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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the Administrative Law Court
Honorable Crystal Rookard, Administrative Law Judge

Case No. 2025-000646
ALC Docket No. 2024-ALJ-15-0027-AP

JOSEPH KELSEY, # 217218 — APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE, AND PARDON SERVICES — RESPONDENT.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

1. Whether the Administrative Law Court ("ALC") may properly dismiss, on purely procedural grounds and without reaching the merits, an appeal where the ALC Clerk informed counsel of a cosmetic, technical, and nonprejudicial defect in the timely-filed Notice of Appeal after the filing deadline had passed, the defect was promptly corrected, and the defect caused no prejudice to Respondent.

INTRODUCTION

For the past ten years, Appellant, Joseph Kelsey (Joe), has been repeatedly denied parole based solely on the nature of an offense that is grossly mischaracterized in his parole file. This Court recognized this concerning pattern in March 2023 when it ordered the South Carolina Department of Probation, Parole and Pardon Services ("PPP") to allow Appellant to access his file to identify and correct all erroneous information therein. When Joe finally received his parole file on the day of his hearing, he learned that PPP had been providing the Board members with a false version of the facts of his offense that falsely aggravated his role in the crime. Consequently, even though his more culpable codefendant was paroled in 2019, Joe was once again denied parole in April 2024 based solely on the nature and circumstances of his offense.

Appellant filed a request for reconsideration, which PPP denied on May 30, 2024. Appellant's Notice of Appeal from PPP's final decision was due 30 days after PPP denied his reconsideration request, on July 1, 2024. On June 27, 2024, Appellant filed his Notice of Appeal with the Administrative Law Court ("ALC") using the ALC's cover form Notice of Appeal available on its webpage. However—after the July 1 filing deadline had passed—the Clerk of Court notified Appellant that the filing should have included a slightly different version of the form notice. The differences between the filed form and the correct form were entirely cosmetic; the two were materially identical. After confirming with the Clerk that a corrected refiling would be considered timely, Appellant filed and served a corrected Notice of Appeal, which included the correct cover form and was otherwise unchanged, on July 9. Subsequently, Administrative Law Judge Crystal Rookard was assigned to preside over the appeal and briefing was completed. On February 24, 2025, however, Judge Rookard dismissed the appeal on the ground that the Notice of Appeal was untimely filed. Relying on prior precedent in the Administrative Law Court, Appellant

filed a Motion to Reinstate his appeal on March 7, 2025, explaining what had happened with his Notice of Appeal. Judge Rookard refused to consider the Motion to Reinstate, classifying it without explanation as a motion for reconsideration and leaving Appellant with no further recourse in the ALC.

Well-developed tenets of procedural fairness and due process in multiple courts, including the United States and South Carolina Supreme Courts, establish that technical filing errors that cause no prejudice to the opposing party may not bar an appellant's access to the courts or frustrate the judicial goal of adjudicating cases on the merits. Therefore, the ALC erred in this case for two reasons. First, Appellant's July 9 filing amounted to a technical correction to a timely filed Notice of Appeal: Appellant's June 27 Notice of Appeal clearly communicated the fact and grounds of Appellant's appeal to the court and Respondent, Appellant reasonably relied on the form notice of appeal provided on the ALC's website, Respondent did not object to the June 27 filing, and Respondent fully and timely briefed the issues on appeal. Second, contrary to the ALC's assertions, the Administrative Law Court Rules do not bar courts from considering or reinstating an appeal when a technical error disrupts normal filing process. Accordingly, this Court should reverse the order dismissing Joe's appeal as a violation of his right to procedural due process and remand this case to the ALC for a decision on the merits.

STATEMENT OF THE CASE

Joe was sentenced to life in prison for a murder that he participated in at the age of 16 in 1994, along with an older, more-culpable codefendant, Geoffrey Payne. The Supreme Court of South Carolina has twice considered the facts of the offense and has held that the evidence "overwhelmingly prove[d]" that the victim died at Payne's hands, either "by Payne strangling her to death, or by Payne lighting the fuse of [a] pipe bomb that exploded in her mouth." *Payne v.*

State, 355 S.C. 642, 586 S.E.2d 857 (2003); *see also State v. Kelsey,* 331 S.C. 50, 502 S.E.2d 63 (1998). Payne, in other words, was indisputably the primary perpetrator of the murder.

On August 30, 2023, the Court of Appeals ruled that PPP must give parole-eligible inmates access to their parole files and an opportunity to correct any inaccurate information in their files before their parole hearings. *Kelsey v. S. C. Dep't of Prob., Parole & Pardon Servs.*, 441 S.C. 373, 379, 893 S.E.2d 588, 591-92 (2023) ("[T]he language of [PPP's] Form 1212 requiring an inmate to notify the Board if his or her file is incorrect necessarily implies the right to review the file."). The case was remanded to PPP on March 8, 2024, with a directive for Joe "to review his file, report any inaccuracies, and be given a new parole hearing." *Id.* at 379, 893 S.E.2d at 591-92; R. p. 10–12.

