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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

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JUL 10 2025

SC Court of Appeals

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 SERVICESRESPONDENT.

FINAL REPLY BRIEF OF APPELLANT

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Appellant, Joseph Kelsey (Joe), makes the following arguments in reply to Respondent's Initial Brief.

I. Respondent's incorrect argument that Appellant's amended Notice of Appeal should not be accepted would have far-reaching implications for future appeals from actions by PPP.

First, Respondent fails to address Appellant's arguments that dismissal on the grounds of a nonprejudicial technical defect violates Appellant's due process right to file an appeal and right of access to the courts. *See* Br. App. at 8–11. Instead, Respondent contends that “the primary issue Appellant raises is not of the importance that would demand the ALC to overlook the filing deficiency.” Br. Resp't at 8. While Appellant disagrees with Respondent's assessment of the merits of his case, *see* Section II, *infra*, the strength of the claims is irrelevant to the question of whether an appeal may be dismissed for a technical defect affecting no matter of substance. *See* Br. App. at 9–11 (citing cases establishing that technical defects that do not affect the opposing party's ability to brief the merits of the case should not bar an appellant's right of access to the courts). Even assuming (without conceding) that Appellant's June 27 Notice of Appeal was technically defective, Respondent offers no legal authority to support the argument that purely technical defects bar an appellant's access to the courts.

In fact, if this Court were to accept Respondent's argument on this issue, it would mean that no litigant could possibly file an effective notice of appeal on his first try, because the PPP-specific form that the ALC sent to Appellant after receiving his initial notice of appeal is, to the best of Appellant's knowledge, not publicly available. Thus, in the best-case scenario, any person seeking to file a case against PPP will receive a letter from the ALC Clerk and be required to refile their appeal. In the worst-case scenario, every future appeal from a PPP decision will have the same result as Joe's: A litigant will file his appeal using the ALC's publicly available appeal form,

receive a letter from the ALC informing him that the improper form was used after the appeal deadline passes, and be unable to timely refile through no fault of his own. Such a decision would effectively eliminate any appeal from any actions of PPP and would clearly violate appellants' right of access to the courts.

As a secondary matter, Respondent asserts that its final decision on Appellant's parole was made on April 26, 2024. Br. Resp't at 4. As the ALC itself recognized, agency decisions are not deemed final until after any motions for reconsideration are decided. R. p. 5 ("The Appellant is correct in stating that the South Carolina Administrative Procedures Act specifies that a notice of appeal must be filed within thirty (30) days after the final decision or, if a rehearing is requested, within thirty (30) days after that decision is rendered.") (citing S.C. Code § 1-23-380(1)). Respondent issued its decision on Appellant's motion for reconsideration on May 30, 2024. Thus, the ALC itself rejected this argument from Respondent by determining that Appellant's notice of appeal deadline was July 1, 2024, and Appellant's first notice of appeal was filed on June 27, 2025.¹ *Id.*

II. Respondent incorrectly argues that the ALC could have dismissed Appellant's case on jurisdictional grounds.

Respondent points out that the ALC noted in a footnote that it believed it had "limited authority to hear routine denials of parole." Br. Resp't at 6. Respondent's argument that the ALC would have been correct to dismiss Appellant's case even absent the timeliness question, Br. Resp't at 7-8, is incorrect on two counts. First, the ALC had jurisdiction over Appellant's appeal; second, the merits of Appellant's case show clear due process violations by PPP.

¹ Respondent asserts that Appellant's argument rests on a notion that the ALC was "required" to accept Appellant's July 9 filing. Br. Resp't at 5. To the contrary, the only reason the Notice of Appeal was refiled on July 9 was because the Clerk's Office assured Appellant that it would be accepted.

a. The ALC has jurisdiction to consider Appellant's case.

Respondent incorrectly asserts that *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008), and *Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 685 S.E.2d 175 (2009), preclude ALC review of Appellant's parole denials. Br. Resp't at 6. Potential parolees have a due process right to appeal decisions by the Parole Board where (a) the Board's decision constitutes the permanent denial of parole to a parole-eligible inmate, and/or (b) the Board fails to comply with the requirements of S.C. Code § 24-21-640. *Cooper*, 377 S.C. 489, 661 S.E.2d 106 (holding that inmates have a due process right to meaningful parole procedures and, where the Board is not considering the required factors, the Board's actions need not constitute a permanent parole denial in order for the ALC to hear an appeal); *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003); *Sullivan v. S.C. Dep't of Corrections*, 355 S.C. 437, 443 n.4, 586 S.E.2d 124, 124 n.4 (2003).

A decision constitutes a permanent denial of parole if the Board fails to "consider" and "giv[e] credence" to the statutory factors set forth in S.C. Code Ann. § 24-21-640 and its own criteria, particularly where the Board denies parole for "limited reasons" involving the nature of the inmate's crime, and triggers a liberty interest in due process. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. Such a liberty interest exists in this case, as in *Cooper*: By denying Appellant parole on the sole basis of factors involving the nature and circumstances of his offense, "the Parole Board apparently failed to consider the requisite statutory factors and, instead, based its decision on certain fixed factors that are unaffected by any rehabilitation efforts on the part of [Appellant]." *Id.* at 502, 661 S.E.2d at 113. Additionally, even when the Board or the agency has not reached a decision that "constitute[s] a permanent denial of parole eligibility," the ALC has jurisdiction over parole appeals in which "a sufficient liberty interest [is] implicated to trigger due process

requirements.” *Id.* at 498, 661 S.E.2d at 111; *Steele v. Benjamin*, 362 S.C. 66, 72–73, 606 S.E.2d 499, 503 (Ct. App. 2004). Appellant raised credible due process claims on both counts pursuant to S.C. Code § 24-21-640 and the South Carolina Administrative Procedures Act in the ALC. *See* R. pp. 50–65. Thus, the ALC had jurisdiction to consider the merits of Appellant’s case.

b. Appellant raised cognizable claims of due process violations by PPP to the ALC.

