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

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RECORD ON APPEAL

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July 25, 2024

Mr. Charles Madden #00182326
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

RE: NOTICE OF REJECTION

Dear Mr. Madden:

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
04 Criminal Record Indicates Poor Community Adjustment
05 Failure To Successfully Complete A Community Supervision Program
Vote Count: Unanimous To Reject

Sincerely,

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles Madden, #182326, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No. 24-ALJ-15-0028-AP **FINAL ORDER AND DECISION**

BACKGROUND

This matter is pending before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to an appeal filed by Charles Madden ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections. Appellant pled guilty to murdering his father in 1991 and received a life sentence. Appellant first became parole eligible in 2011 and appeared before the Parole Board on July 24, 2024. In a Notice of Rejection issued the next day, the Board denied Appellant parole. The notice states in part:

> 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 Criminal Record Indicates Poor Community Adjustment
> 05 Failure To Successfully Complete A Community Supervision Program

The decision to deny parole in this instance was unanimous.

On August 12, 2024, Appellant filed an appeal of the parole denial issued by the South Carolina Department of Probation, Parole, and Pardon Services ("Respondent" or "Department") on July 25, 2024. This matter was assigned to the undersigned on August 15, 2024.

On September 13, 2024, the Department filed the Record on Appeal which contained the July 25, 2024 Notice of Rejection letter, the Criteria for Parole Consideration Form 1212 signed by Appellant on March 1, 2024, and six Acknowledgement of Duties forms signed by the Department's board members. On November 12, 2024, Appellant filed his brief designating three issues on appeal. On November 22, 2024, the Department filed its brief setting out four distinct arguments. With consent of the Department and permission of the Court, Appellant filed a reply brief on December 17, 2024.

ISSUES

Appellant's brief lists the following issues on appeal:

1. Did the South Carolina Department of Probation, Parole, and Pardon Services (SCDPPP) violate Mr. Madden's due process rights by not providing him adequate time and opportunity to inspect, review, and report inaccuracies in his parole file by not allowing him to review his parole file until the day of his hearing?

2. Did the SCDPPP Parole Board (the Board) violated Mr. Madden's due process rights by not excluding documents that were irrelevant to his current incarceration from his parole file before consideration by the Board?

3. Did the Board commit reversible error when it erroneously found Mr. Madden "Failed to Successfully Complete a Community Supervision Program" and denied parole based on that erroneous finding?

The Department generally asserts in its brief that this matter is a routine denial of parole which the Court is precluded from reviewing pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2024). As to Appellant's first issue on appeal, the Department contends that it satisfied its obligations to Appellant under *Kelsey v. South Carolina Department of Probation, Parole, and Pardon Services*, 441 S.C. 373, 893 S.E.2d 588 (Ct. App. 2023) by providing him the ability to inspect his parole file for inaccuracies during his parole hearing, and that *Kelsey* did not convey Appellant an unfettered right to inspect his parole file *prior* to his hearing. Finally, the Department disputes Appellant's view of the phrase "a community supervision program."

JURISDICTION

The Court's jurisdiction to review parole decisions is limited. Section 1-23-600(D) specifically provides an administrative law judge shall not hear "an appeal involving the denial of

parole to a potentially eligible inmate by the Department." However, our supreme court has explained that while a parole eligible inmate does not have a right of review after a decision denying parole, "an inmate has a right of review by the [ALC] after a *final* decision that he is *ineligible* for parole." *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 497-98, 661 S.E.2d 106, 111 (2008) (quoting *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443 n.4, 586 S.E.2d 124, 124 n.4 (2003)), *abrogated on other grounds by Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 886 S.E.2d 671 (2023).

Moreover, even if the Parole Board's decision does not amount to a permanent denial of parole, the Court may still review whether the Parole Board followed the proper procedure in making its parole determination. *Id.* 377 S.C. at 499-500, 661 S.E.2d at 112; *see also Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009) ("[I]f the Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate's right to parole eligibility and infringes on a state-created liberty interest, warranting minimal due process protection.").

STANDARD OF REVIEW

Where review is permissible, the Administrative Procedures Act, S.C. Code Ann. §§ 1-23-300, *et seq.* (2005 & Supp. 2024), establishes the standard of review the Court must apply when addressing an agency's decision. Specifically, section 1-23-380(5) provides the following:

> The [C]ourt may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The [C]ourt may affirm the decision of the agency or remand the case for further proceedings. The [C]ourt may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
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> (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.

"When appealing an agency's decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced based on one of six statutory criteria listed above." *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 259-60, 659 S.E.2d 233, 235 (Ct. App. 2008); *see also Pressley v. Lancaster County*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001) ("The party challenging a governmental body's decision bears the burden of proving the decision is arbitrary."); *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) ("The burden is on appellants to prove convincingly that the agency's decision is unsupported by the evidence.").

DISCUSSION

Appellant designated three issues on appeal: (1) whether Appellant had appropriate time and opportunity to review his parole file; (2) whether the Board should have excluded documents which Appellant contends were irrelevant;[1] and (3) whether the Board erred as a matter of law in its finding regarding a Community Supervision Program. The Court will begin by addressing the second and third of these issues together, as the Court views these matters to be challenges to the merits of the Board's decision to deny parole.[1]

I. ALC Review of Parole Appeals

The Department asserts that the underlying action was a routine denial of parole which cannot be reviewed by this Court pursuant to section 1-23-600(D). Section 1-23-600(D) was amended in 2008 to add:

> An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A) or an appeal involving the denial of parole to a potentially eligible inmate by the

[1] To the extent, if any, that Appellant frames the second issue on appeal as one involving due process rather than one involving the erroneous admission of prejudicial evidence, the Court rejects such an argument. A prisoner has no federal constitutional right to be released before the expiration of his sentence. *Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex*, 442 U.S. 1, 7 (1979). Parole is a privilege, not a right. *Buchanan v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 442 S.C. 393, 408, 899 S.E.2d 600, 608 (Ct. App. 2023), *reh'g granted* (Oct. 18, 2023), *cert. denied* (Apr. 16, 2024). Only the permanent denial of eligibility for parole or a failure to consider factors mandated by statute implicates a liberty interest sufficient to require minimal due process. *Id.*, *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112 ("[w]e find the apparent failure by the Parole Board to consider the requisite statutory criteria in rendering its decision constitutes an infringement of a state-created liberty interest and, thus, warrants minimal due process procedures"). A failure to exclude a particular piece of evidence in a parole hearing is neither a permanent denial of eligibility for parole nor a deviation from required statutory procedure in parole hearings.