Despite counsel's multiple requests to access Joe's file in advance of his new hearing on April 24, 2024, Joe was not allowed to review his file until the morning of his hearing. He was instructed to handwrite any necessary corrections on the file and address inaccuracies orally to the Board during his hearing. Joe was then informed by a PPP employee that he would not be marked "present" for his parole hearing until he signed a form acknowledging that he had reviewed the file and that PPP "is not obligated to alter facts or details which are unsubstantiated by official records."

Upon reviewing the file, Joe learned that PPP has been providing the Board members with two different versions of the facts of the offense. The first description of the facts of the underlying offense—the version that PPP endorsed—sets forth a version of the crime that inaccurately portrays Joe as the primary perpetrator of the offense and is conclusively refuted by a comprehensive SLED investigation report, sworn trial testimony, and detailed findings contained in two opinions of the Supreme Court of South Carolina. *See Payne v. State*, 355 S.C. 642, 586

S.E.2d 857 (2003); *State v. Kelsey*, 331 S.C. 50, 59-60, 502 S.E.2d 63, 67 (1998); Reconsideration Request, R. pp. 148–775.

As instructed by PPP, at Joe's parole hearing, Joe and counsel called the Board's attention to the incorrect facts of the offense and informed the Board that PPP's false version of the offense had been proven untrue by multiple sources, including sworn testimony and the South Carolina Supreme Court. Joe also presented unconverted evidence of his prison record, which has only continued to improve. Nonetheless, the damage from PPP's false information was already done, and Joe was denied parole by a vote of two in favor to three against on the basis of factors solely related to his offense. Notice of Parole Rejection for Joseph Kelsey, R. p. 779.

Subsequently, Joe submitted a request for reconsideration to PPP along with a request that PPP correct his parole file. Joe detailed various inaccuracies in his file including the false information about the offense and provided PPP with the "official records" that it required in order to change information in the file.[1] *See* Reconsideration Request for Joseph Kelsey, R. pp. 148–775. In response, on May 30, 2024, PPP Associate Deputy Director Valerie Suber denied reconsideration and not only refused to remove the false information in Joe's file but further claimed that PPP had never provided false information in the first place. Denial of Reconsideration Request for Joseph Kelsey, R. pp. 772–78. This denial was a final agency decision which Joe had 30 days to appeal to the ALC, which meant that his 30-day deadline to file a Notice of Appeal with the ALC was July 1, 2024. *See* SCALC Rules 57, 59.

[1] Specifically, Joe provided copies of the trial transcript in his case in which the third codefendant, Jamie Lee, testified under oath that the version of the offense that PPP provided to the Board was false, along with the findings from the South Carolina Supreme Court that refuted PPP's false version and found that "the testimony overwhelmingly proves that Payne murdered [the victim]."

On June 27, 2024—prior to the July 1, 2024 filing deadline—Appellant mailed his Notice of Appeal to the ALC and to opposing counsel. *See* R. pp. 13–19 ("NOA 1"). The Notice of Appeal included the ALC's form Notice of Appeal provided on the ALC website ("ALC Forms," South Carolina Administrative Law Court, http://www.scalc.net/forms.aspx), the statement of the grounds for appeal, and exhibits. On July 2, 2024, after the filing deadline had passed, the ALC Clerk's Office mailed a letter to Joe's counsel advising that counsel had included the incorrect form with the Notice of Appeal filed on June 27, 2024, and providing a different form for counsel to resubmit the appeal. *See* R. p. 780. The form that counsel originally filed on June 27 was the form for general appeals from agency decisions, which is available on the ALC's website. *See* R. pp. 794–95. The form provided by the Clerk's Office was a specific form for special appeals from decisions by PPP, which, to the best of counsel's knowledge, is not publicly available. *See* ALC Forms, http://www.scalc.net/forms.aspx. There were no material differences between the form notice counsel originally submitted on June 27 and the form notice provided by the Clerk. R. pp. 793–95.

Counsel was out of state at the time that the Clerk's letter was mailed and received the letter upon returning to the office. Upon receipt of the letter, counsel immediately contacted the Clerk to clarify which form was needed and to confirm that the appeal should be resubmitted as timely even though the Clerk's letter had been mailed after the submission deadline had passed. The Clerk's Office confirmed that the Notice of Appeal could be submitted with the corrected form.