Finally, Respondent incorrectly argues that the ALC would have been correct to dismiss Appellant’s case on the merits because “his appeal went straight to the Board’s own decision-making authority,” and because his claims were not of sufficient “importance” for the ALC to address. Br. Resp’t at 7, 8. The fact that the ALC has already indicated that it would be inclined to rule against Appellant on jurisdictional grounds, R. p. 5 n.3, begs the question why Respondent would so strongly oppose a remand that would likely produce a favorable decision. The answer is that Appellant’s claims are meritorious. The claims that Appellant raised in the ALC revealed clear due process violations by Respondent. In the ALC, Appellant argued, *inter alia*, that Respondent had violated his due process rights by actively and willfully providing false information that materially aggravated the facts of his offense—which Respondent knew to be false and contrary to the facts of the case as twice found by the South Carolina Supreme Court—to the Parole Board. Contrary to Respondent’s argument, Br. Resp’t at 7, this claim has nothing to do with the Board’s decision-making authority (which Appellant nonetheless maintains is reviewable under *Cooper*), and everything to do with the actions of Respondent itself.

Specifically, as Appellant explained in the ALC, for the past ten years, PPP has provided the Board with a false version of the facts of the offense that completely flips the roles of Joe and Payne to falsely portray Joe as the primary perpetrator. The first description of the facts of the underlying offense—the version that PPP endorsed—sets forth a version of the crime that 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). By adopting this false version of events, PPP has rejected the Supreme Court’s finding that “the testimony overwhelmingly proves that Payne murdered [the victim].” *Payne*, 355 S.C. at 646, 586 S.E.2d at 859. *See also Kelsey*, 331 S.C. at 59–61, 502 S.E.2d at 67–68.

Respondent admits that this false version of events is taken from Geoffrey Payne’s and Jamie Lee’s initial false statements to law enforcement, in which both blamed Joe for Melanie’s murder. Lee later admitted at trial, under oath, that his and Payne’s initial statements were the result of a conspiracy between Payne and Lee to shift blame away from Payne by lying to law enforcement and flipping the roles of Payne and Joe. R. p. 149. As Lee testified, Payne instructed that “if anything happens, just flip everything around. Everything that I did say Joe did.” *Id.* (quoting trial testimony of Jamie Lee). The materially false version of the facts is presented as PPP’s “official” version of the case, which is crucial because, as PPP has acknowledged, Board members are instructed to look to PPP’s version of the facts of the offense and disregard any other factual statements. *See* R. p. 54. When Appellant called PPP’s attention to the false information in his file and provided PPP with court documents and trial testimony demonstrating that Lee and Payne had lied—both at his parole hearing and in his reconsideration request—PPP not only refused to remove the false information but claimed that it had never provided false information in the first place. *See* Response to Reconsideration Request for Joseph Kelsey.

Contrary to Respondent’s assertion that potential parolees have “minimal to no due process” in parole proceedings, Br. Resp’t at 7, Appellant has a substantial liberty interest, protected by due process, in an accurate parole determination. *Barton v. S.C. Dep’t of Prob., Parole*

& Pardon Servs., 404 S.C. 395, 413, 745 S.E.2d 110, 120 (2013) (citing *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111–12). Further, the South Carolina Administrative Procedures Act requires that the Parole Board’s “[f]indings of fact must be based exclusively on the evidence and on matters officially noticed.” S.C. Code § 1-23-320(I). By knowingly providing inaccurate information to the Board and allowing the Board to base its decision on that information, PPP has violated both Joe’s due process rights and the APA. Further, this Court’s decision in *Kelsey v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 441 S.C. 373, 893 S.E.2d 588 (2023), requiring PPP to allow inmates access to their parole files so that they can correct false information, would be rendered meaningless if Respondent is correct that PPP is not required to remove demonstrably false information from inmates’ parole files, even after the inmate satisfies his obligation to alert PPP to the false information and provides official documentation demonstrating that the information is false.

Respondent contends that “the primary issue Appellant raises is not of the importance that would demand the ALC to overlook the filing deficiency.” Br. Resp’t at 8. To the contrary, the question that Appellant asked the ALC to answer is nothing short of whether Respondent may place a thumb on the scale against parole by falsely aggravating the facts of inmates’ offenses based on demonstrably false extra-judicial information that contradicts court findings and the judicial record. The answer to this question has far-reaching implications for every single inmate who comes before the Parole Board. Respondent provides the Board with a file for each inmate, with a factual summary for each inmate, and it is impossible to know how many of those files contain false aggravating information on which Board members base their decisions to deny parole, as they did in Joe’s case.

CONCLUSION

For the foregoing reasons, along with the reasons stated in Appellant's Initial Brief, this Court should reverse the ALC's order dismissing Appellant's appeal and remand to the ALC with instructions to issue a decision on the merits.

Respectfully submitted,

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