

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Carolyn C. Matthews, Administrative Law Court Judge

Appellate Case No. 2014-000773

Kenneth William Green, #116020. Appellant

v.

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

**APPELLANT'S MOTION
TO SUPPLEMENT THE RECORD ON APPEAL
PURSUANT TO RULE 212(b), SCACR**

KENNETH WILLIAM GREEN
#116020
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

APPELLANT, *pro se*

Other counsel of record:

Tommy Evans, Esq.
General Counsel
S. C. Department of Probation, Parole, and Pardon Services
P.O. Box 50666
Columbia, SC 29501

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Kenneth William Green, the *pro se* Appellant in the afore-captioned appeal from the Administrative Law Court, respectfully moves this Honorable Court, pursuant to Rules 212(b) and 240, South Carolina Appellate Court Rules, for leave to Supplement the Record on Appeal with the May 13, 2014 affidavit of Marlene T. McClain (attached). In support of this motion to supplement the ROA the Appellant would show this Court the following:

- 1) Ms. McClain was a voting member of the Parole Board during the time of Appellant's November 29, 2000 parole hearing;
- 2) Ms. McClain's affidavit specifically details voting and reporting procedures of the Board employed on or about November 29, 2000;
- 3) Ms. McClain's affidavit indicates that the lower court misunderstands Board voting procedures as published in the uncertified Record and that the lower court determination of reasons of fact ("1, 2, 3 & 4") as the vote tally are incorrect;
- 4) Ms. McClain's affidavit is not cumulative;
- 5) Ms. McClain's affidavit was not available until after Judge Matthew's March 21, 2014 final order;
- 6) That the affidavit of Ms McClain is substantial evidence under the scope and review of Administrative Law Court Review that directly affects the substantial rights of the Appellant;
- 7) That the Affidavit of Ms. McClain would change the minds of reasonable jurists if considered by the Court as it directly affects the merits of the case;
- 8) That on May 27, 2014 Appellant sought the consent of counsel for Respondent to supplement the record (attached) and such good faith effort was unanswered;

- 9) That the supplementation of the Record with Ms. McClain's affidavit would not prejudice the Respondent in any manner, but would provide clarity to the matter of parole board voting procedures and the error of the lower court; and
- 10) That consideration of Ms. McClain's affidavit by this Court would provide Appellant the relief to which he was entitled on November 29, 2000 and before the ALC on review of the *Barton* petition.

CONCLUSION

WHEREFORE, based on the foregoing facts and attachments, the Appellant prays this Honorable Court grant leave to Supplement the Record on Appeal with the affidavit of Ms. Marlene T. McClain, pursuant to Rule 212(b), SCACR.

Respectfully submitted,



Kenneth William Green

#116020

Lieber Correctional Institution, SA-29

Post Office Box 205

Ridgeville, South Carolina 29472-0205

APPELLANT, Pro se

June 9, 2014

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SC Court of Appeals

Kenneth William Green
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May 27, 2014

Tommy Evans, Jr.
Deputy General Counsel
South Carolina Department of Probation
Parole and Pardon Services
2221 Devine Street, Suite 6000
Post Office Box 50666
Columbia, SC 29250

Re: *Kenneth Green v. SCDPPPS*
Appellate Case No. 2014-000773

Dear Mr. Evans:

I am in the process of preparing my initial brief in the above-referenced appeal from the Administrative Law Court. In preparing the Designation of Matter to be Included in the Record on Appeal, I have one document which was received following Judge Matthew's March 21, 2014 Order. It is my understanding Mr. Buchanan in your Office is in possession of this document as well and I wish to include it in the Record on Appeal in the above-referenced matter.

This letter is a formal good-faith effort to request your consent to include in the Record the affidavit of former Parole Board Member Marlene McLain in the time frame in question where Roosevelt Hicks averred that the Parole Board published "no" votes first.

In consideration of the Appellate Court Rules, I am requesting your consent to include this matter. In light of the time frame for briefing, I request a response from you within five (5) days of the date of your receipt of this correspondence.

Please also take this correspondence as Notice that if you elect to object to inclusion, I will move the Court to include the affidavit of Ms. McLain in the ROA.

Your attention to this matter is sincerely appreciated.

