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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Administrative Law Court
Crystal M. Rookard, Administrative Law Judge

Case No. 2026-001548
ALC Docket No. 25-ALJ-15-00033-AP

Herbert Bell, #132646,

Appellant,

v.

South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABE OF AUTHORITIES……..……..iii

STATEMENT OF ISSUES ON APPEAL ……..……1

STATEMENT OF THE CASE……..…….……..…...2

STANDARD OF REVIEW……...…….……..9

ARGUMENTS……..…….10

I. DPPPS violated Herbert Bell's due process right to a statutory and regulatory correct parole procedure when it failed to give Herbert the opportunity to present evidence to the Parole Board indicating Herbert's parole file contained inaccurate information regarding: 1) the nature and seriousness of his current offense, and 2) the indication of violence in his offense. …….....……...10

II. DPPPS violated Herbert's due process right to a statutory and regulatory correct parole procedure when it: 1) required Herbert, who has not committed sexual misconduct, to undergo an actuarial risk assessment test intended for men who have committed sexual misconduct, and then 2) submitted the results of that test to the Parole Board for its consideration in granting or denying parole. 17

III. The ALC erred in failing to reach the merits of Herbert's arguments. ……..……..22

CONCLUSION……..……24

TABLE OF AUTHORITIES

Cases

Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S. 1, 15 n.7 (1979) . . ……..……11, 13, 21, 22

Allen v. S.C. Dep't of Corr., 439 S.C. 164, 886 S.E.2d 671 (2023)…..…….14, 23

Barton v. S.C. Dep't of Prob. Parole & Pardon Servs., 404 S.C. 395, 413, 745 S.E.2d 110, 120 (2013)……...……..10

Compton v. S.C. Dep't of Prob. Pardon and Parole Services, 385 S.C. 476, 685 S.E.2d 175 (2009). ……...…….*passim*

Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs., 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008), *abrogated on other grounds by Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 886 S.E.2d 671 (2023)…….…….*passim*

Hazel v. State, 377 S.C. 60, 63–64, 659 S.E.2d 137, 139 (2008) ……..……17

Kurschner v. City of Camden Plan. Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) . 24

State v. Kornahrens, 290 S.C. 281, 287, 350 S.E.2d 180, 184 (1986) ……..3, 15

State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). ……17

Thompson v. State, 415 S.C. 560, 566, 785 S.E.2d 189, 192 (2016)…….……..7, 16

Kelsey v. S.C. Dep't of Prob., Parole, & Pardon Servs., 441 S.C. 373, 379, 893 S.E.2d 588, 591–92 (Ct. App. 2023)…….*passim*

Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008) ……9

SGM-Moonglo, Inc. v. S.C. Dep't of Revenue, 378 S.C. 293, 295, 662 S.E.2d 487, 488 (Ct. App. 2008)……...…… 9

Blackwell v. S.C. Dep't of Prob. Parole & Pardon Servs., Op. No. 2024-UP-211 (S.C. Ct. App. filed June 12, 2024)…….12, 13, 21

Constitutional Provisions

S.C. Const. art. I, § 22……..…16, 20, 24

Statutes, Regulations, and Legislative Materials

S.C. Code Ann. § 1–23–350 (2005) (West 2026)……..13

S.C. Code Ann. § 1-23-380(A)(5) (West 2026) ……..16, 21

S.C. Code Ann. § l-23-610(B) (West 2026)……..9

S.C. Code Ann. § 16-3-910 (West 2026)……...…….3, 15

S.C. Code Ann. § 23-3-430 (West 2026)……..17, 18

S.C. Code Ann. § 23-3-430(C)(3)(d) (West 2026)……..……..20

S.C. Code Ann. § 24-21-10 (F)(1) (West 2026)…….……11, 18, 20

S.C. Code Ann. § 24-21-640 (West 2026)……...…….11, 24

1991 Act 117 (H.B. 3350) ……2

1994 Act 497 (H.B. 4820)……..…..……..17

2010 Act 273 (S.B. 1154). …….……18

Policy and Procedure Manual Parole Board Manual, South Carolina Board of Paroles and Pardons ……..…….. 3, 12, 16

DPPPS Form 1212 and "DPPPS Online Criteria for Parole Consideration" ……..……..11

DPPPS 2011 Report to the Sentencing Reform Oversight Committee, DPPPS ……....18

Other

Practitioner's Guide to COMPAS Core, Northpointe, March 13, 2015……..…….……..19

A. Phenix, et.al., 2016 Static-99R Coding Rules, "Definitions: Sex Offense" ……..……19

L. Maaike Helmus et. al., *Static-99r: Strengths, 10 Limitations, Predictive Accuracy Meta-Analysis, and Legal Admissibility Review*, 28 Psychol. Pub. Pol'y & L. 307, 309 (2022) ……....19

STATEMENT OF ISSUES ON APPEAL

1. Whether the South Carolina Department of Probation, Parole, and Pardon Services (DPPPS) violated Herbert Bell's due process right to a statutory and regulatory correct parole procedure when it failed to give Herbert the opportunity to present evidence to the Parole Board indicating Herbert's parole file contained inaccurate information regarding: 1) the nature and seriousness of his current offense, and 2) the indication of violence in his offense.

2. Whether DPPPS violated Herbert's due process right to a statutory and regulatory correct parole procedure when it: 1) required Herbert, who has not committed sexual misconduct, to undergo an actuarial risk assessment test intended for men who have committed sexual misconduct, and then 2) submitted the results of that test to the Parole Board for its consideration in granting or denying parole.

3. Whether the Administrative Law Court (ALC) erred in failing to review the record and reach the merits of Herbert's above arguments because it ruled that DPPPS complied with *Cooper v. S.C. Dept. of Prob. Pardon and Parole Services*, 377 S.C. 489, 66 S.E.2d 106 (2008) and *Compton v. S.C. Dep't of Prob. Pardon and Parole Services*, 385 S.C. 476, 685 S.E.2d 175 (2009) in denying Herbert parole.