Department of Probation, Parole and Pardon Services.

2008 Act No. 334, Section 7, eff. June 16, 2008. Accordingly, the Department asks the Court to reject this appeal.

Appellant argues in response that the South Carolina Supreme Court clarified in *Allen v. South Carolina Department of Corrections*, 439 S.C. 164, 886 S.E.2d 671 (2023) that section 1-23-600(D) does not divest this Court of subject matter jurisdiction to hear an appeal from a decision denying parole. In *Allen*, the court specifically addressed the question of whether an inmate's claim had to implicate a state-created liberty interest in order for the Administrative Law Court to have subject matter jurisdiction over the inmate's appeal. It answered this question in the negative but also emphasized that summary dismissal is nevertheless appropriate where no such interest is implicated. *Allen* addressed an appeal from an inmate grievance within the Department of Corrections, but Appellant here reads the decision broadly to apply equally to decisions of the Board.

Notably, our court of appeals adopted this same position in *James v. South Carolina Department of Probation, Parole, and Pardon Services.*, 377 S.C. 564, 660 S.E.2d 288 (Ct. App. 2008). In *James*, an inmate alleged that his due process rights had been violated when he was denied parole because only five of the seven Board members participated in the denial decision. *Id.* at 566, 660 S.E.2d at 289 The court of appeals agreed that the Administrative Law Court had subject matter jurisdiction to entertain the appeal but affirmed the dismissal below because no state-created liberty interest was implicated. *Id.* at 257, 660 S.E.2d at 290.

The Court concludes, however, that neither *Allen* nor *James* advances Appellant's position. *Allen* involved the Department's refusal to allow Allen visitation from persons not known to him prior to his incarceration. It did not involve the loss of the inmate's opportunity to earn sentence-related credits and therefore did not address the effect of the 2008 Amendment. *James* was decided in April of 2008, a few months *before* the 2008 Amendment to section 1-23-600(D) became effective. The language of the 2008 Amendment is clear – "[a]n 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." Section 1-23-600(D) (emphasis added).

As a result, the Court lacks jurisdiction to entertain an appeal involving the denial of parole and lacks jurisdiction to review the second and third issues raised on appeal in this case. These issues involve the Board's consideration of certain evidence and its construction of a statute.

Stated differently, these issues are attacks on the manner in which the Board reached its decision, the weight it gave to evidence considered and the soundness of its legal reasoning. This Court has no authority to address such issues when parole has been denied.

II. Requirements of *Kelsey*

In addition to cases involving the permanent denial of parole eligibility and the failure to follow statutorily required procedure in parole hearings, the Court also implicitly has authority to review an inmate's access to his or her parole file under *Kelsey*. In *Kelsey,* the court of appeals held that the Department's Form 1212 which requires inmates to notify the Board of any errors or inaccuracies in their parole file, necessarily implies that inmates must have an opportunity to review their parole file. *Id.* at 379, 893 S.E.2d at 591. It stated that "[w]ith the protections for victims in place by reasonable redaction and sealing, we find an inmate is entitled to review his or her file." *Id.* The court determined that the inmate in question had been denied access to his parole file, reversed the decision, and remanded so that a new parole hearing could be held after the inmate had the opportunity to "review his file" and "report any inaccuracies." *Id.*

Appellant argues that in addition to a right of review and an opportunity to report inaccuracies, *Kelsey* also inherently requires that: (1) the Board has a responsibility to "investigate the [reported error] and notify the inmate of the action taken'"[2] and (2) an inmate must have adequate time to review his or her parole file so that Board may investigate any alleged inaccuracies prior to the hearing. Citing *Franklin v. Shields*, 569 F.2d 784 (4th Cir. 1977) (*rev'd en banc* Jan. 3, 1978)(*cert. denied*),[3] Appellant further argues that parties have an interest in eliminating consideration of inaccurate information by the Board. Appellant concludes that:

> The *Kelsey* decision and general due process requirements provide Mr. Madden is entitled to review his file, with time to contest its contents, have the Board conduct an investigation and notify Mr. Madden of the steps it took to investigate the error or inaccuracy. Only then is the file properly validated for consideration by the Board at the hearing.

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[2] This language is also found in Form 1212.

[3] Appellant's citation to *Frankin* is curious. While the original appellate panel in *Franklin* did conclude that inmates have a limited due process right to access to their parole files, the Fourth Circuit, sitting *en banc*, reversed this holding, stating specifically that "we discern 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. These are all matters better left to the discretion of the parole authorities. *Franklin*, 569 F.2d at 800 (emphasis added). *Franklin* is therefore directly contrary to Appellant's assertion that due process is implicated in this appeal.

(Appellant's Brief at p. 6). The Department argues that it satisfied the requirements imposed by *Kelsey*, which it construes as less onerous than does Appellant.

To the extent that Appellant argues that due process has been violated, the Court disagrees. *Kelsey* is not premised on due process, nor could it be. *Johnson v. Rodriguez*, 110 F.3d 299, 308 (5th Cir. 1997) ("[t]he protections of the Due Process Clause are only invoked when State procedures which may produce erroneous or unreliable results imperil a protected liberty or property interest. It is therefore axiomatic that because Texas prisoners have no protected liberty interest in parole they cannot mount a challenge against any state parole review procedure on procedural (or substantive) Due Process grounds") (internal citations omitted); *Manier v. Colorado State Bd. of Parole*, No. 14-CV-02851-GPG, 2014 WL 7177402, at *2 (D. Colo. Dec. 16, 2014) ("[a]bsent a liberty interest in parole, the Due Process Clause does not mandate an inmate's access to his parole file"); *Worden v. Montana Bd. of Pardons & Parole*, 962 P.2d 1157, 1166 (Mont. 1998) ("no precedent of the United States Supreme Court or of this Court leads us to conclude that the due process clause of either the U.S. or Montana constitutions require that Inmates be allowed to inspect the specific information contained in the Board of Pardons' files"); *see also Buchanon*, 442 S.C. at 408, 899 S.E.2d at 608 (parole is a privilege, not a right). *Kelsey* is instead premised on the language of Form 1212, a form which the Department can unilaterally change at any time.

