

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

JUN 30 2025

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2025-000925

Jarvis Johnson, #216908,

Appellant,

South Carolina Department of Probation, Parole and  
Pardon Services, <sup>v.</sup> Respondent.

INITIAL BRIEF OF APPELLANT

Jarvis Johnson, #216908, Appellant  
Kershaw Corr. Inst.  
4848 Goldmine Hwy Syc A-61  
Kershaw, S.C. 29067

# TABLE OF CONTENTS

Table of Authorities	ii, iii
Statement of Issues on Appeal	<u>IV</u>
Statement of the Case	1, 2
Argument(s)	3-9

1. BECAUSE APPELLANT HAS BEEN DENIED PAROLE SIX (6) CONSECUTIVE TIMES FOR THE SAME FIXED REASON(S) WITH NO PRESCRIBED REMEDIES, CASE PLANNING AND TREATMENT DECISIONS.

2. APPELLANT'S YOUTH, DIMINISHED CULPABILITY AND MENTAL CAPACITY AT THE TIME OF OFFENSE SIXTEEN (16) YEARS OLD WAS NOT TAKEN INTO CONSIDERATION WHEN BEING DENIED PAROLE AFTER THIRTY ONE YEARS OF INCARCERATION THEREBY DENYING APPELLANT A MEANINGFUL OPPORTUNITY AT RELEASE AS A FORTY EIGHT YEAR OLD RESPONSIBLE ADULT.

Argument 1 ... pgs. 3-5

Argument 2 ... pgs. 6-9

Conclusion ... pg. 10

## TABLE OF AUTHORITIES

### Cases

Blackmon v. SCDHEC 441 S.C. 342, 893 SE2d 578 (2022) ...  
Pg. 9

Buchanan v. SCDPPPS, 442 S.C. 393, 405, 899 SE2d 600  
(2023) ... Pg. 8

Cooper v. SCDPPPS 377 S.C. 489, 496, 661, SE. 2d 106, 110 ... Pg. 4

Graham, 560 U.S., at 72-73, 130 S.Ct. at 2029 (quoting Workman  
v. Commonwealth, 429 S.W. 2d 374, 378 (Ky. App. 1968) at  
75, 130 S.Ct., at 2030, Id., at 76, 130 S.Ct., at 2031) ...  
Pg. 7

Miller v. Alabama 132 S.Ct. 2455 ... Pg. 6

Motor Veh. Mfrs. Assn. of U.S. Inc. v. State Farm Mut Auto Ins.  
Co. 463 U.S. 29, 43, 103 S.Ct. 2854 (1983) ... Pg. 8

### Statutes

S.C. Code of Laws 1-23-350 ... Pg. 8

S.C. Code of Laws 24-21-10 (F)(1)(2) ... Pg. 5, 10

S.C. Code of Laws 24-21-13 ... Pg. 3

S.C. Code of Laws 24-21-70 ... Pg. 4

## TABLE OF AUTHORITIES

S.C. Code of Laws 24-21-220 --- pg. 4  
S.C. Code of Laws 24-21-640 --- pg. 3, 5  
SCDC Form 1212 --- pg. 3, 5  
S.C. Con. Art. 1, Sec. 5 --- pg. 6  
S.C. Con. Art. 12, Sec. 15 --- pg. 3, 4  
U.S. Con. Art. 14, Sec. 1 --- pg. 3, 4

### Law Review

47 Am. J. Crim. L. 47 (2020) --- pg. 4

## STATEMENT OF ISSUES ON APPEAL

1. Did parole board deny Appellant a realistic opportunity to participate in the South Carolina parole program and was this action by the board arbitrary and capricious and in violation of the U.S. Constitution, S.C. Constitution and state statutes?
2. Did SCDPPPS provide inaccurate, false and misleading information in Appellant's parole file that would have an adverse and prejudicial effect on Appellant's request for parole?
3. Should minimal due process be a thing merely stated as being provided by the board or should there be clear evidence that the statutory requirement has been granted in each parole case to insure integrity and impartiality?
4. Does Appellant have a right to a meaningful opportunity at release as outlined in Miller regarding juvenile offenders sentenced to life imprisonment after becoming parole eligible upon completion of twenty (20) years?
5. Does current law and sentencing scheme involving a mandatory minimum sentence of thirty (30) years for murder satisfy the statutory requirement in Appellant's case after completing thirty one (31) years as a juvenile convicted and sentenced as an adult?