STATEMENT OF THE CASE

After a two-day jury trial in June 1986, Herbert Lee Bell was convicted of the crime of kidnapping and is now serving a mandatory life sentence for this conviction.[1] (R. 130). His conviction arose from an incident where a man identified as "Tony" asked a teenager, Jay Edens, who was driving his dad's pickup truck, for a ride to a bait shop and then a fishing hole. (R. 180-85). Although there was no overt threat made by Tony to obtain the ride, Jay testified at trial he felt obligated to give Tony a ride because, "if I would have told him I was going to leave him, he might have beat me up." (R. 220). After not being able to locate his friends at the fishing hole, Tony asked Jay for a ride to Tony's home. (R 185-88). When the two had been going down a dirt road for a while, Jay stopped the truck and attempted to cut the ignition. (R. 188-89). Tony then grabbed Jay's wrist; Jay twisted out of the grip, opened the truck door, and ran out. (R. 188; 227-30). At this point, according to Jay's testimony, Tony shouted "Stop or [I am] going to shoot." (R. 230). Jay testified he did not see a gun or hear a gunshot. (R. 230 "Q: Did you ever hear a shot?" A: "No, Sir." Q: "[Victim], had he ever said anything about a gun before that?" A: "No, Sir.").

The offense of kidnapping is defined as:

> A person who unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of [kidnapping.]

S.C. Code Ann. § 16-3-910 (West 2026); *see also State v. Kornahrens*, 290 S.C. 281, 287, 350 S.E.2d 180, 184 (1986) (describing same elements of kidnapping from the time of Herbert's

[1] In 1991—five years after Herbert Bell was sentenced to life imprisonment—the Legislature amended the kidnapping statute. Specifically, the Legislature changed the mandatory life sentence for the offense to a discretionary sentence with a maximum period of incarceration not to exceed thirty years. 1991 Act 117 (H.B. 3350). As of today, Mr. Bell has spent forty years serving a sentence for Tony's crime against Jay Edens.

conviction). As is clear from the statute, sexual misconduct is not an element of kidnapping. During Herbert's arrest, trial, and conviction, sexual misconduct was not alleged—it was not even suggested. Herbert Bell was not convicted of sexual misconduct.

In preparation for a parole hearing, DPPPS prepares a parole case summary report, called the "parole file." *Policy and Procedure Manual Parole Board Manual*, South Carolina Board of Paroles and Pardons, 21, https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProbationParoleandPardon/Parole%20Board%20Manual.pdf (last visited Aug. 10, 2026). Among other relevant information, the parole file includes: (1) "[t]he criminal offense and a description of it;" and (2) "[r]isk classification reports." *Id*. In 2023, the South Carolina Court of Appeals held that prisoners are entitled to review this parole file in order to report any inaccuracies. *Kelsey v. S.C. Dep't of Prob., Parole, & Pardon Servs*., 441 S.C. 373, 379, 893 S.E.2d 588, 591–92 (Ct. App. 2023). Per DPPPS practice, prisoners are given this parole file to review *on the day* of their hearing. (R. 85). Neither the lawyer, nor the incarcerated person is able to retain this parole file or make a copy of it. (R. 85). Instead, they must return it to the DPPPS before the end of the hearing. (R. 85).

After *Kelsey* was issued in 2023, Herbert Bell was able to review his parole file for the first time on the day of his November 20, 2024 hearing. He was represented at that 2024 hearing by two law students from the University of South Carolina School of Law under the supervision of an attorney. (R. 117, Exhibit 2, Track 1 at 00.14, 00.53 to 01.07). On the day of the hearing, the law students noticed two inaccuracies in the parole file. (Exhibit 2, Track 2 at 04:12 to Track 3 at First, the law students noticed that, in Herbert's parole file, the description of the offense indicated a gun was used during the commission of the kidnapping of Jay Edens. (Exhibit 2, Track 2 at

04:12 to Track 3 at 00.05). Pursuant to *Kelsey*, the law students clarified for the record that, according to the transcript of Herbert's 1986 trial, there was no gun involved in the commission of the crime. (Exhibit 2, Track 2 at 04:12 to Track 3 at 00.05). As they stated for the record:

> So one of the things that I wanna make sure is, is clear, there's a couple of references in here about there being a gun used, or that there were threats to the victim's life in this charge. Ms. Van Ert and I, we poured over the original trial transcript, and there's no reference to a gun being used at all. So that kind of changes the, the outlook of the original infraction as well. There was no- there was no gun used. There was no weapon.

(Exhibit 2, Track 2 at 04:20 to 04:53). The second issue the law students brought to the attention of the Parole Board was the fact that parole file indicated DPPPS required Herbert to take a Static-99R test for sexual recidivism and those results were included in the parole file. Track 3 at 00.24 to 01:54). The students clarified that Herbert had not committed sexual misconduct. (Exhibit 2, Track 1 at 04:50 to Track 2 at 00:18). The students argued the Static-99R score within the parole file did not "reflect the reality of the situation." (Exhibit 2, Track 3 at 00:27). After a discussion of these two representations, Herbert's parole was denied in a vote of one to five. (Exhibit 2, Track 4 at 00:42 to 02:45-02:55).

After their request for the parole file to be reviewed for factual inaccuracies, Herbert's representatives received a letter from DPPPS indicating that Herberts' representatives "were given the opportunity to discuss" the Static-99R results and their "perceptions of the criminal offense" with the Parole Board. (R. 118). The letter from DPPPS did not indicate it would change its reporting of these inaccuracies for the next year's parole file, instead the letter stated "Please note, there is no rehearing/appeal process for the routine denial of parole." (R. 118).