To the extent that Appellant argues that *Kelsey* requires the Board to delay making a parole decision until it can investigate claimed inaccuracies in an inmate's parole file and report any action taken, the Court again disagrees with Appellant. Form 1212 does, of course, contain language indicating that the Board will investigate claimed errors in an inmate's file, but *Kelsey* stopped short of addressing the import of that language. Form 1212 also does not specify when a Board investigation must be completed. If, as Appellant argues, an investigation must be completed after an inmate reviews his or her file and notifies the Board of a claimed inaccuracy but *before* the Board makes a parole determination, parole hearings which had been previously set on a standard, statutory schedule, could then be indefinitely delayed. Such a construction may cause the Department to violate the statutory requirement that an inmate be considered for parole at specified intervals.[4]

[4] For example, section 24-21-620 provides that, once a negative parole determination has been made for an inmate, the inmate's case "shall be reviewed every twelve months thereafter for the purpose of such determination." If an inmate scheduled for an annual parole hearing raised concerns about the inaccuracy of the contents of his or her parole file shortly before the hearing or in the hearing itself, and the Board was then required to pause and conduct an

To the extent that Appellant contends that the decision of the Board must be reversed because he did not have access to his parole file until the morning of his parole hearing, the Court again disagrees with the Appellant. *Kelsey* does not specify the time at which an inmate must be granted access to his or her parole file. While the Court leaves open the possibility that providing access at the parole hearing itself could, upon particular facts not present here, violate the spirit of *Kelsey*, the Court is compelled to affirm in this case by the applicable standard of review. The burden rests squarely on Appellant to prove that his substantive rights were prejudiced. *Mitchell*, 377 S.C. at 259-60, 659 S.E.2d at 235. Appellant concedes here that, despite the allegedly improper timing of his access to the contents of his parole file, he was nevertheless able to review the file, identify what Appellant contends is incorrect information, and raise these matters to the Board for consideration. On these facts, the Court cannot conclude that Appellant was prejudiced as a result of the time at which he was granted access to his parole file.[5]

CONCLUSION

For the reasons discussed above, the Court is compelled to affirm.

ORDER

IT IS THEREFORE ORDERED that the decision of the Department is **AFFIRMED. AND IT IS SO ORDERED.**

The Honorable Robert L. Reibold
Administrative Law Judge

February 20, 2025
Columbia, South Carolina

investigation, the delay resulting from the investigation would likely postpone the date on which an inmate is actually considered from parole beyond the 12 month outer limit provided by statute.

[5] To the extent Appellant argues that he was prejudiced by lack of investigation by the Board prior to a parole determination, which the Court has determined is not currently required by South Carolina law, Appellant's claim of prejudice fails because it is speculative. The allegedly incorrect matters raised by Appellant in this case are "the description of an alleged 2009 disciplinary infraction for which he was never convicted and the inclusion of an arrest warrant that indicated Mr. Madden was arrested and charged with robbery, a crime for which he was never convicted." Appellant has not specified the manner in which the description of 2009 disciplinary infraction was incorrect. Appellant does not deny that he was in fact arrested for the offense shown in the warrant – and as a result, the information in the document is not incorrect. Appellant does not identify the nature or depth of the investigation he believes is required. Additionally, the Appellant's parole file is not in the record and Appellant made no motion to supplement the record. The Court therefore lacks information it would need to evaluate Appellant's claim of prejudice.

CERTIFICATE OF SERVICE

I, Van Whitehead, hereby certify that I have on 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).

Van Whitehead

Van Whitehead
Staff Attorney

February 20, 2025
Columbia, South Carolina

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

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

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

Charles J. Madden, #00182326,

Appellant,

v.

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

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the South Carolina Department of Probation, Parole, and Pardon Services (SCDPPP) violate Mr. Madden's due process rights by not providing him adequate time and opportunity to inspect, review, and report inaccuracies in his parole file by not allowing him to review his parole file until the day of his hearing?

2. Did the SCDPPP Parole Board (the Board) violate Mr. Madden's due process rights by not excluding documents that were irrelevant to his current incarceration from his parole file before consideration by the Board?

3. Did the Board commit reversible error when it erroneously found Mr. Madden "Failed to Successfully Complete a Community Supervision Program" and denied parole based on that erroneous finding?

STATEMENT OF THE CASE

This is an appeal of a final decision by the SCDPPP denying Mr. Charles J. Madden parole. Mr. Madden was convicted of murder and was sentenced to life in prison in 1991. He first became parole eligible in 2011; despite Mr. Madden's exemplary disciplinary record, efforts towards rehabilitation, community support, and satisfactory completion of the Jump Start program,[1] Mr. Madden has been denied parole at each of his appearances before the board. Mr. Madden is currently 61 years old and has remained continuously incarcerated since he was convicted 33 years ago.

Mr. Madden's counsel requested a copy of Mr. Madden's parole file in early 2024. SCDPPP rejected counsel's request for the file and stated its position that, due to administrative burden of complying with the Court of Appeals opinion, *Kelsey v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 441 S.C. 373, 893 S.E.2d 588 (Ct. App. 2023), *reh'g denied* (Nov. 17, 2023), inmate's parole files would only be made available the day their hearing.

Mr. Madden appeared for his most recent hearing before the Board on July 24, 2024. He

[1] The Jump Start program is a faith-based program that provides both an intensive, 40-week in-prison program and post-release assistance to inmates. If granted parole, Mr. Madden will have at least 12 months of low-cost, stable housing and long-term employment secured through the Jump Start program.

was provided a copy of his parole file that morning. Upon review, Mr. Madden and his counsel questioned the description of an alleged 2009 disciplinary infraction for which he was never convicted and the inclusion of an arrest warrant that indicated Mr. Madden was arrested and charged with robbery, a crime for which he was never convicted. The Board voted unanimously to deny Mr. Madden parole and sent a Notice of Rejection (the "Notice") the next day. In the July 25 Notice, the Board stated Mr. Madden's parole "must be denied," after careful consideration of:

> (1) the characteristics of [Mr. Madden's] 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.

