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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge

Case No. 25-ALJ-15-0034-AP
Appellate Case No. 2026-001402

STEPHEN BECKHAM, #236548, APPELLANT,

v.

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

APPELLANT'S REPLY BRIEF

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REPLY

I. *Cooper* and *Compton* protect the Board's discretion, not the Agency's antecedent failure to compile an accurate and adequate parole file as it relates directly to the Form 1212 factors.

Respondent's position confuses the two distinct duties of the Board and the Agency. The Board deliberates the statutory and Form 1212 factors on the record before it; the Agency investigates and develops the record upon which the Board's deliberation is founded. *Cooper* and *Compton* address the Board's duty, holding that when the Board properly considers the criteria set forth in Form 1212 and S.C. Code Ann. § 24-21-640, and then issues a denial letter that confirms their consideration of the required factors, this Court will not second-guess its weighing of those factors. *See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 112 (2008); *Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). But that deference operates on the presumption that the Board had before it a record upon which deliberation could occur. When the Agency has failed at the investigative stage, the presumption fails at its foundation and no recitation by the Board can cure that failure. At that point, the ALC retains its ordinary review authority under the Administrative Procedures Act ("APA"). S.C. Code Ann. § 1-23-380(5)(a), (c), (d), (f). Appellant does not ask this Court to question the Board's discretion; he challenges the prior, threshold issue of whether the record before the Board permitted its consideration of the required criteria at all.

Further, this narrow appeal is limited to errors tied to statutory or Form 1212 parole factors, and not to any possible error or omission in a parole file. Materiality is self-evident when erroneous or incomplete information prevents consideration of a required factor. Many types of parole file errors would not rise to the level of precluding proper consideration of these factors. Instead of inviting a "flood of appeals," Resp. Br. 6, Appellant's case demonstrates how the Agency could avoid future litigation and ensure appropriate information for the Board by timely disclosing the file. Even without early disclosure, Respondent retains an internal course-correction mechanism that it declined to use in this case: its own Request for Reconsideration process, which could resolve many such defects before any appeal reaches the ALC.

II. Harmless error analysis is inappropriate when the defects in Appellant's parole file directly informed criteria the Board was statutorily required to consider.

The defects at issue directly correlate to criteria the Board is statutorily obligated to weigh and are not incidental to the Board's deliberation. Again, the errors in Appellant's file specifically prevented the Board from considering at least two Form 1212 criteria: the opinions of the sentencing judge and the victims. The sentencing judge was misnamed and not consulted, and the redacted portion confidentially detailing the victims' feelings about Appellant's release was skewed because the record was so selectively-developed that it did not include the feelings of the closest victims. As described in section four, the latter is particularly concerning.

Respondent recasts these defects under the harmless-error framework of *State v. Rivera*, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013), hoping to avoid reversal by reasoning that even constitutional errors at trial do not automatically require reversal in criminal trials. Resp. Br. 6. Even if this Court were to find that some errors related to Form 1212 criteria should not result in reversal, Appellant would caution that unmooring harmless error analysis from its criminal trial context is inappropriate. The harmless error doctrine developed based on an interest in finality of criminal convictions and an assurance of robust constitutional protections with timely opportunity to object at trial. Roger A. Fairfax, Jr., *Harmless Constitutional Error and the Institutional Significance of the Jury*, 76 Fordham L. Rev. 2027 (2008). With fewer procedural protections and guardrails than a criminal trial, lower stakes and interests on both sides, and a discretion-laden entity such as the Board, parole is not an appropriate context in which to apply this doctrine.

Instead, this Court can find the necessary answers in *Cooper*, a case that directly addresses inmates' rights in the parole context. In its simplest form, *Cooper's* framework asks whether the Board considered the criteria that § 24-21-640 and Form 1212 require it to consider. It does not authorize the Agency to later declare that a particular required criterion did not warrant careful consideration. If a court may excuse the Agency's arbitrary or incomplete development of the factual record upon which a parole decision is rendered, on the theory that such information rarely changes parole outcomes, then that court has moved from reviewing the Board's compliance to weighing those criteria on the Board's behalf, the very inquiry *Cooper* forbids. Harmless error analysis would put courts in the ill-suited position of invading the purview of the parole board and substituting its own discretion as to whether the error(s) would have changed the outcome.