Herbert Bell was next able to review his parole file on the day of his November 19, 2025 hearing. (R. 85). Herbert was represented at his hearing by attorney Rebecca Depp. (R. 85). The

morning of that hearing, she was able to review Herbert's parole file for the first time since his last hearing and noticed that the description of the offense in his parole file still stated he forced Jay Edens to drive him around while threatening Jay with a gun. (R. 116, Exhibit 1, Part 3 at 00:01 to 00:14). She also noticed that Herbert's overall COMPAS assessment coded him as low risk for committing any future crime, but that he had received a separate score of having a moderate to high risk for "recommitting" a sexual misconduct crime. (Exhibit 1, Part 2 at 04:50 to Part 3 at 02:45). During the hearing, Herbert's attorney contended these two mistakes needed to be reported pursuant to *Kelsey*. (Exhibit 1, Part 2 at 04:50 to Part 3 at 02:45). Specifically, she alerted to the Board that Herbert's parole file incorrectly stated that: (1) Herbert was convicted of abducting a teenager at gunpoint, and (2) Herbert was high risk for "recommitting" a sexual-misconduct crime. (Exhibit 1, Part 2 at 04:50 to Part 3 at 02:45). Herbert's attorney contended these facts did not accurately reflect the underlying facts of Herbert's kidnapping conviction. (Exhibit 1, Part 2 at 04:50 to Part 3 at 02:45).

Immediately following the November 19, 2025 hearing, Herbert's parole was denied by a vote of three to three. (R. 83). Later that day, Herbert received a "Notice of Rejection" which stated:

> 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.

(R. 83). In the Notice of Rejection, two of the "Findings of Fact" used to support the denial of Herbert's parole were the "Nature And Seriousness of Current Offense," and the "Indication of

Violence In This Or Previous Offense." (R. 83).

On December 4, 2025, Herbert sent DPPPS a letter asking for reconsideration of his parole denial. (R. 86-87). Specifically, Herbert asked for reconsideration based on: (1) the two factual inaccuracies in his file (namely, that he did not abduct a child at gunpoint and he did not commit sexual misconduct), and (2) his concern that, in preparation for his parole hearing, he was administered a Static 99-R sexual recidivism risk assessment, which—because he has not committed sexual misconduct—did not produce accurate results regarding his proclivity to commit sexual misconduct in the future. (R. 86-87). In support of the reconsideration request, Herbert submitted the transcript of his June 24-25, 1986 kidnapping trial. (R. 86-87). On December 11, 2025, DPPPS sent Herbert a letter indicating it would not reconsider his parole denial, stating:

> The standard for granting a request for a reconsideration hearing includes a showing that the Board may have based its decision on erroneous or incomplete information. You were able to—and did—correct any inaccuracy regarding the use of a gun in this crime. During the hearing the Board gave you the opportunity to address and correct any inaccuracies you perceived in the parole packet. You did both.
>
> You also take issue with the characterization of this kidnapping as a sex crime, and the reference in the parole packet's (COMPAS) assessment that [Herbert] has a moderate to high risk of recommitting a sexual offense. As you accurately point out, unless committed by a parent, kidnapping a person under eighteen years of age "shall be referred to as a Tier III offender." S.C. Code § 23-3-430 is entitled "Sex offender registry." Subsection (3)(d) provides in pertinent part that a person convicted of" (d) kidnapping (Section 16-3-910) of a person under eighteen years of age ... " must register as a sex offender. Thus, the parole packet describes accurately [Herbert's] situation.

(R. 112-13). On December 18, 2025, Herbert filed an appeal of the reconsideration denial to the ALC, asserting DPPPS erred and violated Herbert Lee Bell's due process rights by: 1) failing to allow an opportunity for the Parole Board consider the transcript of the kidnapping trial, and 2)

subjecting Herbert to an actuarial risk assessment test that was not designed to determine the future risk of a man who has not committed sexual misconduct. (R. 1). In the appeal, Herbert also asked the ALC to make a *Thompson v. State*, 415 S.C. 560, 566, 785 S.E.2d 189, 192 (2016) finding that Herbert's underlying kidnapping conviction did not involve sexual misconduct. (R. 15, 22).

In accordance with the ALC rules, DPPPS filed a Record in this appeal on January 21, 2026. (R. 81). Herbert filed a Motion to Supplement the Record and a Motion to Conduct Limited Discovery on March 17, 2026. (R. 47). In the motions, Herbert requested the Record be supplemented with: 1) Herbert's parole packet, prepared by his attorney and filed with DPPPS in preparation for his November 19, 2025 parole hearing; 2) Herbert's parole file, prepared by DPPPS; 3) the audio recording of the November 19, 2025 parole hearing; 4) the full transcript of Herbert's kidnapping trial; and 5) Herbert's COMPAS and Static-99R assessment results. *Id*. Herbert also filed a Motion for an Extension to File Initial Brief on March 27, 2026. (R. 47-58).

The ALC denied Herbert's Motion to Supplement the Record, Motion to Conduct Discovery, and Motion to Stay, but granted Appellant's Motion for an Extension to File Initial Brief on April 6, 2026. (R. 6). Herbert filed his initial brief on May 7, 2026. (R. 13). DPPPS filed its brief on May 20, 2026, and Herbert filed a reply brief on June 1, 2026. (R. 26, 39).

The ALC issued a final order in Herbert's appeal on June 24, 2026. (R. 1). In the order, the ALC found that, because Herbert was issued a Notice of Rejection on November 19, 2025, pursuant to *Compton* and *Cooper*, Herbert's parole process did not violate due process requirements. (R. 2-4); *Cooper*, 377 S.C. at 489, 66 S.E.2d at 106; *Compton*, 385 S.C. at 476, 685 S.E.2d at 175. The ALC therefore found Herbert's parole denial was "routine" and the ALC did not address the merits of Herbert's arguments, nor did it make a *Thompson* finding that Herbert's

underlying conviction did not involve sexual misconduct. (R. 2-4). On July 13, 2026, Herbert filed a notice of appeal from the ALC's June 24, 2026 Final Order to this Court. (R. 10).