## STATEMENT OF THE CASE

On October 23, 2024, Appellant appeared before the S.C. parole board for review. Prior to the actual hearing, Appellant was given an opportunity for the first time in six (6) consecutive hearings to review the parole file. Multiple inaccuracies were identified and notations were made directly to Appellant's copy of the file, which the examiner explained would be forwarded to the SCOPPS for review and/or corrections. Appellant requested that the file be reviewed before the hearing took place. The examiner explained that this wasn't possible and that the notated file would later be sent to the SCOPPS for review.

During the hearing, the board's chairperson proceeded to ask Appellant routine questions as in hearings past. After one or two minutes of questions, Appellant was given an opportunity to speak. Appellant pointed out to the board that...<sup>1</sup> Appellant was not charged, convicted nor sentenced for armed robbery, but attempted robbery <sup>2</sup> Appellant has no prior criminal record <sup>3</sup> Appellant's option for housing and job placement was with Jump Start in Spartanburg - not an area of high crime and/or victimization. R.1.

The chairperson then thanked Appellant for "pointing out the inaccuracies" and asked Appellant to step out of the room. Several moments later, the parole examiner called Appellant back into the room and informed that parole was denied and that a letter would explain why.

The following week, Appellant received a letter of rejection from the S.C. Dept. of PPS with its Conclusion of Law and Findings

of Fact. On November 8, 2024, Appellant filed a Notice of Appeal with the Administrative Law Court (ALC). On November 25, 2024, Appellant received a response from the ALC regarding the filing of Appellant's appeal including Rules of Procedure, Docket No. and Judge assignment.

On December 8, 2024, Appellant wrote to the S.C. Dept. of PPS to request a copy of the parole audio cd to prepare for the appeal process and to present evidence to the court concerning Appellant's claims. On January 6, 2025, Appellant received a letter from the S.C. Dept. of PPS regarding the request for a review of the parole file. R.2. SCDPPS failed to mention key points that Appellant outlined for review and didn't clearly state what, if any, corrections were made concerning Appellant's parole file.

On January 25, 2025, Appellant responded to letter from PPS about the reviewing of Appellant's parole file. R.3. Appellant had questions and also requested corrections be made along with a request for an unredacted copy of the parole file excluding personal/sensitive information.

On or around February 3, 2025, Appellant received reply letter from PPS stating that it had forwarded Appellant's letter to the Office of General Counsel for review and response. R.4.

Appellant reviewed parole audio cd on February 6, 2025 and observed that the investigating detective in Appellant's case in 1993, was the only victim opposition to offer a statement on parole audio cd. R.1

## ARGUMENTS

1. Because Appellant has been denied parole six (6) consecutive times for the same fixed reason(s) with no prescribed remedies, case planning and treatment decisions. R. 5.