To support its position, the Board articulated three Findings of Fact: (1) Nature And Seriousness Of Current Offense, (4) Criminal Record Indicates Poor Community Adjustment, (5) Failure To Successfully Complete A Community Supervision Program. In an August 8, 2024, follow up letter to Mr. Madden's request to review his parole file, the Board stated, "the official records indicate that [Madden's] most recent disciplinary [sic] was committed10/16/2009[,]" and that Mr. Madden was given the opportunity to discuss this with the Board at his hearing. The letter further identified Mr. Madden's post-release living arrangement with Jump Start indicated that he would be "returning to an area of high crime or victimization[,]" when assessed through COMPASS, and that even though the summary did not indicate that he was convicted of robbery, the arrest warrant was nevertheless included in Mr. Madden's parole file for consideration by the Board. Mr. Madden filed this appeal with the Administrative Law Court ("ALC") on August 5, 2024, which it initially rejected. Mr. Madden then re-filed on August 12, 2024.

STANDARD OF REVIEW

Though the Board sits as "the sole authority with respect to decisions regarding the grant or denial of parole," the ALC may, under certain circumstances, review decisions of the Board when it "deviates from or renders its decision without consideration of the appropriate criteria…essentially abrogate[ing] an inmate's right to parole eligibility and, thus, infring[ing] on a state-created liberty interest." *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008); *see also Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003) (finding that inmates are afforded "at least minimal due process" when they are permanently denied parole eligibility).

The ALC sits in its appellate capacity in reviewing such matters. *Cooper*, 377 S.C. at 497, 661 S.E.2d at 110. In its consideration of the record, if the ALC finds that an inmate's substantial rights have been prejudiced, the ALC may reverse, modify, or remand the decision if the Board's findings, inferences, conclusions or decisions are:

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

S.C. Code Ann. § 1-23-380(5) (Supp. 2024).

ARGUMENT

I. The Board violated Mr. Madden's due process rights when it failed to provide Mr. Madden adequate time to review and challenge any discrepancies in his parole file that would be considered at his hearing.

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.

As the Court of Appeals articulated in *Kelsey*, Form 1212, which requires inmates to notify the Board of any errors or inaccuracies in their parole file, necessarily requires that inmates have an opportunity to review their parole file. *Kelsey v. S.C. Dep't of Prob., Parole, & Pardon Servs.,* 441 S.C. 373, 378, 893 S.E.2d 588, 591 (Ct. App. 2023), *reh'g denied* (Nov. 17, 2023) ("Like the ALC, we find 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."). Like the opportunity to review the parole file, adequate time to review a parole file is inherent in the requirement that inmates identify and report any errors, inaccuracies, or other incomplete information. Furthermore, Form 1212 and the *Kelsey* decision implicitly require adequate time between the inmate's review and his or her parole hearing for the Board to "investigate the inquiry and notify the inmate of the action taken." *Id.*, at 373, 893 S.E.2d at 591. This reasoning in plainly evident in the Kelsey court's opinion when it remanded Kelsey's case "for Kelsey to review his file, report any inaccuracies, and be given a new parole hearing." *Id.*, at 379, 893 S.E.2d 591-92. Failure to

provide adequate time for review and subsequent investigation of the inmate's identified issues results in the precise situation here; where the inmate was unable to locate documents or other supporting evidence prior to his hearing, the parole board considered inaccurate information during the hearing, and it was not until weeks after their decision was rendered that DPPPS investigated and reached a conclusion regarding the inmate's reported inaccuracies.

Both an inmate and the State have an interest in the Board only considering accurate information. *Franklin v. Shields*, 569 F.2d 784, 791 (4th Cir. 1977) ("Broadly speaking, the prisoner's concern is to avoid the arbitrary denial of parole. Because the state is interested in protecting the public and in restoring the prisoner to a useful life, it too must be concerned that parole be neither granted nor denied on the basis of inaccurate information or erroneous evaluation."). Like the Fourth Circuit reiterated in *Franklin*, "[T]he evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to *show* that it is untrue." *Id.*, at 794 (emphasis added) (*quoting Greene v. McElroy*, 360 U.S. 474, 496 (1959)).

Here, though Mr. Madden's counsel requested access to the file in early 2024, so that he may review and investigate any errors, Mr. Madden was denied the opportunity to review his file in time to contest any of the information to be relied on by the Board. Such timing necessarily abnegates the Board's responsibility to investigate the reporting inmate's assertions and then give notice of the investigatory steps it took to verify or correct the reported information before the file is considered by the Board. If an inmate is not given adequate time to review their parole file and report and errors or inaccuracies, with proper evidentiary documentation, then there runs the risk of the Board considering factually inaccurate or incomplete information in an inmate's parole file, which is contrary to the State's and inmate's interest in an accurate file. *Id.*, at 794-95 ("Since the data on which the Board acts is not developed through an open adversary confrontation, its

accuracy cannot be assured unless the prisoner has access to the relevant information in his file.").

Thus where, as here, Mr. Madden was only given access to his file on the morning of his hearing, with no adequate time to review the file, no copy of the file to refer back to in investigating the claims, and no time for the Board to investigate the claims of error or inaccuracy prior to the hearing, the Board has failed to provide basic the due process protection of reasonable notice and an opportunity to be heard. The *Kelsey* decision and general due process requirements provide Mr. Madden is entitled to review his file, with time to contest its contents, have the Board conduct an investigation and notify Mr. Madden of the steps it took to investigate the error or inaccuracy. Only then is the file properly validated for consideration by the Board at a hearing. Therefore, the Court should remand this case back to the Board to reschedule Mr. Madden's parole hearing after he is provided a full and complete review of his parole file with time to refute and investigate before the Board's consideration.

II. Inclusion of statements made in an arrest warrant indicating Mr. Madden's incarcerated crime was accompanied by aggravating charges for a crime that he was never convicted of undermined applicable mitigating factors and were unduly prejudicial to Mr. Madden.

"Unfair prejudice means an undue tendency to suggest decision on an improper basis." *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009). Included prominently in Mr. Madden's parole file was a notation that the arrest warrant issued stated Mr. Madden committed murder during an armed robbery. However, Mr. Madden was never convicted of robbery in conjunction with his current offense. Inference of any evidence to the contrary is inherently prejudicial to consideration of Mr. Madden's parole file, particularly when the denial of Mr. Madden's parole was based in part on the "(1) Nature And Seriousness Of Current Offense." It seems plain that where there is evidence to suggest that the crime for which Mr. Madden is incarcerated for is *more* serious than the crime he was convicted for is inherently prejudicial to

Mr. Madden receiving full and fair consideration of an accurate parole file. Even though the summary of the charges did not include a reference to a conviction for robbery, that is insufficient to overcome the prejudice of referencing documentary evidence to suggest the contrary. The arrest warrant's contents were still presented prominently as evidence in Mr. Madden's file that was available for the Board to consider. Thus, Mr. Madden is entitled to a new hearing and for the Board to consider his file based only on accurate and relevant information to the crime for which he is incarcerated, and his parole consideration stems from.