Herbert Bell is in prison, and parole is a privilege. *Cooper*, 377 S.C. at 496, 661 S.E.2d at 110 (2008), *abrogated on other grounds by Allen*, 439 S.C. at 164, 886 S.E.2d at 671 (("Parole is a privilege, not a right."). Nevertheless, under the constitutional protections provided by the Due Process Clause, Herbert is entitled to a statutorily and regulatorily correct parole procedure. *Id*. at 499, 661 S.E.2d at 112 ("Parole is a privilege and [an inmate] has no right to be paroled; however, [an inmate] does have a right to require the Board to adhere to statutory requirements in rendering a decision.").

Today, we ask that this Court look into three aspects of South Carolina's parole process to determine if they pass constitutional muster. First, we ask that the Court examine the procedure a person who is up for parole must go through to correct inaccuracies in his parole file. Second, we ask that this Court examine the process DPPPS goes through in determining who is subject to an actuarial risk assessment for sexual recidivism. Finally, we ask that this Court look into the way the ALC has been interpreting two important precedents of the South Carolina Supreme Court: *Cooper*, 377 S.C. 489, 66 S.E.2d 106 and *Compton*, 385 S.C. 476, 685 S.E.2d 175. In Herbert's case, the ALC has interpreted *Cooper* and *Compton* in a way that forecloses judicial review of Herbert's parole process, even when that process denied him his right to a statutorily and regulatorily correct parole procedure.

STANDARD OF REVIEW

Section l-23-610(B) of the South Carolina Code provides the applicable standard of review for an ALC's final decision in an appeal from a parole denial. *Kelsey*, 441 S.C. at, 376, 893 S.E.2d at 590. Section l-23-610(B) provides:

> (B) The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (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.

"The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Kelsey* 441 S.C. 373, 376, 893 S.E.2d 588, 590 (Ct. App. 2023) (quoting *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008)). "The court of appeals may reverse or modify the decision only if the appellant's substantive rights have been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law." *Id.* (quoting *SGM-Moonglo, Inc. v. S.C. Dep't of Revenue*, 378 S.C. 293, 295, 662 S.E.2d 487, 488 (Ct. App. 2008)).

ARGUMENTS

IV. DPPPS violated Herbert Bell's due process right to a statutory and regulatory correct parole procedure when it failed to give Herbert the opportunity to present evidence to the Parole Board indicating Herbert's parole file contained inaccurate information regarding: 1) the nature and seriousness of his current offense, and 2) the indication of violence in his offense.

Herbert Bell's 2024 and 2025 parole file indicated: 1) that he kidnapped a teenager while threatening him with a gun and 2) that he committed sexual misconduct during the commission of a kidnapping. The transcript of his 1986 kidnapping trial reveal that both of these characterizations of his conviction are false. Herbert now contends his right to a statutory and regulatory correct parole process was violated because, in Herbert's case, DPPPS failed to give Herbert the opportunity to present the Parole Board with evidence that his parole file contained these mischaracterizations for their consideration. Herbert contends this due process violation was prejudicial and rendered the denial of his parole arbitrary.

Under the due process protections of the United States and South Carolina Constitution, an inmate has a "substantial personal right to statutorily correct parole review." *Barton v. S.C. Dep't of Prob. Parole & Pardon Servs*., 404 S.C. 395, 413, 745 S.E.2d 110, 120 (2013). This right extends to a regulatory correct parole review. *Kelsey*, 441 S.C. at 378–79, 893 S.E.2d at 591–92 (holding inmate had a "right to review the [parole] file" because DPPPS' regulatory compliant Form 1212 required the inmate to notify the Parole Board if his or her file was incorrect).

Further, an inmate's state-created liberty interest to parole eligibility is implicated when the Parole Board's denial of parole was arbitrary. *See Cooper*, 377 S.C. at 499, 661 S.E.2d at 111, *abrogated on other grounds by Allen*, 439 S.C. 164, 886 S.E.2d 671 ("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."). The decision to deny parole is arbitrary when an inmate's parole is denied due to inaccurate information in the parole file. *See e.g. Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 15 n.7 (1979) (indicating an inmate's right to due process at a parole hearing is at risk when "relevant adverse factual information in the inmate's file is wholly inaccurate").

Under South Carolina law, and relevant to this appeal, a statutory and regulatory correct parole process is outlined as follows:

1. Per statute, DPPPS is required to develop and publish to the public a list of factors it will take into consideration when considering whether to grant or to deny parole. S.C. Code Ann. § 24-21-640 ("The board must establish written, specific criteria for the granting of parole and provisional parole . . . The criteria must be made available to all prisoners at the time of their incarceration and the general public."). These factors are listed in DPPPS' Form 1212 and online at DPPPS, "Criteria for Parole Consideration." https://ppp.sc.gov/sites/dppps/files/Documents/Parole%20Pardon%20Release/Criteria_for_Parole_Consideration.pdf (last visited Aug. 6, 2026); (Form 1212, Record on Appeal Prepared by DPPPS p. 2). In addition to these factors, DPPPS is statutorily required to adopt and consider actuarial risk assessment tests to determine a prisoner's recidivism risk upon release from prison and then use this information in making a parole decision. S.C. Code Ann. § 24-21-10 (F)(1) ("[DPPPS] must develop . . . a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions.").