Appellant was denied parole for the following, "Finding of Fact": (1) Nature and Seriousness of Current Offense. Appellant has been denied six (6) consecutive times for the same "fixed" reason(s). R. 6. Appellant asks how can immutable facts be satisfied? The board arbitrarily and capriciously abused its discretion when denial is based on a reason that cannot be changed, essentially rendering Appellant parole ineligible based on the original offense. Of all the rehabilitative points to consider or "criteria" outlined on S.CDC Form 1212, the board chose to deny parole based solely on one aspect of #2 and not all. R. 7. ... the circumstances surrounding the offense, and the inmates attitude towards it. This would suggest that all other 15 1/2 points of reference or "criteria" were met. Appellant asserts that due process is entitled under U.S. Con. Art. 14, Sec. 1 and S.C. Con. Art. 12, Sec. 15. The use of the guidelines (S.C. Code of laws 24-21-640; SCDC Form 1212), for release decisions must be a collection of factors relevant to the release decisions, quantified and weighted to accomplish certain objectives by recommending or mandating release at a specific time. Written policy decisions made by the promulgators of the guidelines (Director of S.C. Dept. of PPS, S.C. Code of Laws 24-21-13) must determine whether a particular factor

is included and how much bearing that factor will have on the release decision. ("... if a parole board deviates from or renders its decision without consideration of the appropriate criteria, we believe it essentially abrogates an inmate's right to parole eligibility, and thus infringes on a state created liberty interest.") (Cooper v. SCOPPS 377 S.C. 489, 496, 661 S.E. 2d 106, 110) There is no substantial way anyone can objectively review whether denial of parole subscribed to law in the event that circumstances or procedures have been misapplied. ("Like other jurisdictions, the South Carolina Board does not describe the relevant weight given to each factor.") 47 Am. J. Crim. L 47 (2020) Board To Death: Id at: II (B) Parole Decision Making pg. 65, and Fn. 131) The Director of SCDC is responsible for preparing and maintaining accurate, up-to-date information regarding all inmates housed in its custody S.C. Code of Laws 24-21-70. The Director of the S.C. Dept. of PPS is responsible for investigating and preparing accurate, up-to-date information to the Board S.C. Code of Laws 24-21-220. Both agencies are in violation by not providing what they are statutorily bound to provide.

Appellant's liberty interest of minimal due process was abrogated when misinformation and outdated information was submitted to the board at the parole hearing. Appellant did not receive an unbiased and objective hearing based on correct and relevant facts. U.S. Con. Art. 14, Sec. 1; S.C. Con. Art. 12, Sec. 15. Appellant asserts that victim opposition from the Sheriff's Dept., Solicitor's Office, victims family and Sentencing Judge were all dated from 2013 - Appellant's

first parole hearing. Most or all no longer occupy these positions in 2024 - Appellant's hearing in question. Appellant requested a copy of the parole file for appeal purposes but did not receive one. R. 3. There is no fact checking during the hearing and Appellant would have to wait two (2) years to hopefully have the file updated and corrected.

There must be weight given to criteria outlined in S.C. Code of Laws 24-21-640 and SCDPPPS Form 1212 so that all inmates appearing before the board may know what needs are to be addressed, worked on and improved to meet the criteria for parole in future hearings. The Findings of Fact only mention "fixed" facts concerning the original offense (which is not considered a risk factor at all, but a point of reference to consider), but do not prepare and recommend a needs plan for those seeking parole S.C. Code of Laws 24-21-10(F)(1)(2). Furthermore, how is one expected to meet a risk needs requirement if a plan and treatment decision(s) are never prescribed because reasons for denial do not specify which criteria were used to determine decision. This opacity is confusing and not conducive to a fair and impartial hearing and/or procedure. Appellant asserts that the board merely, "considers factors ... which it considers relevant ..." and that, the nature and seriousness of an inmate's offense is not a criterion at all, but a point of reference to consider. The Sentencing Judge has already considered and determined the nature and seriousness and has sentenced Appellant accordingly. It is the duty of the board to focus on rehabilitation and restoration.

2. Appellant's youth, diminished culpability and mental capacity at the time of offense (sixteen (16) years old) was not taken into consideration when being denied parole after thirty one (31) years of incarceration thereby denying Appellant a meaningful opportunity at release as a forty eight (48) year old responsible adult.