III. The Board's interpretation of Community Supervision Program was clearly erroneous and affected by an error of law.

Among the findings of fact cited in support of its conclusion the Board lists "Failure To Successfully Complete A Community Supervision Program." *Id.* Mr. Madden does not dispute that he has not completed a Community Supervision Program ("CSP"). He has never, in fact, been placed into a CSP and is, by statute, not eligible to participate in a CSP. Moreover, he is not, by law, required to complete a CSP and the Board's inclusion of this "finding of fact" as grounds for denial of parole is clearly erroneous and plain error of law.

"Community Supervision Program" is a statutorily defined term, with statutorily defined parameters. *See, e.g.*, S.C. Code Ann. §§ 24-21-510 *et seq.*; 24-21-30. The CSP is, in essence, a more rigorous form of probation which certain offenders are assigned to at sentencing. *State v. Dawkins*, 352 S.C. 162, 573 S.E.2d 783 (2002); S.C. Code § 24-21-560. However, the provisions mandating prisoners who commit "no parole offenses" to complete a CSP do not apply to Mr. Madden because these prospective requirements became operative on January 1, 1996; five years after Mr. Madden was convicted and sentenced. *See* 1995 S.C. Laws Act 83 (H.B. 3096) (amending various code sections to provide certain prisoners must complete a CSP).[2] Moreover,

[2] The Department's own website unambiguously addresses the effective date and prospective nature of the community

both the crime Mr. Madden was convicted for, and the sentence imposed on him are specifically exempted from participation in a CSP. S.C. Code Ann. § 24-21-560(A). The Board's conclusion that it must deny Mr. Madden parole, as a matter of law, because he has not completed a CSP is, therefore, clearly erroneous and its decision is affected by error of law.

In its February 14, 2023, Order of Remand, this Court determined that because the statutory scheme defining Community Supervision Program did not expressly define the term, it was not well established and it could, "on its face" be "open to more than one reasonable interpretation." The Court then deferred to the SCDPPP to define what Community Supervision Program meant in Mr. Madden's denial. Thereafter, the Board determined that because Mr. Madden violated his probation associated with an offense prior to the one he is currently incarcerated for, that constituted his failure to complete a CSP.

However, the Board's definition of the term runs contrary to every statutory and common law use of CSP, which uniformly differentiates between probation and a Community Supervision Program. S.C. Code Ann. § 24-21-280(A) ("A probation agent...must furnish to each person released on probation, parole, *or* community supervision under his supervision a written statement of the conditions of probation, parole, or community supervision and must instruct him regarding them"); § 23-3-540(C) ("A person who... violates a term of probation, parole, community supervision, or a community supervision program must be ordered by the court or agency with jurisdiction to be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device."); *Dawkins*, 352 S.C. at 167, 573 S.E.2d at 784 ("The CSP is a more stringent, closely monitored form of supervision than normal probation."); *State v. Blakney*,

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supervision program, noting that "[i]ndividuals who committed one of these ["no parole offenses"] on or after January 1, 1996 are not eligible for parole consideration at any time during their sentence." SCDPPP, *Supervision Strategies*, available at https://www.dppps.sc.gov/offender-supervision/supervision-strategies

410 S.C. 244, 763 S.E.2d 622, (Ct. App. 2014) (finding that a defendant's completion of his community supervision program (CSP) term discharges any residual probation); and the list continues.

Each of the above instances demonstrate that South Carolina law differentiates between a CSP and probation or parole. Basic application of the rules of statutory interpretation mandate that probation be viewed as a program separate and apart from a CSP and not, as the Board has urged and applied, as an included program. *Michau v. Georgetown Cnty. ex rel. S.C. Ctys. Workers Comp. Tr.,* 396 S.C. 589, 595, 723 S.E.2d 805, 808 (2012) (quoting *K & A Acquisition Group, LLC v. Island Pointe, LLC*, 383 S.C. 563, 580, 682 S.E.2d 252, 261 (2009) ("As this Court has recognized, the "use of the word 'or' in a statute 'is a disjunctive particle that marks an alternative.")).

Moreover, recent United States Supreme Court precedent requires the Court to interpret statutory terms it deems open to interpretation, and to not blanketly defer to an agency's definition in the event of ambiguity. *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2266 (2024) ("The very point of the traditional tools of statutory construction—the tools courts use every day—is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency's own power—perhaps the occasion on which abdication in favor of the agency is least appropriate."). Therefore, it is imperative that the Court remedy the Board's misapplication of the plain statutory language, clarify that probation and a CSP are different programs under the purview of SCDPPP, and remand Mr. Madden's case for the Board to find accordingly.

CONCLUSION

For the reasons set forth above, Mr. Madden respectfully requests the Administrative Law Court: (1) reverse the final decision of the Parole Board; and (2) remand his case to the Board with

instructions not inconsistent with the Court's determinations consistent herewith; and (3) provide any other relief that the Court deems just and proper.

Respectfully Submitted,

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November 12, 2024
Columbia, South Carolina

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

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

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

Charles J. Madden, #00182326,

Appellant,

v.

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

Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Charles J. Madden, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by Electronic Mail, to the following address(es):

Pleadings: Initial Brief of Appellant, Charles J. Madden, #182326

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November 12, 2024

State of South Carolina

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November 22, 2024

The Honorable Robert L. Reibold
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

RE: Charles Madden, #182326 v. S.C. Department of Probation, Parole and Pardon Services

Dear Judge Reibold:

Please find enclosed for filing the *Brief of Respondent*, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures
cc: Michael Stover, Esquire

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 24-ALJ-15-0028

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

CHARLES MADDEN, #182326 ..... APPELLANT

v.

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

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Brief of Respondent*, dated November 22, 2024, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 22nd day of November, 2024, addressed to:

Michael Stover, Esquire
1320 Main Street, 17th Floor
Columbia, SC 29201

I further certify that all parties required by Rule 61 to be served have been served.

Dawn Nichols
Executive Assistant
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STATE OF SOUTH CAROLINA
In the Administrative Law Court
Docket Number 24-ALJ-15-0028

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

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

v.