2. Two weeks before a parole hearing, DPPPS investigators create a "Parole Case Summary Report," which is commonly referred to as a prisoner's "parole file," to present to the Parole Board. *Parole Board Manual*, 21. This parole file includes a description of the offense, as well as any relevant actuarial risk assessment results. *Id*.
3. A person who is up for parole is entitled to see his or her parole file, prepared by DPPPS, before his or her Parole Board hearing. *See Kelsey*., 441 S.C. at 379, 893 S.E.2d at 591 (holding DPPPS' rules imply "an inmate is entitled to review his or her file" so long as "the protections for victims [are] in place by reasonable redaction and sealing.").
4. After review of this file, a person who is up for parole is required to report any inaccuracies in it and have an opportunity to submit evidence in support of the file's correction to the Parole Board for consideration. *See id.* (remanding inmate's case for an immediate new parole hearing when he was denied an opportunity to report inaccuracies in his parole file); *Blackwell v. S.C. Dep't of Prob. Parole & Pardon Servs*., Op. No. 2024-UP-211 (S.C. Ct. App. filed June 12, 2024)[2] (holding inmate was entitled to offer evidence to Parole Board in support of his contention that his parole file mischaracterized facts relevant to his parole consideration).
5. The Parole Board, in turn, reviews this evidence before weighing and considering its relevant, published factors in determining whether to grant parole. *See Compton*., 385 S.C. at, 479, 685 S.E.2d at 177 (stating, "if the Parole Board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate's right

[2] *Blackwell v. S.C. Dep't of Prob. Parole & Pardon Servs*., Op. No. 2024-UP-211 is not published, and it is therefore not precedential. Nevertheless, it is the only case in South Carolina that has applied the recent holding from *Kelsey*; therefore, we believe it is persuasive authority in Herbert's case.

to parole eligibility and infringes on a state-created liberty interest, warranting minimal due process protection" because a decision that does not weigh these appropriate factors is "arbitrary and capricious"); *Blackwell*, Op. No. 2024-UP-211 (holding an inmate's due process rights were not violated when he was able to present evidence in support of correction of his parole file to the Parole Board before the Parole Board voted on whether to grant or deny parole,); *see also Greenholtz,* 442 U.S. at 1, 15 n.7 (noting an inaccurate parole file implicates due process).

6. If, after a vote, the Parole Board denies parole, the Parole Board is required to give notice to the inmate of its findings of facts and conclusions of law as to why it has denied parole. *See Cooper*, 377 S.C. at 500, 661 S.E.2d at 112, *abrogated on other grounds by Allen*, 439 S.C. at 164, 886 S.E.2d at 671 ("Pursuant to the terms of the APA, a final decision in an agency adjudication of a contested case 'shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.' S.C. Code Ann. § 1–23–350 (2005).").
7. A person whose parole has been denied may appeal that decision, and if the ALC determines the process outlined above was not followed, the ALC may find the inmate's parole denial was not "routine" but was, instead, tainted by the Parole Board's failure to operate within its statutorily, regulatorily, and constitutionally prescribed parameters. *See Cooper*, 377 at 499, 661 S.E.2d at 111, *abrogated by Allen*, 439 S.C. at 164, 886 S.E.2d at 671 ("Undoubtedly, the Parole Board is the sole authority with respect to decisions regarding the grant or denial of parole. However, the Legislature created this Board to operate within certain parameters. We do not believe the Legislature established the Board

and intended for it to render decisions without any means of accountability."); *see also Allen*, 439 S.C. at 171, 886 S.E.2d at 674 (holding the ALC has appellate authority to ensure inmate's due process rights are protected).

According to the notice sent to Herbert on the day of his November 19, 2025 hearing, the Parole Board found both the "Nature And Seriousness Of Current Offense" and an "Indication Of Violence In This Or Previous Offense" supported the denial of Herbert's parole. (R. 83). Herbert timely requested a reconsideration of his parole denial and submitted Herbert's June 24 and 25, 1986 trial transcript in support. (R. 86-87).

On December 11, 2025, DPPPS sent Herbert a letter indicating it would not reconsider his parole denial, but instead "the transcript you provided will be sent to our investigators, and the facts will be investigated and corrected, if necessary, prior to Mr. Bell's next hearing." (R. 112). Further, DPPPS indicated that, because Herbert will be required to register for the sexual offense registry upon his release from prison, "the parole packet describes accurately Mr. Bell's situation[; t]his certainly leaves you free to point out to the Board at the next hearing that Mr. Bell's fifteen-year-old victim was not sexually assaulted." (R. 113). The letter concluded by stating, "Therefore a review of your correspondence, the Parole Packet [sic[3]], the recoding of the hearing, the trial transcript, and the COMPAS assessment reveals no indication the Board relied on erroneous or incomplete information." (R. 113).

[3] Herbert's letter requesting reconsideration of Mr. Bell's November 19, 2025 Parole Denial, and in DPPPS' letter denying that reconsideration, Mr. Bell and DPPPS refer to the "parole file" prepared by DPPPS when using the term "parole packet." (R. 86-87, 112-13). We wish to clarify for this appeal that "parole file" will reference the file prepared by DPPPS in preparation for a parole hearing, while "parole packet" will refer to the packet of information prepared by Herbert's attorney and filed with DPPPS in preparation for the parole hearing.

The transcript of Herbert's kidnapping trial reveals that he was not convicted of abducting a child at gunpoint, and under *Kelsey* and its progeny, Herbert must be given an opportunity to present this evidence to the Parole Board for its consideration. Instead, the transcript of his trial for kidnapping reveals a strange tale of a man named "Tony" who hitched a ride from a teenager driving a pick-up truck in 1986, bought crickets from a bait shop, went to a fishing hole, and finally grabbed the teen's arm when the teen stopped the truck. (R. 88-111, 179-89, 212-32). This thirty-minute encounter culminated with Tony shouting at the teenager, "Stop or [I am] going to shoot," but there was no gun seen ever, and there was no threat of violence before that point. (R. 232). This is a very different crime than one where a man pulls a gun on a boy, forces him into a car, and makes him drive around while threatening him with violent action—which is how the crime is characterized in Herbert's parole file in both 2024 and again in 2025.