Appellant asserts the U.S. Con. Art. 1, Sec. 5 rights to due process were violated thereby abrogating the created liberty interest by failing to provide accurate and complete information (procedural) and by not fact checking and/or correcting the pointed out inaccuracies (unfair process and incomplete analysis) once recognized. R-1

The original offense in no way demonstrates or describes Appellant's current mind-set and attitude towards life in general thirty one (31) years later. Appellant asserts that at age sixteen (16) the ability to reason properly, understand and weigh consequences were not yet fully developed. Appellant was marked by impulsivity and impetuosity. The dangerousness that Appellant once posed in 1993 has no further bearing on the rehabilitation of today (2025) and should not be held against subjectively and by unsupported data. Instead, the board should base its decision(s) with a clear, universal standard as outlined in S.C. Code of Laws 24-21-640 --- Circumstances warranting parole.

Appellant asserts that the Sentencing Judge in 1994, considered the "mitigating qualities of youth" as outlined in Miller v. Alabama 132 S.Ct. 2455 in his sentencing order on October 11, 1994. R.8. Due to the sentencing schemes at the time, the options were: Death,

Life Without Parole and Life with the possibility of parole after 20 yrs. or 30 yrs. The Sentencing Judge chose 20 yrs before parole eligible. The statute suggests that parole would be granted between 20 yrs - 30 yrs. ... ("A state is not required to guarantee eventual freedom --- What a state must do, however, is provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation") (Graham, 560, U.S., at 75, 130 S.Ct., at 2030. Appellant has demonstrated maturity and rehabilitation over the past thirty years and is entitled, by law, to a meaningful opportunity to obtain release. R.9. Deciding that a "juvenile offender forever will be a danger to society" would require "mak[ing] a judgment that [he] is incorrigible" but "incorrigibility is inconsistent with youth." 560 U.S., at 72-73, 130 S.Ct., at 2029) (quoting Workman v. Commonwealth, 429 S.W.2d 374, 378 (Ky. App. 1968)). "An offender's age, "we made clear in Graham, "is relevant to the Eighth Amendment, "and so "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." Id., at 76, 130 S.Ct., at 2031. Appellant asserts that under current law and sentencing schemes, one can only be sentenced to one of three sentences for murder: Death, Life without the possibility of parole and a Mandatory minimum of 30 yrs. Appellant has served thirty one (31) yrs. now and has exemplified extraordinary character throughout SCOC. He asserts that continual parole denial is bordering on torture and cruel and unusual punishment. Every two (2) years a false hope is given to potential parolees, only to be snatched away at the last possible second for reasons beyond their control - immutable factors.

This serves to diminish a person's mental stability and effectually crushes one's soul - the very essence for wanting to live.

Appellant asserts that parole granting and/or denial should be mostly based on a person's "maturity and rehabilitation" as outlined in Miller. ("there is a tension between the principle that inmates are entitled to a meaningful parole review and what appears to be serial denials of parole based solely on factors that do not change and have no relation to an inmates' rehabilitation...") *Buchanan v. SCOPPPS*, 442 S.C. 393, 405, 899 S.E.2d 600 (2023) ("The scope of review under the arbitrary and capricious" standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made.") *Motor Veh. Mfrs. Assn. of U.S. Inc. v. State Farm Mut. Auto Ins. Co.* 463 U.S. 29, 43, 103 S.Ct. 2856 (1983) Simply stating that S.C. Code of Laws 24-21-640 and SCDC Form 1212 were used in the board's final decision is not sufficient and Appellant respectfully believes this issue should be revisited by the court to insure minimal due process in its application. The board's processes are perfunctory in nature and are arbitrary and capricious. Pursuant to the terms of the APA, Findings of Facts, if set forth in statutory language shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. S.C. Code of Laws 1-23-350. ("An agency's decision is "arbitrary" within the meaning of the statute governing judicial review of such decisions, if it is without a rational basis,

is based not on reasoning and exercise of judgment, is made at pleasure, without adequate determining principles or is governed by no fixed rules or standards.") Blackmon v. SCDHEC 441 SC 342, 893 SE.2d. 578 (2022)