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

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

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2. **Respondent followed the requirements mandated by the Court of Appeals in *Kelsey v. S.C. Dep't of Probation, Parole and Pardon Services.***

3. **So long as the inmate is afforded the opportunity to present to the Board and report any perceived errors or inaccuracies in his file, due process is not denied.**

4. **The Board uses the phrase "a community supervision program" as generic, catch-all terminology for all forms of supervision within the community and not to refer specifically to the Community Supervision Program pursuant to S.C. Code 24-21-560.**

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 on June 2, 1991, during the commission of an armed robbery and while he was out on bond for other offenses. Appellant pled guilty to murder before the Honorable William P. Keesley and received a sentence of life. Appellant initially became parole eligible in 2011 after service of twenty years for the instant offense.

Appellant's seventh parole hearing was conducted on July 24, 2024. The Board unanimously denied him parole, listing the nature and seriousness of the offense, criminal record, and his failure to successfully complete a community supervision program as the reasons for rejection.

Appellant appeals this denial, arguing that he should have had more time to review his parole file, that the Board violated his rights because of information within his arrest warrant was included in his parole file, and that "a community supervision program" in the rejection letter can only mean Community Supervision Program as defined in S.C. Code 24-21-560.

In response, Respondent would respectfully submit that this Court has limited authority to hear appeals from denials of parole of otherwise parole-eligible inmates because the Record shows the Board considered all the statutory factors; that Respondent followed the requirements of *Kelsey* because Appellant had the opportunity to address the Board about any perceived inaccuracies in his file; and that "a community supervision program" as used by the Board's letter of rejection is a generic phrase that encompasses all forms of supervision within the community. Respondent's brief follows.

ARGUMENTS

1. **Because this is a routine denial of parole, this court cannot entertain this appeal.**

As an initial matter, Respondent would respectfully submit that this is a routine denial of parole and therefore this Court has limited authority to hear such appeals.

Inmates who are denied parole and petition the Administrative Law Court are limited to review of whether the Board complied with procedures as outlined in *Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services,* 377 S.C. 489, 661 S.E.2d 106 (2008). The notice of rejection must clearly state that the Board considered the factors published in Department Form 1212, the factors outlined in S.C. Code Ann. § 24-24-640 and § 24-21-10(F)(1), and consideration of the actuarial needs assessment.

This holding was further clarified in *Compton v. South Carolina Dept. of Probation, Parole and Pardon Services*, 385 S.C. 476, 685 S.E.2d 175 (2009). In *Compton*, the Supreme Court held that no specific findings of fact regarding consideration of the inmate's record were required in the notice of rejection. *Id.*, 385 S.C. at 479, 685 S.E.2d at 177. Because these requirements were met in Appellant's instant parole denial, there is no authority for this court to review the matter. Thus, Appellant's parole denial must stand and this appeal must be dismissed. The Board not only stated that it considered the requisite factors as seen in its letter of rejection (R. 1), but the Board members each swore an oath upon taking their office that they would consider the requisite factors on each parole case. (R. 3-8).

The fact that Appellant does not like the result does not change the fact that the evidence before this Court is clear that it considered the factors. If the evidence shows that the Board did consider the factors, this Court, pursuant to *Cooper* and *Compton*, must dismiss the appeal. In the Board's letter of rejection, it clearly stated that the Board carefully considered factors published in

Department Form 1212, the factors outlined in S.C. Code Ann. § 24-24-640 and § 24-21-10(F)(1), and the actuarial needs assessment. (R. 1).

According to the Supreme Court in *Cooper*, this is sufficient. If the Parole Board "clearly states in its order denying parole that it considered the factors outlined in § 24-21-640 and the fifteen factors published in its parole form,"[1] it will constitute a routine denial of parole. Per the Board's letter of rejection and their oaths of office, the members of the Board considered those results and still elected to deny Appellant parole.

Notably, the Board has full discretion over parole decisions. Furthermore, a routine denial of parole does not render an inmate ineligible for parole in the future. Only "the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process." *Furtick v. South Carolina Dep't of Probation, Parole and Pardon Services*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003) (Emphasis in original). Respondent respectfully would further argue that this Court's statutory authority to hear this matter is similarly constrained by statute. 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). Because Appellant remains parole eligible, this Court should not hear the appeal.

Respondent respectfully submits that this is dispositive and South Carolina case law and statutes both mandate this appeal be dismissed.

2. The requirements of *Kelsey* were met.

Appellant argues that his due process rights are violated because he only had access to his file before his hearing. Respondent submits that this is compliant with the requirements of *Kelsey*.

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[1] *Id.* at 500, 661 S.E.2d at 112.

After the remittitur of *Kelsey*, Respondent developed a process in which inmates may 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.

Respondent would emphasize that this procedure is similar to Nebraska's parole process, which the U.S. Supreme Court determined satisfied due process. "At the Board's initial interview hearing, the inmate is permitted to appear before the Board and present letters and statements on his own behalf. He is thereby provided with an effective opportunity, first, to insure that the records before the Board are in fact the records relating to his case; and, second, to present any special considerations demonstrating why he is an appropriate candidate for parole. Since the decision is one that must be made largely on the basis of the inmate's files, this procedure adequately safeguards against serious risks of error and *thus satisfies due process*." *Greenholtz v. Inmates of Nebraska Penal and Corr. Complex*, 442 U.S. 1, 15 (1979) (emphasis added). Quite simply, due process does not require review of the parole files weeks or months in advance of the actual hearing.

Appellant cites to *Franklin v. Shields*, 569 F.2d 784 (4th Cir. 1977), to support his argument, but a subsequent ruling by the Fourth Circuit held that inmates do not have a constitutionally protected right of access to their prison files. *Franklin v. Shields*, 569 F.2d 800 (4th Cir. 1978) Cert. denied, 435 U.S. 1003 (1978).

Due process rights only attach when an inmate has an actual liberty interest. Inmates clearly do not have the right to receive parole. See *Sullivan v. South Carolina Dep't of Corrections*, 355 S.C. 437, 443 n. 4, 586 S.E.2d 124, 127 n. 4 (2003). Furthermore, "a prisoner must identify a cognizable liberty interest before he can demonstrate a denial of due process." *Bowling v. Dir, Virginia Dep't of Corr.*, 920 F.3d 192, 199 (4th Cir. 2019). A parole hearing does not require trial-like discovery of evidence as if this was a contested hearing, and *Kelsey* did not create such a right.

3. Appellant had the opportunity to address the Board about any perceived inaccuracies so there was no prejudice about information included in the parole file.