Consequently, on July 9, 2024, counsel mailed the corrected form notice, along with the statement of the grounds for appeal and exhibits, back to the Clerk. R. pp. 27–33. The only difference between the materials submitted on June 27 and July 9 was the cover letter form notice received from the Clerk. *Compare* R. pp. 13–26 (NOA 1) *with* R. pp. 27–41 (NOA 2). Judge

Rookard was assigned to preside over the case on July 18, 2024. R. p. 42. Subsequently, both Appellant and Respondent fully briefed the issues on appeal without further communication from the Clerk's Office and without any objections from PPP. *See* R. pp. 50–86. However, on February 24, 2025, the ALC entered an order dismissing Joe's appeal on the grounds that his Notice of Appeal was untimely because it had not been filed until July 9. R. pp. 2–6. Between the filing of the corrected Notice of Appeal and Judge Rookard's decision, Appellant received no further notice of any problems with his Notice of Appeal or any indication that the corrected Notice of Appeal filed on July 9 would not be accepted.

Upon receiving Judge Rookard's order, Joe filed a Motion to Reinstate Appeal with the ALC on March 7, 2025, explaining the events surrounding the filing of his Notice of Appeal, outlining a prior ALC case involving the same clerical issue that was reinstated on motion of counsel, and requesting a decision on the merits. Motion to Reinstate Appeal, R. pp. 88–102. On April 3, 2025, the Motion to Reinstate was returned to counsel stamped with the words "Motions for Reconsideration are Prohibited. See ALC Rule 65." *Id.* This appeal follows.

STANDARD OF REVIEW

This Court has jurisdiction to review decisions by the ALC. S.C. Code Ann. § 1-23-610(A)(l). This Court's review of the controlling legal principles is de novo, and the Court has the power to reverse the ALC if its decision is affected by an error of law. S.C. Code Ann. § l-23-610(B); *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 313, 785 S.E.2d 600, 605 (Ct. App. 2016). Specifically, this Court may "remand the case for further proceedings" or it may reverse or modify the ALC's decision if the appellant's "substantive rights have been prejudiced" as a result of: a "violation of constitutional or statutory provisions"; an agency's exercise of undelegated authority; "unlawful procedure"; any "other error of law"; "clearly erroneous" factual findings, in view of

the whole record; or decision making that is "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." S.C. Code Ann. § 1-23-610(B).

ARGUMENT

I. Dismissal of Appellant's appeal on the grounds of nonprejudicial technical defects, even assuming any exist here, violated Appellant's due process rights.

Multiple courts, including the United States and South Carolina Supreme Courts, have recognized that "imperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment, to which appellate court." *Becker v. Montgomery*, 532 U.S. 757, 767 (2001); *see also Perkins v. Douglass*, 46 S.C. 6, 6, 24 S.E. 42, 43 (1896) (noting, in a case that was dismissed because proof of service of the notice of appeal had not been filed in the record, that the "appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits" and remanding for a decision on the merits). The United States Supreme Court has similarly recognized that federal courts should permit notices of appeal "technically at variance with the letter of a procedural rule" but that amount to "the functional equivalent of what the rule requires." *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 316-17 (1988); *see also Clark v. Cartledge*, 829 F.3d 303, 305 (4th Cir. 2016).

Technical defects in a notice of appeal affecting no matter of substance do not deprive the appellate court of jurisdiction nor the appellant of his right to appeal and access to the courts. *See, e.g., Turnbull v. United States*, 929 F.2d 173, 177 (5th Cir. 1991) (noting that technical defects "should not bar an appeal as long as the intent to appeal a specific judgment can be fairly inferred and the appellee is not prejudiced or misled by the mistake."); *Contino v. United States*, 535 F.3d 124, 126-27 (2d Cir. 2008) (holding that counsel's failure to transmit an electronic notice of appeal with the proper event code did not render it untimely); *Bisher v. Lehigh Valley Health Network,*

Inc., 265 A.3d 383, 407 (Pa. 2021) ("[T]echnical defects should not frustrate the goal of adjudicating cases on the merits."); *Horton v. Stovall*, 591 S.W.3d 567, 568, 570 (Tex. 2019) (in the interests of justice, fair play, and judicial economy, "[r]ather than disposing of appeals based on harmless procedural defects, appellate courts should reach the merits of an appeal whenever reasonably possible." (internal citation omitted)); *Willis v. Donnelly*, 199 S.W.3d 262, 270 (Tex. 2006) ("[A] party should not lose its right to appeal based on an unduly technical application of procedural rules."); *Boydston v. Strole Dev. Co.*, 969 P.2d 653, 656 (Ariz. 1998) ("A defective notice of appeal does not necessarily deprive the court of appeals of jurisdiction. It will be sufficient as a notice if it is neither misleading nor prejudicial to the appellee."); *Wilhelm v. Owens Entreprises, Inc.*, 790 P.2d 467, 468 (Mont. 1990) ("[T]echnical defects of procedure should not bar a party from access to the courts."); *Kelly v. Kelly*, 371 N.W.2d 193, 196 (Minn. 1985) ("A notice of appeal is not insufficient due to clerical errors or defects which could not have been misleading."); *Aguiar v. Doral Hotel & Country Club*, 599 So. 2d 698, 701 (Fla. Ct. App. 1992) ("[S]o long as the notice of appeal gives sufficient information from which it can reasonably be determined which order is being appealed, technical defects in the notice that neither affect jurisdiction nor mislead or prejudice the other party will not require dismissal."); *Hanna v. American Int'l. Land Corp.*, 289 So. 2d 756, 757 n.1 (Fla. 2d DCA 1974) (deficiencies in form or substance of notice of appeal shall not be jurisdictional or require dismissal unless opposing party was misled or prejudiced).