## CONCLUSION

Appellant humbly requests time served, a resentencing or a fair, impartial and procedurally correct rehearing with accurate/updated information to insure minimal due process. Appellant also asks the court to address the absence of weight bearing factors when deciding parole decisions and that SCDPPS provide case planning and treatment decisions as outlined in S.C. Code of Laws 24-21-10(F)(1)(2). Appellant asserts that a lengthy sentence is deserving for the offenses committed and that Appellant has worked extremely hard to earn an opportunity at a meaningful release. Appellant contends that the prescribed and desired punishment and correction has been wrought and has, even now, outlived its usefulness.

June 20, 2025

Respectfully submitted,

s/ Jarvis Johnson

Jarvis Johnson, #216908, Appellant  
Kershaw Corr Inst,  
4848 Goldmine Hwy Syc A-61  
Kershaw, S.C. 29067

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM ADMINISTRATIVE LAW COURT  
Deborah Brooks Durden, Administrative Judge

---

Appellate Case No. 2025-000925

---

RECEIVED

JUN 30 2025

SC Court of Appeals

Jarvis Johnson, #216908,

Appellant,

v.

South Carolina Department of Probation, Parole and  
Pardon Services,

Respondent.

---

PROOF OF SERVICE

---

I, Jarvis Johnson, #216908, Petitioner in the above matter, certify that I have served the filed Initial Brief of Appellant and Designation of Matter To Be Included In The Record On Appeal on the Respondent by depositing a copy of the same in the United States mail, postage prepaid, the 20<sup>th</sup> day of June, 2025, addressed to:

Mr. Matthew C. Buchanan, General Counsel  
South Carolina Department of Probation, Parole  
and Pardon Services  
P.O. Box 207  
Columbia, S.C. 29202

I further certify that the format shown by Form 7 in Appendix C  
to part II of the SCACR has been followed and that all parties required  
by Rule 203(b)(6), SCACR to be served have been served.

June 20, 2025 s/ Jarvis Johnson  
Jarvis Johnson, #216908, Appellant  
Kershaw Corr. Inst.  
4848 Goldmine Hwy Syc A-61  
Kershaw, S.C. 29067

cc Court of Appeals  
General Counsel

June 20, 2025

The Honorable Catherine S. Harrison  
Chief Deputy Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

RECEIVED  
JUN 30 2025  
SC Court of Appeals

RE: Jarvis Johnson, #216908, Appellant,  
v.

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

Appellate Case No. 2025-000925

Dear Ms. Harrison:

Please be advised that I received your letter dated May 16, 2025, on May 24<sup>th</sup> 2025 at Kershaw Corr. Inst. mail room assigning me an Appellate Case Number. I'm requesting that my thirty (30) day time limit to respond, start on this date (May 24<sup>th</sup> 2025).

Enclosed, please find the Designation of Matter, Initial Brief of Appellant and Proof of Service for the above mentioned

June 20, 2025

appeal. If there are any deficiencies, please let me know so that corrections can be promptly made and this matter can move forward. Thank you ma'am.

Sincerely,  
Jarvis Johnson

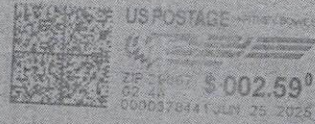
Jarvis Johnson #216908

Kershaw Corr. Inst.

4848 Goldmine Hwy Syc A-61

Kershaw, S.C. 29067

Mr. Jarvis D. Johnson #216908  
Kershaw Correctional Institution  
4848 Goldmine Hwy Syc A-61  
Kershaw, S.C. 29067



RECEIVED

JUN 30 2025

SC Court of Appeals

RECEIVED

JUN 25 2025

KERSHAW CI  
MAIL ROOM

Legal Mail

The Honorable Catherine S. Harrison  
Chief Deputy Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211