Furthermore, there is a much more egregious mischaracterization in Herbert's parole file; specifically, both the 2024 and 2025 parole file indicated Herbert has committed sexual misconduct. This is false in every way. We are particularly alarmed at the language from DPPPS' letter denying reconsideration that states, "the parole [file] describes accurately Mr. Bell's situation[; t]his certainly leaves you free to point out to the Board at the next hearing that Mr. Bell's fifteen-year-old victim was not sexually assaulted." (R. 113). Again, we point out that sexual misconduct is not an element of kidnapping, and the 1986 trial transcript unequivocally reveals that Herbert was not convicted of sexual misconduct. S.C. Code Ann. § 16-3-910;. *Kornahrens*, 290 S.C. at 287, 350 S.E.2d at 184; (DPPPS Record at 6-29, "Trial Transcript").

Herbert's parole file does not "accurately describe [his] situation," and for the parole file to include gun violence and sexual misconduct as features of Herbert's conviction, and then for DPPPS to refuse to send the objective evidence demonstrating that Herbert's parole file was

inaccurate to the Parole Board indicates that DPPPS' parole procedure has been carried out in a way that is arbitrary, prohibits meaningful opportunity to be heard, and infringes on Herbert's state-created liberty interest. *See* S.C. Const. art. I, § 22; S.C. Code Ann. § 1-23-380(A)(5) (reviewing court may correct DPPPS arbitrary decisions or procedure).

We are not asking this Court or the ALC to re-weigh the statutorily required criteria and determine Herbert is entitled to parole. Instead, we ask this Court to remand this case to the Parole Board in order for the Board to review the objective evidence of Herbert's 1986 kidnapping trial transcript and reconsider whether to grant him parole. In this way, the Parole Board can use discretion when assessing both the "Nature And Seriousness Of Current Offense" and the "Indication Of Violence In This Or Previous Offense" when determining whether parole is appropriate for Herbert Bell. (Record at 1, "Notice of Rejection"). This is what due process requires. Due process further requires the Parole Board makes this assessment *this year*, as soon as possible, not sometime before Herbert's next Parole Hearing—when again, his lawyer will not have a chance to see whether the mischaracterization of Herbert's conviction has been corrected until the day of the hearing.[4] *See* "Statement of Case," *supra* (explaining DPPPS' parole procedure and how Herbert's 2024 representation attempted to correct the parole file at the hearing, but it was still erroneous in 2025).

[4] We also believe due process requires an inmate the opportunity to review their parole file for inaccuracies with sufficient time to correct those inaccuracies before the parole hearing. S.C. Const. art. I, § 22; *Kelsey*, 441 S.C. at 379, 893 S.E.2d at 591–92. At minimum, we see no valid reason why the parole file is not released to the inmate at the same time it is given to the Parole Board—many implications of due process would be completely avoided if inmates could prepare for a *meaningful* opportunity to be heard at their hearing. *See Parole Board Manual*, 14 ("The Department is responsible for investigating and preparing parole and pardon cases for the Board's review and for ensuring that these cases reach the members *no less than two weeks before the date of the hearing*." (emphasis added)).

V. DPPPS violated Herbert's due process right to a statutory and regulatory correct parole procedure when it: 1) required Herbert, who has not committed sexual misconduct, to undergo an actuarial risk assessment test intended for men who have committed sexual misconduct, and then 2) submitted the results of that test to the Parole Board for its consideration in granting or denying parole.

DPPPS has violated Herbert's due process rights by: 1) subjecting him to an actuarial risk assessment test that was not designed to determine the future risk of a man who has not committed sexual misconduct, and 2) relying on the results of that test as criteria for denying his parole. Accordingly, the Parole Board's decision to deny Herbert's parole was arbitrary. In accord with *Thompson*, we ask the ALC to make a finding on the record that Herbert's kidnapping offense did not involve sexual misconduct. 415 S.C. at 566, 785 S.E.2d at 192.

In 1994—eight years after Herbert was convicted of kidnapping—the Legislature passed an act establishing South Carolina's Sex Offender Registry. 1994 Act 497 (H.B. 4820). As written into the Act, the Sex Offender Registry is a civil statute, and its purpose is not to punish offenders who have committed sexual misconduct. *Thompson*, 566, 785 S.E.2d at 192; *State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). Rather, the purpose of the Registry is to "protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes." *Walls*, 348 S.C. at 31, 558 S.E.2d at 526; *see also Hazel v. State*, 377 S.C. 60, 63–64, 659 S.E.2d 137, 139 (2008) (detailing legislative history of the Sex Offender Registry Act). Crimes that qualify for the Sex Offender Registry are found in section 23–3–430 of the South Carolina Code.

Kidnapping and trafficking are the only two offenses listed as registrable offenses in section 23-3-430 that do not include sexual misconduct as an element of the crime. S.C. Code Ann. § 23-3-430 (listing registrable crimes, such as: voyeurism, buggery, incest, indecent exposure, sexual exploitation, criminal sexual conduct, sexual battery, etc.). In 2016, the South

Carolina Supreme Court analyzed when a court may evaluate the underlying facts of a conviction for kidnapping to determine it does not include sexual misconduct. *Thompson*, 415 S.C. at 566, 785 S.E.2d at 192. In *Thompson*, the Court held the finding does not have to be made at the time of the original sentencing and it does not have to be made once the incarcerated person is released from prison. *Id.* Rather, because incarcerated people's eligibility for certain programs and services within prison are based on their propensity for sexual misconduct, the person who has been convicted of kidnapping is entitled to a "meaningful opportunity to be heard on whether his kidnapping offenses were sexual in nature" as soon as the civil consequences flow from the conviction. *Id*.

