C. Code Ann. § 1-23-600(D) states in pertinent part that "an administrative law judge shall not hear ... an appeal involving the denial of parole to a

*potentially eligible* inmate by the Department of Probation, Parole and Pardon Services.” (Emphasis added).

The South Carolina Supreme Court addressed this in *Allen v. S.C. Department of Corrections*, 439 S.C. 164, 171, 886 S.E.2d 671, 674 (2023), in the context of inmate grievance claims, stating a “claim that implicates a state-created liberty or property interest is not required for the ALC to have subject matter jurisdiction over the appeal. However, the ALC is not required to hold a hearing in every matter and may summarily dismiss an inmate’s grievance if it does not implicate a state-created liberty or property interest sufficient to trigger due-process guarantees.”

However, routine denials of parole do *not* trigger “due-process guarantees.” Only “the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process.” *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 (Emphasis in original).

Therefore, Respondent would submit that Appellant’s argument – that *Kelsey* inherently implies early access to the parole file so inmates may research and challenge facts they may dispute – does not rise to the level of due process protections. As such, the proper action by the ALC was to dismiss the appeal. See also *Compton v. South Carolina Dept. of Probation, Parole and Pardon Services*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009), holding that, “if the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24–21–640 and the fifteen factors published in Form 1212, and that if the Parole Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC will have limited authority to review the decision.”

**b. Appellant fails to raise sufficient facts to support his request for a remand.**

Appellant alleges “several discrepancies” were present within his parole file which he and his attorney were able to view before their hearing before the Parole Board. Respondent submits the ALC correctly determined Appellant failed to show how the two discrepancies raised, regarding mention of an armed robbery in the arrest warrant for which he was not indicted or convicted and for a disputed disciplinary infraction from 2009, unduly prejudiced him when he was able to address the Board about them.

Consider that the court in *Kelsey* remanded the case because he “has not been provided the referenced opportunity to notify the Board of any errors or inaccuracies he identifies.” *Kelsey*, 441 S.C. at 378-379, 893 S.E.2d at 591. In this case, Appellant has had the opportunity to notify the Board of the perceived errors within his file, thus satisfying *Kelsey*.

“Moreover, when appealing an agency’s decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced based on one of the six statutory criteria [in the Administrative Procedures Act].” *South Carolina Dept. of Corrections v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (2008). Respondent submits that Appellant has not met the burden of showing the Board’s decision was in violation of constitutional or statutory provisions, in excess of its statutory authority, made upon unlawful procedure, or affected by error of law.<sup>2</sup>

Furthermore, the Board’s stated reasons for rejection do not relate to the perceived errors Appellant raises. Appellant disputes a disciplinary action by the Department of Corrections from 2009 and the fact that his warrant referenced an armed robbery. Notably, the Board did not list his disciplinary record as a reason for why it had denied him parole. R. \*. Also, Appellant was able to

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<sup>2</sup> Pursuant to the holdings of *Cooper* and *Compton* and the language of S.C. Code 1-23-600(D), the ALC may not weigh in on the Board’s decision-making, and Respondent by making this point does not concede that S.C. Code 1-23-380 applies to routine parole denials.

tell the Board that he was not indicted, nor convicted of armed robbery,<sup>3</sup> though it is undisputed that the arrest warrant stated that he murdered his father during the commission of an armed robbery. As the ALC noted, “Appellant’s claim of prejudice fails because it is speculative.” Final Order and Decision, p. 8 fn. 5.

Respondent would submit that Appellant’s argument fails to show how his own case would benefit from his position that *Kelsey* requires early access to his file. He does not – and, respectfully, cannot – show how receiving his file weeks in advance would have affected the outcome. Furthermore, such a speculation implicates the Board’s own deliberative process which is solely responsible for parole decisions. “Undoubtedly, the Parole Board is the sole authority with respect to decisions regarding the grant or denial of parole.” *Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008). Therefore, this Court should affirm the ALC’s dismissal of the appeal.

**c. The ALC correctly declined to extend *Kelsey*.**

After the remittitur of *Kelsey*, Respondent developed a process in which inmates are given the opportunity to review their finalized files on the day of their parole hearing. The inmates may then report any perceived inaccuracies to the Board members during the hearing, and subsequently to the Department for further review. “With the protections for victims in place by reasonable redaction and sealing, we find an inmate is entitled to review his or her file. Thus, we reverse and remand for *Kelsey* to review his file, report any inaccuracies, and be given a new parole hearing.” *Kelsey*, 441 S.C. at 379, 893 S.E.2d at 591-592. The new process meets every stated requirement of the Court of Appeals’ remand. Appellant, however, finds unspoken requirements within the opinion as support for his argument.