Appellant argues that he was unduly prejudiced by the inclusion of the statement from the arrest warrant that stated the murder of his father was committed during an armed robbery. Respondent would submit that this weighing of evidence and possible prejudice is outside the limited scope of review granted to this Court. See Part 1.

Furthermore, Appellant does not say that there was no mention of the armed robbery in the arrest warrant, only that he was not indicted or convicted of armed robbery. This is because the arrest warrant did reference an armed robbery. The information within the parole file was therefore accurate. Appellant was also given the chance to emphasize to the Board that he was not convicted of armed robbery, thus alleviating any possible prejudice.

Again, Respondent would stress the limited authority over routine denials of parole afforded this Court. To further entertain Appellant's arguments over which materials or information within the parole file may be unduly prejudicial necessarily involves a review of the Board's decision-making, which is beyond this Court's authority. Any concern that there are inaccuracies within the parole file is now alleviated by *Kelsey* allowing the inmates to review their files and report to the Board any perceived inaccuracies.

4. The phrase "a community supervision program" is not solely a term of art that only refers to the supervision program defined in S.C. Code 24-21-560.

Despite the minimal due process rights afforded inmates in parole hearings and the obvious plain-language meaning of the phrase "a community supervision program," Appellant applies a hyper-technical definition to the phrase in an obvious bid to circumvent the Parole Board and demand parole by manufacturing a due process issue that plainly does not exist.

Appellant insists that the phrase "a community supervision program" only refers to the period of supervision required of prisoners who are convicted of "no parole offenses" per S.C. Code Ann. § 24-13-100 that begins upon the release from incarceration. S.C. Code Ann. § 24-21-560. This program and its specific name came into being via operation of legislation in 1995, five years after he was originally convicted and sentenced. *See* 1995 S.C. Laws Act 83 (H.B. 3096).

Prior to this, "community supervision program" and "community supervision" have been generic phrases that have been in use for years and are defined as any type of program in which an offender lives in the community at large but is still supervised by the State.[2] This phrase regularly incorporated probation, parole, supervised furlough, and, after 1996, the Community Supervision Program (CSP)[3].

Contrary to Appellant's position that "a community supervision program" only ever refers to CSP throughout the entire Code, the phrase is in use in several statutes that are clearly meant generically rather than CSP. The phrase is distinguished from CSP in the electronic monitoring statute S.C. Code § 23-3-540. "(C) A person who is required to register… and who violates a term

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[2] Notably, this phrase was used prior to the enactment of § 24-21-560. See S.C. Code § 24-21-520(1) (Supp. 1993) (effective date August 31, 1994; repealed June 29, 1995). See also S.C. Code § 24-22-120 (Supp. 1992).

[3] For clarity, Respondent will use the acronym CSP to refer to the community supervision program required for those serving no parole offenses pursuant to S.C. Code 24-21-560.

of probation, parole, community supervision, *or a community supervision program* must be ordered..." (emphasis added). See also "(D) A person who is required to register... and who violates a term of probation, parole, community supervision, *or a community supervision program*, may be ordered by the court..." (emphasis added).

In another context, S.C. Code § 24-21-280(A) outlines the duties and powers of a probation agent over individuals "released on probation, parole, or community supervision under his supervision" do not mention reentry supervision (S.C. Code § 24-21-32) or supervised furlough (S.C. Code § 24-13-710 and § 24-13-720), but individuals on either form of supervision are still clearly under the authority of the agent. Similarly, "community supervision" is used in the generic sense in S.C. Code § 24-3-40(B)(1) and (3) when the Code speaks to when and how inmates' wages are distributed upon their release from incarceration. The phrase "community supervision program" is obviously used in a generic context because inmates are released to a variety of supervision programs depending on their sentence, such as parole, probation, CSP, or supervised reentry.

Lastly, it should be noted how regularly the Code cites to § 24-21-560 whenever it refers to CSP. "[A] community supervision program as set forth in Section 24-21-560" is used in § 24-21-30(A). Section 24-13-150 states that certain inmates are not eligible "for early release, discharge, or community supervision as provided in Section 24-21-560," and § 24-13-210 (E) states, "a person is required to complete a community supervision program pursuant to Section 24-21-560," while (F) states, "... prerelease or community supervision program as provided in Section 24-21-560."[4]

Quite simply, if the phrase "community supervision program" had only one singular

[4] See also: § 24-13-230(C) and § 24-21-32.

meaning as Appellant insists, then the General Assembly would have no need to refer to § 24-21-560 each time it needs to make sure the actual program referenced therein was implicated. In fact, because the plain language of the phrase "community supervision program" could refer to any number of the myriad forms of supervision within the community that have developed over the years, it is clearly incumbent on the Legislature to refer to § 24-21-560 whenever a statute affects or is affected by CSP.

Consider also that the Board members have no role to play with individuals released to CSP. Inmates serving "no parole sentences" by definition are not considered for parole, so they do not appear before the Board. Their release from incarceration to supervision under the terms of CSP operate independently from the Parole Board. Consequently, to maintain that the only possible interpretation of the phrase "a community supervision program," when used by the Board, means CSP pursuant to § 24-21-560 is a massive leap of logic.

CONCLUSION

Based on the foregoing reasons, Respondent respectfully requests the final decision of the Parole Board be affirmed and this appeal be dismissed.

Respectfully submitted,

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November 22, 2024

BRIEF OF APPELLANT

COPY

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

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

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

Charles J. Madden, #00182326,

Appellant,

v.

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

Respondent.

REPLY BRIEF OF APPELLANT

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I. Respondent Fails to Recognize that South Carolina No Longer Requires a State Created Liberty Interest for The ALC to Have Subject Matter Jurisdiction Over This Appeal.

"The ALC has subject matter jurisdiction to review a final decision of an administrative agency." *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 168, 886 S.E.2d 671, 672 (2023) (citing S.C. Code Ann. § 1-23-600(D)). In *Allen* our supreme court clarified that although the ALC may have a limited scope of review, the ALC treats final decisions of SCDC like it does any other agency. *Id.* Moreover, *Allen* stands for the proposition that administrative decisions (like the "routine denial" at issue here) are not the product of some sovereign arm of the Executive Branch and remain subject to appellate review by this Court. *Id.* (*accord Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004) ("We now clarify that the AL[C] has subject matter jurisdiction to hear appeals from the final decision of [SCDC] in ... [an] administrative matter.")).