In 2010, the Legislature passed the Omnibus Crime Reduction and Sentencing Reform Act. 2010 Act 273 (S.B. 1154). As part of that Act, the Legislature directed the Department of Probation, Pardon, and Parole Services (DPPPS) to establish "a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions[.]". S.C. Code Ann. § 24-21-10 (F)(1). In response to this requirement, the Parole Board purchased "an actuarial risk/needs assessment tool" called "COMPAS by Northpointe, Inc." 2011 Report to the Sentencing Reform Oversight Committee, DPPPS, Nov. 2011, 4, https://ppp.sc.gov/sites/dppps/files/Documents/Annual%20Statistics%20and%20Reports/SROC%20Reports/2011_SROC_Report.pdf (last visited August 12, 2026). The COMPAS tool purchased by DPPPS also includes "[s]econdary assessments" designed to "enhance supervision strategies with specialized populations (domestic violence offenders, sex offenders etc.)." *Id*. at 18. According to Northpointe's Practitioner's Guide to COMPAS Core, The COMPAS secondary assessments "for this purpose" include: . . . the STATIC 99 . . . for use with adult male sex assault

offenders[.]" Practitioner's Guide to COMPAS Core, Northpointe, March 13, 2015, 30, https://archive.epic.org/algorithmic-transparency/crim-justice/EPIC-16-06-23-WI-FOIA-201600805-COMPASPractionerGuide.pdf (last visited August 12, 2026).

Importantly, the Static 99R risk assessment tool defines sex offender narrowly, and the test is not designed to be taken by men who have not committed sexual misconduct. *See* A. Phenix, et.al., 2016 Static-99R Coding Rules, "Definitions: Sex Offense," 20, https://www.oregon.gov/boppps/Documents/Exhibits/ExhibitQ2.pdf (last visited August 16, 2026) ("For the purposes of a Static-99R assessment a sex offence is an officially recorded sexual misbehaviour or criminal behaviour with sexual intent."). If taken by a man who has not committed sexual misconduct, the Static 99-R will not give accurate results. *See* L. Maaike Helmus et. al., *Static-99r: Strengths, 10 Limitations, Predictive Accuracy Meta-Analysis, and Legal Admissibility Review*, 28 Psychol. Pub. Pol'y & L. 307, 309 (2022) ("The appropriate population for Static-99R may not fully correspond with the population of individuals labeled as 'sex offenders' in the criminal legal system . . . . The scale cannot be used for individuals whose. . . offenses [are] without a sexual motive. . . . It also cannot be used to determine guilt or innocence."); *2016 Static-99R Coding Rules*, "Whom Can you Use the Static-99R on?", 13, ("This instrument is not recommended for . . . those who have never committed a sex offence, nor is it recommended for making recommendations regarding the determination of guilt or innocence in those accused of a sex offence . . . Static-99R applies where there is reason to believe an actual sex offence has occurred . . . with an identifiable victim[.]").

Herbert does not dispute that he will be required to be on the Sex Offender Registry if he is released on parole. S.C. Code Ann. § 23-3-430(C)(3)(d). Nevertheless, the legal fiction that Herbert is a "sex offender" does not alter the reality that he has not committed, nor has he been

convicted of, sexual misconduct with anyone, ever. According to Herbert's parole file, his Static-99R assessment coded him as moderate to high risk for sexual recidivism. Meanwhile, his overall COMPAS assessment—a recidivism test appropriately given to him to assess his likelihood to reoffend—coded him as low risk for committing any future crime. The discrepancy between the COMPAS score and the Static-99R score is of course explained by the fact that the Static-99R cannot give an accurate assessment of the future sexual criminal propensity of a man who has never committed sexual misconduct.

What is deduced from the parole procedure in Herbert's case, and specifically from what DPPPS stated in its letter denying Herbert's reconsideration request, is that DPPPS has determined that inmates who have been convicted of an offense that may qualify as a registerable sex offense must be subjected to the Static-99R risk assessment for sexual misconduct recidivism—regardless of whether that person meets criteria for accurate assessment under the Static-99R's own coding rules. This violates DPPPS statutory mandate to establish "a process for adopting a validated actuarial risk and needs assessment tool consistent with *evidence-based* practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions[.]". S.C. Code Ann. § 24-21-10 (F)(1) (emphasis added). This misstep in DPPPS' statutory compliance alone violates Herbert's right to due process. *Cooper*, 377 S.C. at 499, 661 S.E.2d at 112, *abrogated on other grounds by Allen*, 439 S.C. at 164, 886 S.E.2d at 671 ("Parole is a privilege and Cooper has no right to be paroled; however, Cooper does have a right to require the [Parole] Board to adhere to statutory requirements in rendering a decision.").

However, in Herbert's case, not only was he subjected to a test that was not designed to be used to assess recidivism for someone who has not committed sexual misconduct, the results of this inappropriately administered test were also given to the Parole Board and weighed by it in

determining whether to grant Herbert parole. This indicates that the Parole Board's decision to deny Herbert's parole was an arbitrary decision that violated Herbert's right to a decision made upon consideration of statutorily-mandated *appropriate* criteria. S.C. Code Ann. § 24-21-10 (F)(1) (mandating consideration of *evidenced-based* actuarial risk assessment results in determining parole); *Compton*, 385 S.C. at 479, 685 S.E.2d at 177. ("[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."); *Greenholtz*, 442 U.S. at 15 n.7 (1979) (noting an inaccurate parole file implicates due process).

Today, we ask this Court to: 1) make a *Thompson* finding that Herbert's kidnapping conviction did not involve sexual misconduct and 2) remand Herbert's case to the Parole Board to consider whether Herbert's parole should be granted or denied with instructions that the Parole Board refrain from considering the Static 99-R results in making their decision. S.C. Const. art. I, § 22; S.C. Code Ann. § 1-23-380(A)(5) (ALC may correct arbitrary decisions or procedure).