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<sup>3</sup> The parole file did not make the claim that Appellant had been indicted or convicted for armed robbery.

Respondent submits that the ALC correctly determined that the basis of *Kelsey's* remand was solely based on the language found within the Department's Form 1212 and not from any due process right to review of parole files. The court in *Kelsey* specifically found that "the *language* of Form 1212 ... necessarily implies the right to review the file." *Id.* at 378, 893 S.E.2d at 591 (emphasis added). Conversely, the Fourth Circuit "discern[ed] no constitutional requirement that each prisoner receive a personal hearing, *have access to his files*, or be entitled to call witnesses in his behalf to appear before the Board." *Franklin v. Shields*, 569 F.2d 784, 800 (4<sup>th</sup> Cir. 1977) (emphasis added).

Without a due process right to access to his parole file, Appellant must argue that other language in Form 1212 necessarily implies a right to contest their file and demand corrections. He points to the statement in the form that, "The Board will investigate the inquiry and notify the inmate of the action taken."

Notably, the Record clearly reflects that the Board's post-*Kelsey* process incorporates that language. (See August 20, 2024 Letter to Appellant, R.\*). Inmates who request corrections or point out perceived errors in their files prior to the parole hearing not only have the opportunity to address the Board, but their notes will be reviewed by Department staff. Inmates revealing serious errors will have their files corrected and will receive a new hearing or further review by the Board.

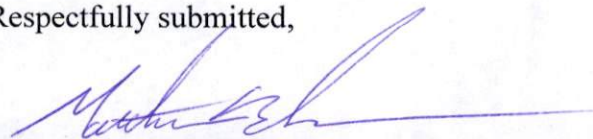
Unsatisfied, Appellant instead advocates for an adversarial system in which inmates are given the right to demand changes to their parole file and enter protracted disputes over perceived errors or inaccuracies. Respondent agrees with the ALC's conclusion that following the process advocated by Appellant would create extensive delays in scheduling hearings before the Parole Board.

Appellant's proposed alternative of providing inmates access far enough in advance of their hearing and adjudicating any claimed inaccuracies before the hearing would be a massive undertaking by limited staff already working on preparing cases for presentment before the Board and assumes that disputes over such inaccuracies can be easily resolved. Respondent would submit that many inmates have a different view of their crime, institutional record, and criminal history than what may be reflected in official records. Even in the instant case, Appellant disputes the inclusion of information found within his arrest warrant. The current process meets the instructions in the *Kelsey* remand to allow inmates report inaccuracies to the Board.

### CONCLUSION

Despite arguing that inmates need advance access to correct errors in their files, Appellant has not shown a substantive error in his own file or that early access would have changed the outcome of his parole denial. The Board's current practice meets the requirements of *Kelsey* and its plain meaning. This Court should therefore affirm the ALC judge's sound and well-reasoned decision dismissing the appeal and declining to extend *Kelsey*.

Respectfully submitted,



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CHARLES MADDEN, #182326,.....APPELLANT

v.

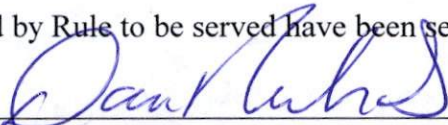
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PARDON SERVICES, .....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within  
*Initial Brief and Designation of Matter* on Appellant this 14<sup>th</sup> day of May, 2025, by depositing a  
copy of the same in the United States mail, postage prepaid, addressed to:

Michael Stover, Esquire  
1320 Main Street, 17<sup>th</sup> Floor  
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I further certify that all parties required by Rule to be served have been served.



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SC Court of Appeals

May 14, 2025

The Honorable Jenny Kitchings  
Clerk, South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, South Carolina 29211

RE: **Charles Madden v. SCDPPPS**  
**Case No.: 25-000565**

Dear Ms. Kitchings:

Please find enclosed Respondent's Initial Brief. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew C. Buchanan".

Matthew C. Buchanan  
General Counsel

MCB:dn  
Enclosures

cc: Michael Stover, Esquire

State of South Carolina

Department of Probation, Parole, and Pardon Services

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