Contrary to the position of Respondent, our supreme court expressly clarified in *Allen* that inmates need not assert a state-created liberty interest, like parole, for this Court to hear an inmate's appeal on the merits. *Id.* (finding that the ALC had subject matter jurisdiction to hear the merits of an inmate's appeal of SCDC's decision to limit the inmate's visitation to specific persons and reiterating that, "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"). Thus, though Respondent is correct that the Board maintains the exclusive authority to grant or deny parole, Respondent is incorrect that that statutory responsibility creates some medieval fiefdom under which the Board is the only state entity that escapes judicial review.

Nevertheless, Mr. Madden has challenged the process by which his parole was denied, which does implicate minimum due process and affords him review by this Court, regardless of whether he remains eligible for parole. *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 502, 661 S.E.2d 106, 113 (2008) ("[C]hallenging the method and procedure

employed by the Parole Board in reaching its decision, [a] claim raises a sufficient liberty interest to trigger due process requirements of judicial review."). Thus, the Court has subject matter jurisdiction to hear Mr. Madden's appeal on the merits and to summarily dismiss this appeal based on a "drive-by jurisdictional rulin[g]" would be error. *Allen*, 439 S.C. at 171, 886 S.E.2d at 674 (quoting *Wilkins v. United States*, 598 U.S. 152, 160 (2023)).

II. The Requirements Under *Kelsey* Were Not Met and Mr. Madden was Inherently Prejudiced by the Lack of Investigation Prior to His Hearing.

Form 1212 requires inmates to, "[N]otify the Board of the specific error or inaccuracy" if they believe their parole file contains some error or inaccuracy. *See Kelsey v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 441 S.C. 373, 377, 893 S.E.2d 588, 591 (Ct. App. 2023), *reh'g denied* (Nov. 17, 2023) (citing S. C. Dept. of Probation, Parole and Pardon Servs., Criteria for Parole Consideration[1]). The *Kelsey* court held that this inevitably meant that inmates were afforded the right to review their parole files. To report specific inaccuracies, however, inmates must also be afforded time and opportunity to investigate the contents of their parole file so they can report these inaccuracies correctly; then the Board must undertake an investigation of the report and notify the inmate of the steps it has taken to investigate the inmate's claims. *See Id.* Mr. Madden has no notice of the steps that the Board took to investigate his claims of inaccuracy prior to his hearing because the Board did not hear of the inaccuracies asserted by Mr. Madden *until the hearing*. To say that an inmate describing an inaccuracy in scant detail during a parole hearing is sufficient opportunity to question the contents and accuracy of the file from which the Board will determine their eligibility for freedom from state confinement relies on semantics over substance of the *Kelsey* decision and should be ignored by this Court.

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1 https://www.dppps.sc.gov/content/download/200476/4681336/file/Criteria+for+Parole+Consideration.pdf, last visited Dec. 13, 2024.

Under Respondent's theory, an inmate could be provided their file as they walk into their parole hearing and that would satisfy *Kelsey.* That is flatly not the intention of the Court of Appeals' decision, which expressly laid out that an inmate is to "review the file, report any inaccuracies, and be given a new parole hearing." *Id.* at 379, 389 S.E.2d at 591-92. This unequivocally mandates a three-step process, 1) review by the inmate; 2) reporting by the inmate, and then 3) investigation, by the Board of the inmate's report, prior to the parole hearing. *See Id. then see id.*, at 377, 893 S.E.2d at 591 (reiterating that "The Board will investigate the inquiry and notify the inmate of the action taken").

Mr. Madden was never given notice of the Board's investigation prior to his parole hearing because there was no such investigation of his claim of inaccuracy, because Mr. Madden was only afforded the opportunity to report his inaccuracy at the time of his hearing, and that was only after the Board had already been in possession of and reviewed his parole file. It is a logical fallacy to assert that this fulfills the requirements of *Kelsey* and therefore the Court should remand Mr. Madden's case to the Board so it may conduct a proper investigation of his claims, give Mr. Madden notice of the steps taken to investigate his claims, and grant him a new parole hearing.

CONCLUSION

According to the foregoing analysis and those arguments made previously in his Initial Brief, Appellant Charles Madden respectfully asks this Court to: (1) reverse the final decision of the Parole Board; (2) remand his case to the Board with instructions that it act consistent with the Court's determinations herewith; and (3) provide any other relief that the Court deems just and proper.

[Signature page to follow]

Respectfully Submitted,

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December 13, 2024
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

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

Case No. 22-ALJ-15-0013-AP

Charles J. Madden, #182326, Appellant,

v.

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

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Charles J. Madden, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by USPS, postage prepaid, to the following address(es):

Pleadings:

Unopposed Motion for Extension of Time to File Appellant's Reply and Reply Brief of Appellant

Parties Served:

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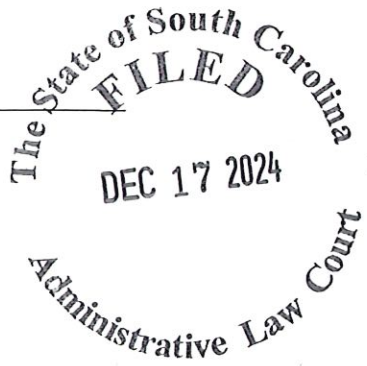
Kim Smith, Administrative Assistant

December 17, 2024



State of South Carolina

Department of Probation, Parole and Pardon Services

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August 20, 2024
MADDEN, CHARLES JACKSON (SCDC ID: 00182326)
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

This letter is in response to your request for a review of your parole file regarding the parole hearing conducted on 7/24/2024. According to your review, you disagree with the description of your disciplinary infractions which indicate the most recent infraction was committed 10/16/2009. Be advised the official records indicate that your most recent disciplinary was committed 10/16/2009. You were given the opportunity to discuss this with the Board, during the hearing.
During the review you added a note that you would be living and working at Jump Start, while underlining the risk/needs assessment information indicating that you may be returning to an area of high crime or victimization. Be advised, these conclusions are derived from the COMPAS assessment, which is a tool 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 able to discuss your release plans during the hearing. Also, you noted that the arrest warrant indicated that you were charged with robbery, but you were not convicted of robbery. The summary does not indicate that you were convicted of robbery. You were able to discuss these matters with the Board, during the hearing.

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

Sincerely,

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

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Jun 26 2025
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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by all parties and not any other material.

June 26, 2025

s/ Michael P. Stover
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