III. *Kelsey* requires a *meaningful* opportunity to identify and rebut inaccuracies which Respondent's reading renders illusory.

In *Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, this Court recognized that an inmate has the right to review the parole file and identify inaccuracies in advance of the hearing. 441 S.C. 373, 378, 893 S.E.2d 588 (Ct. App. 2023). That right exists against the backdrop of the state-created liberty interest recognized in *Barton* and in South Carolina's statutory framework requiring development and consideration of specific parole criteria. *Barton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 404 S.C. 395, 413, 745 S.E.2d 110, 120 (2013); S.C. Code Ann. § 24-21-640 (2025). This Court anchored the procedural due process right to review the parole file in the directive of Form 1212 itself: "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." *Kelsey*, 441 S.C. at 378, 893 S.E.2d at 591 (emphasis added). A right grounded in the duty to flag inaccuracies must, by its own logic, be meaningful enough to permit that duty to be discharged.

A reading of *Kelsey* that requires nothing more than perfunctory access to the file at some point before the hearing strips that meaning away and reduces the right to a formality. Appellant's case illustrates the problem with such a limited reading and exemplifies why a less-than-one-hour review on the morning of the hearing, conducted at a correctional institution with restricted access to technology and records, of a file in which the entire victim portion has been redacted, is not the opportunity *Kelsey* contemplates.

While similar appeals of parole denials based on inaccurate or incomplete parole files exist, the outreach errors in Appellant's parole file are unique in that they could not be identified before the hearing, nor could they be remedied by Appellant at all once they had been identified. Even a diligent inmate who identifies every error in the limited time before their parole hearing has no mechanism to correct any of them before the decision is made. In Appellant's case, the misidentification of the sentencing judge could not be cured from a prison holding room on the morning of the hearing. Similarly, the omitted victim input was entirely redacted from Appellant's view, and the omission was not even brought to Appellant's attention until after the hearing had concluded.

IV. In this unusual case, Appellant appropriately refers to the victims' rights as it pertains to Form 1212 consideration.

Appellant has serious and legitimate concerns regarding the investigative victim outreach conducted in his case. His children were the closest victims to the decedent under South Carolina law. They were available, grown adults *and* were known to the agency, as evidenced by the 30-day parole hearing notification. Their exclusion is particularly noteworthy given their vocal support of Appellant at his sentencing. For his children to be relegated to a 30-day notice and not included as actual victims during the investigative outreach process is concerning. In this particular case, it resulted in a parole file that must have represented just one side of the family's perspective—that side which opposed parole.¹

Appellant cited the Victim's Bill of Rights to demonstrate who is defined as a victim in our state. Only the victims can speak for themselves in regards to Appellant's parole. When an agency selectively chooses more distant victims that oppose parole *instead of* the closest victims who do not, that is arbitrary and deprives the potential parolee of due process. Most pertinently, it strips the Board of a meaningful opportunity to consider the nuance of how the family views the possibility of Appellant's release.

Respondent has identified no neutral standard by which the Agency selected which victims to invite into the investigative-stage process and which to omit. Selective development of the evidentiary record, without a discernible standard governing whose input is solicited and whose is not, is arbitrary agency action. *See Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998). And because victim impact is a parole criterion every party agrees the Board must consider, an arbitrarily compiled record on that criterion deprived the Board of the reliable, probative, and substantial evidence the APA requires. S.C. Code Ann. § 1-23-380(5)(e) (2025). Outside of correcting the sentencing judge in the parole file, it is unclear whether the Agency intends to solicit and incorporate the children's feedback into the redacted victim input section of the parole file without an order from this Court.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the Administrative Law Court's dismissal and remand with instructions to return the case to the

¹ Due to the redaction of the entire victim section in the file, instead of just the identifying information, Counsel cannot speak with certainty about what *was* included and from *whom*; Counsel only knows the children were excluded.

Agency to correct the investigative failures identified in Appellant's parole file and to the Parole Board for reconsideration on a complete and accurate record.

Respectfully submitted,

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