

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Carolyn C. Matthews, Administrative Law Court Judge

RECEIVED

APR 13 2015

SC Court of Appeals

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
Attorney for Respondent

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 March 20, 2015 affidavit of Marlene T. McClain (attached) and the March 11, 2015 affidavit of June Shissias (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 Appellant's November 29, 2000 parole hearing;
- 2) Ms. Shissias was a voting member of the Parole Board during Appellant's November 29, 2000 parole hearing;
- 3) Ms. McClain's and Ms. Shissias' affidavits specifically details how each member of the Parole Board voted in Appellant's case on November 29, 2000, to include the "yes" vote of former Chairperson J. P. Hodge, and determines Appellant received four (4) votes;
- 4) Ms. McClain's and Ms. Shissias' affidavits specifically details the voting and reporting procedures of the Board employed on November 29, 2000;
- 5) Ms. McClain's and Ms. Shissias' affidavits directly contradicts the uncertified Record as submitted by Respondents on March 3, 2014 to the lower court;
- 6) Ms. McClain's and Ms. Shissias' affidavits indicates that the lower court misunderstood the Board voting procedure by the uncertified Record and incorrectly determined reasons of fact ("rejected, 4 to 2; 1, 2, 3 & 4") as the vote tally;
- 7) The Affidavit of Ms Shissias specifically indicates that at the time of the November 29, 2000 parole hearing of Appellant, that "the Board took yes votes first;
- 8) Ms. McClain's and Ms. Shissias' affidavits are not cumulative;

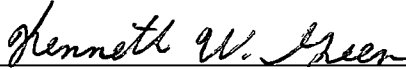
- 9) The Affidavits of Ms. Shissias and Ms. McClain were not available until after Judge Matthew's March 21, 2014 final order;
- 10) That the Affidavits of Ms McClain and Ms. Shissias are substantial evidence under the scope and review of Administrative Law Court Review that directly affects the substantial rights of the Appellant;
- 11) That the Affidavits of Ms. McClain and Ms. Shissias would change the minds of reasonable jurists if considered by the Court as it directly affects the merits of the case;
- 12) That the supplementation of the Record with the affidavits of Ms. McClain and Ms. Shissias would not prejudice the Respondent in any manner, but would provide clarity to the matter; and
- 13) That consideration of Ms. McClain's and Ms. Shissias' affidavits 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 affidavits of Ms. Marlene T. McClain and Ms. June Shissias, pursuant to Rule 212(b), SCACR.

Respectfully submitted,

April 8, 2014



Kenneth William Green
#116020
Lieber Correctional Institution, SB-34
Post Office Box 205
Ridgeville, South Carolina 29472-0205

APPELLANT, *Pro se*

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

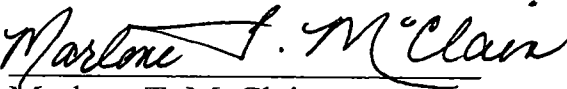
AFFIDAVIT OF MARLENE T. MCCLAIN

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. From August, 1999 until May, 2006, I served on the South Carolina Parole Board.
3. I was present at Kenneth Green's parole hearing on November 29, 2000.
4. I have had the opportunity to listen to the recording of Mr. Green's November 29, 2000 hearing and it is my recollection that I voted in favor of Mr. Green being granted parole at that hearing. I also recalled that J.P. Hodges voted in favor of Mr. Green being granted parole.
5. At the time of this hearing, there were only 6 of the 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 Kenneth Green was rejected because he failed to get 5 or the 6 votes.

6. It is my understanding that there is some confusion regarding the announcement that can be heard on the recording that "parole is rejected 1, 2, 3 and 4". 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. Green.

FURTHER AFFIANT SAYETH NOT.


Marlene T. McClain

March 20, 2015

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

RECEIVED

APR 13 2015

SC Court of Appeals

Kenneth William Green, #116020..... Appellant

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 8th day of April, 2015, 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 W. Green
KENNETH WILLIAM GREEN
#116020
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

APPELLANT, *pro se*

Kenneth Green
#116020
Lieber Correctional Institution SB-34
P.O. Box 205
Ridgeville, SC 29472

April 8, 2015

RECEIVED

APR 13 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchens
Clerk
Court of Appeals of South Carolina
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Kenneth Green, # 116020 v. South Carolina Department of Probation, Parole, and Pardon Services*
Appellate Case No. 2014-000773

Dear Ms. Kitchens:

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.

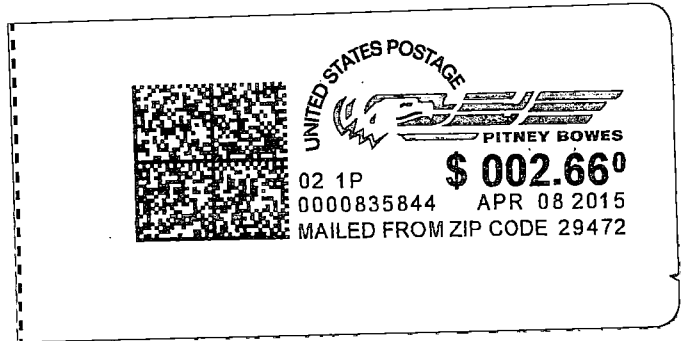
With kindest regards, I remain,

Sincerely,



Kenneth Green
APPELLANT, *pro se*

Cc: Tommy Evans, Esq.



RECEIVED

APR 08 2015

MAIL ROOM

USBCI

RECEIVED

APR 15 2015

SC Court of Appeals

able Jenny Abbott Kitchens

Appeals of South Carolina

Box 11629

SC 29211