VI. The ALC erred in failing to reach the merits of Herbert's arguments.

An inmate's state-created liberty interest to parole eligibility is implicated, sufficient to warrant a hearing and review, when the Parole Board's denial of parole was arbitrary or when the parole decision is controlled by DPPPS's failure to comply with its statutory and regulatory mandates in administering the parole process. *See Cooper*, 377 S.C. at 499, 661 S.E.2d at 112, *abrogated on other grounds by Allen*, 439 S.C. at 164, 886 S.E.2d at 671 ("Parole is a privilege and Cooper has no right to be paroled; however, Cooper does have a right to require the [Parole] Board to adhere to statutory requirements in rendering a decision."); *id*, 661 S.E.2d at 111, ("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."); *see also Kelsey*., 441 S.C. at 379, 893 S.E.2d at 591 (holding inmates have a right to review their parole file to report any inaccuracies to the Parole Board). The decision to deny parole is arbitrary when an inmate's parole is denied due to inaccurate information in the parole file. *See e.g. Greenholtz*, 442 U.S. at 15 n.7 (indicating an inmate's right to due process at a parole hearing is at risk when "relevant adverse factual information in the inmate's file is wholly inaccurate").

During Herbert's parole process, 1) Herbert was subjected to the Static 99R—an actuarial risk assessment test he was not qualified to take; 2) Herbert's parole file contained incorrect information about the nature of his kidnapping offense—namely, that it involved both gun and sexual violence when it did not; 3) Herbert was not given adequate opportunity to address these inaccuracies with evidence before his hearing; and 4) after Herbert's hearing, DPPPS refused to provide the transcript of Herbert's kidnapping trial to the Parole Board for their reconsideration. Each of these failures is enough to constitute a violation of Herbert's right to both a statutorily

correct parole process and a non-arbitrary parole decision. Nevertheless, the ALC found that, because Herbert was provided with a *notice* of rejection stating that the Parole Board considered the appropriate factors when they decided to deny parole, that, under *Cooper* and *Compton*, Herbert's parole denial was "routine" and the ALC could not, by statute, review the decision. (ALC Final Order, 3-4). Herbert now contends the ALC's interpretation of *Cooper* and *Compton* is erroneous and the due process violations that occurred during his parole process were sufficient to warrant review.

In the ALC's Final Order, the ALC explained that, as long as "the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212," then the denial of parole is "routine" and unreviewable. (R. 2). In other words, the ALC has interpreted *Compton* as holding: 1) a routine denial of parole is any denial where an inmate *receives notice* that the Parole Board considered the statutorily required factors in denying parole, and 2) the ALC does not have jurisdiction to review a routine denial of parole. However, this interpretation of *Compton* is not accurate. First, the Supreme Court has clarified that the ALC absolutely has jurisdiction to review a denial of parole—routine or otherwise. *See Allen,* 439 S.C. at 168, 886 S.E.2d at 672 ("The ALC has appellate jurisdiction over any matter where the procedural requirements for perfecting an appeal have been met."). Second, in the same opinion, the Supreme Court clarified that the ALC may review an agency appeal to determine whether the agency violated an inmates' right to due process, and, if so, it may correct the agency decision. *Id.* at 171, 886 S.E.2d at 674.

Thus, the material due process determination from any parole denial is not whether the Parole Board *issued notice* that it considered relevant factors in denying parole, but rather, whether the Parole Board violated an inmate's procedural due process rights in denying parole. *Allen*, 439

S.C. at 171, 886 S.E.2d at 674; *Compton.*, 385 S.C. at 479, 685 S.E.2d at 177; *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.").

Furthermore, the ALC's interpretation of *Cooper* and *Compton* is problematic, because if *Compton* does hold that an inmate's procedural due process rights are entirely satisfied as long as he *receives notice* that the Parole Board considered criteria when considering whether to deny parole, *Compton* should be overruled and abrogated as that holding itself would violate due process by making any meaningful judicial review of the parole process impossible. S.C. Const. art. I, § 22; *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, *and judicial review*." (emphasis added)).

Today Herbert asks that this Court correct the ALC's interpretation of *Cooper* and *Compton* and reach the merits of Herbert's due process arguments. Finally, to the extent Herbert is required to challenge the ALC's denial of Herbert's Motion to Supplement the Record and Motion to Conduct Discovery, he does so now. Herbert respectfully requests this Court review the whole record in Herbert's case—including Herbert's parole file, the audio recordings of his parole hearings, and the transcript of his 1986 kidnapping trial—which were all in DPPPS custody for review by DPPPS and the Parole Board during Herbert's parole process. S.C. Code Ann. § l-23-610(B) (providing standard of review for ALC decisions).

CONCLUSION

Under the Due Process clauses of the U.S. and South Carolina constitutions, Herbert Lee Bell is entitled to a statutorily and regulatorily correct parole process that allows for notice, an

opportunity to be heard in a meaningful way, and judicial review. DPPPS erred and violated Herbert Lee Bell's due process rights by failing to allow the Parole Board the opportunity to consider evidence offered to support Herbert's contention that his parole file contained the inaccurate information that his conviction involved gun violence and sexual misconduct. He was prejudiced when the Parole Board relied on this clearly erroneous information in denying his parole. His due process rights were further violated when DPPPS subjected Herbert to a sexual recidivism risk assessment that is not designed to give an accurate result for the future criminality of a man who has never committed sexual misconduct. We are asking this Court to make a *Thompson* finding on the record that Herbert's underlying conviction does not involve sexual misconduct and remand Herbert's case to the Parole Board for reconsideration with instructions that the Board: 1) consider the transcript of his 1986 conviction for kidnapping, and 2) remove from consideration the Static 99-R assessment results. *See Kelsey*. 441 S.C. at 379, 893 S.E.2d at 591–92 (finding when due process was violated in parole denial decision, inmate was entitled to a new parole hearing on remand). Herbert Bell has spent forty years in prison. We are asking for a fair shot at his parole—one he is entitled to under due process—one that is not arbitrarily clouded by the inaccurate characterization that he is a sexual predator who once abducted a child at gunpoint.