Very truly yours,



Kenneth William Green
APPELLANT, *pro se*

Cc: file

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

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AFFIDAVIT OF
MARLENE T. MCCLAIN

PERSONALLY APPEARED BEFORE ME, Marlene T. McClain, being duly sworn, deposes and states as follows:

1. My name is Marlene T. McClain and I have personal knowledge of the facts set forth in my affidavit.
2. I am the Director of Victim Services at the Anderson County Sheriff's Office.
3. From August, 1999 until May, 2006, I served on the South Carolina Parole Board.
4. I was present for the parole hearing of Mr. Gene Ray Richardson on June, 20 2001.
5. I clearly recall Mr. Richardson's June 20, 2001 hearing, and I have also had the opportunity to listen to the recording of this hearing that confirms my recollection.
6. In addition to myself, the following five parole board members were present at Mr. Richardson's hearing: Orton Bellamy, J.P. Hodges, Bishop Sanco Rembert, June Shissias, and John McCarroll.
7. Mr. Richardson was represented by Douglas Jennings, a member of the South Carolina Legislature, who appeared in person at the Parole Board's office. In addition to Mr. Jennings, Mr. Richardson, his wife, his mother, his brother, his sister, and Mr. John Williams, a pastor, appeared at Lieber Correctional Institution and spoke in

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JUN 12 2014

SC Court of Appeals

favor of parole. Sometime later, two victim witnesses, whose arrival had been delayed, spoke against parole at the Parole Board's office.

8. During the Parole Board's deliberations I expressed my support for granting parole for Mr. Richardson. I mentioned that the opposition of the victim's family would never change. I also mentioned that Mr. Richardson had an exemplary prison record and good support from family, community, and law enforcement in the county in which he would reside.

9. During the deliberations Bishop Rembert expressed his support for granting parole for Mr. Richardson. Bishop Rembert mentioned that he knew the pastor who spoke at the hearing was an honest and conservative man who would not offer his support for parole unless he were convinced that Mr. Richardson was a changed man.

10. During deliberations Mr. Hodges expressed his support for granting parole for Mr. Richardson. Mr. Hodges mentioned Mr. Richardson's marriage and the strong support he had.

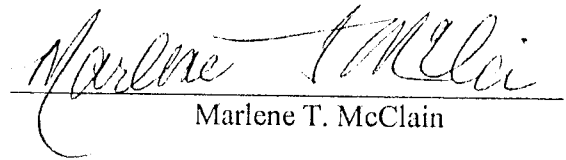
11. At Mr. Richardson's hearing, four votes were cast in favor of granting parole and two votes were cast against granting parole.

12. I voted in favor of parole for Mr. Richardson. Bishop Rembert, Mr. Hodges, and either Mr. Bellamy or Mr. McCarroll also voted in favor of parole for Mr. Richardson. While I cannot recall whether it was Mr. Bellamy or Mr. McCarroll who voted in favor of parole, I am sure that one of them did vote in favor of parole because four votes were cast in favor of parole. At the time of this hearing, there were only 6 of 7 Parole Board members present. The Department of Probation, Parole, and Pardon had previously instructed the Board that the statute required an affirmative vote of 5 members

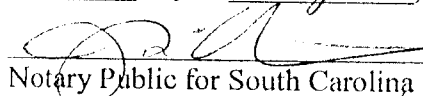
(2/3) regardless of whether there were 6 or 7 members present. In this case, the Parole of Mr. Richardson was rejected because he failed to get 5 of the 6 votes.

13. It is my understanding that there is some confusion regarding Mr. Bellamy's announcement that can be heard on the recording that "parole is rejected 1, 2 and 3." This announcement is not a tally of the votes for or against parole, but is instead a numerical listing of the reasons parole was denied, which would have appeared in the notice to Mr. Richardson.

FURTHER, THE AFFIANT SAYETH NOT.


Marlene T. McClain

SWORN to and subscribed before me
this 13th day of May, 2014.


Notary Public for South Carolina

My Commission Expires: 6/11/18

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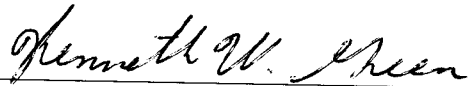
v.

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

PROOF OF SERVICE

The undersigned hereby certifies that he has served a true and correct copy of the Motion to Supplement the Record on Appeal on counsel for Respondent, by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 9th day of June, 2014, addressed as follows:

Tommy Evans, Esq.
General Counsel
S. C. Dept. of Probation, Parole, and Pardon Services
P.O. Box 50666
Columbia, SC 29501


KENNETH WILLIAM GREEN
#116020
Lieber Correctional Institution
Post Office Box 205
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APPELLANT, p. 

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Kenneth William Green
#116020
Lieber Correctional Institution SA-29
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June 9, 2014

The Honorable V. Claire Allen
Deputy Clerk
Court of Appeals of South Carolina
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Kenneth William Green v. SCDPPPS*
Appellate Case No. 2014-000773

Dear Ms. Allen:

Please find enclosed for filing in the above-referenced appeal the Original and six (6) copies of Appellant's Motion to Supplement the Record Pursuant to Rule 212(b). Also enclosed is proof of service on counsel for Respondents.

Your assistance in this matter is sincerely appreciated.

With kindest regards, I remain,

Sincerely,



Kenneth William Green
APPELLANT, *pro se*

Cc: Tommy Evans, Esq.

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Richard Conn. Inst. SA-29
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