Here, the June 27 Notice of Appeal clearly stated that Appellant was appealing the decision of the Parole Board to the ALC, set forth a statement of the grounds for appeal, and provided notice of the appeal to Respondent, upon which Respondent fully briefed the issues. *See* R. pp. 13–19 (NOA 1); 66–80 (Br. Resp't, *Kelsey v. S.C. Dep't of Prob., Parole & Pardon Servs.*, No. 2024-

ALJ-150027-AP (S.C. Admin. L. Ct. Dec. 19, 2024)). *And see Becker*, 532 U.S. at 767; *U.S. v. Henneberger*, 592 Fed. Appx. 233, 236 (5th Cir. 2014) (finding that a notice of appeal was effective, even if marred by a technical defect, where "[the appellant's] intent to appeal his sentence was clear, and the government has fully briefed the correct sentencing issue."). Appellant reasonably relied on the form Notice of Appeal provided on the ALC's website, and there is no material difference between the two forms—the information counsel provided was the same on both forms, and the statements of the issues on appeal that counsel filed on June 27 and on July 9 were identical. Moreover, Respondent raised no objection to either the June 27 or the July 9 Notices of Appeal. Thus, Respondent cannot point to any prejudice arising from the initial inclusion of the incorrect (but materially identical) form notice.

"The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Bundy v. Shirley*, 412 S.C. 292, 303, 772 S.E.2d 163, 169 (2015) (quoting *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008)). As a result of the ALC's erroneous dismissal, Appellant had neither a meaningful opportunity to be heard nor judicial review of his appeal. Consequently, as recognized by both the United States and South Carolina Supreme Courts, dismissal without consideration of the merits of Appellant's case violates Appellant's due process rights.

II. The ALC Rules do not bar a decision on the merits.

Judge Rookard was not barred under the ALC Rules from considering either Appellant's appeal or his motion to reinstate the appeal. First, as demonstrated by a prior parole case in the ALC, Judge Rookard was not precluded from considering Joe's appeal as a result of a clerical mistake in his Notice of Appeal because SCALC Rule 67 permits administrative law judges to correct "clerical mistakes . . . arising from oversight or omission . . . at any time of [her] own

initiative." A similar error has occurred in at least one other parole case at the ALC, resulting in dismissal of a timely appeal before briefs were filed. In *Bennett v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 24-ALJ-15-0003-AP, Administrative Law Judge Durden dismissed Bennett's appeal as untimely after her notice of appeal was erroneously rejected by court staff. However, once counsel brought the filing error to the court's attention, Judge Durden reinstated Bennett's appeal pursuant to SCALC Rule 67. R. p. 8–9. Rule 67 provides:

> Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the administrative law judge at any time of his own initiative or on the motion of any party and after such notice, if any, as the administrative law judge orders.

Similarly, SCALC Rule 62 provides that and "Administrative Law Judge has the discretion to determine that a document is timely filed upon a finding that the party who filed the document made a good faith effort to file the document within the applicable time limits." Here, Appellant originally filed his Notice of Appeal within the time limits and, when informed of his technical error, promptly corrected it. The United States and South Carolina Supreme Courts, as set forth above, have established that judges must proceed notwithstanding clerical or technical errors where such errors are not prejudicial, and the ALC Rules are consistent with those decisions.

Judge Rookard was also not precluded from considering Appellant's Motion to Reinstate. While SCALC Rule 65 prohibits motions to reconsider orders in "special appeals," including appeals from parole denials, the Rules are silent with respect to motions to reinstate appeals that have been erroneously dismissed. *See* SCALCR 65. The fact that the ALC in *Bennett* already recognized reinstatement as a valid remedy for an erroneous dismissal on the grounds at issue here further evinces that Judge Rookard should have considered Appellant's Motion to Reinstate in this case.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court hold that Appellant's due process rights were violated when the ALC dismissed his appeal on the basis of a nonprejudicial technical defect and remand Joe's case to the ALC for consideration of and a decision on the merits.

Respectfully submitted,

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July 10, 2025.