

STATE OF SOUTH CAROLINA
In the Court of Appeals

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APR 10 2015

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Carolyn Matthews, Administrative Law Judge
13-ALJ-15-0042

Case No 14-00773

KENNETH GREEN, #116020..... APPELLANT,

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,..... RESPONDENT

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

The Appellant request this Court to supplement the record on appeal pursuant to Rule 212(b) of the South Carolina Appellant Court Rules. The Respondent, the South Carolina Department of Probation, Parole, and Pardon Services, respectfully requests this honorable court deny the Appellant’s request to supplement the Record on Appeal.


Appellant is attempting to include two Affidavits signed by two former Parole Board members. These affidavits were not included in the record on appeal and not originally presented to the Administrative Law Court (ALC). The rules or the Appellate court states that matters contained in the record on appeal shall only include matters presented to the lower court. Rule 210(c) SCACR.

In the Respondent’s opinion, these affidavits also cannot be considered substantial

evidence so they should not be included. There are no witnesses to these affidavits and furthermore, as previously mentioned in Respondent's brief, there is no way to verify the vote count from a 2000 parole hearing as those records have since been destroyed. Substantial evidence is evidence which considering the record as a whole allow reasonable minds to reach the conclusion that the administrative agency reached to justify its action. *Howell v Pacific Columbia Mills*, 291 S.C. 469, 354 S.E.2d 384 (1987). These affidavits cannot be considered substantial evidence as to the question raised to the ALC.

The information contained within the record on appeal is information submitted to the ALC prior to their decision. This court does not have the luxury to make decisions on information submitted that was not presented to the lower court. So they cannot be subsequently added to the record. The Appellant's motion to supplement the record should be denied.

Respectfully submitted,



Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation, Parole
and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Attorney for the Respondent

Columbia, South Carolina
April 14, 2015

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APR 16 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
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APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Carolyn Matthews, Administrative Law Judge
13-ALJ-15-0042

Case No. 14-00773

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v.

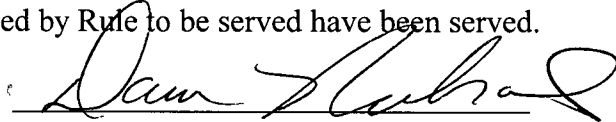
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT.

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Motion to Deny Appellant's Motion to Supplement the Record on Appeal* dated April 14, 2015, on Appellant this 15th day of April, 2015, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Kenneth Green, #116020
Lieber Correctional Institution
PO Box 205
Ridgeville, South Carolina 29472

I further certify that all parties required by Rule to be served have been served.



Dawn K. Nichols
Executive Administrative Assistant

South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

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

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

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April 15, 2015

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street- 5th Floor
Columbia, South Carolina 29201

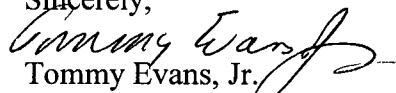
RE: Kenneth Green v. SCDPPPS

Dear Ms. Kitchings:

Enclosed please find the original and (6) copies of the *Motion to Deny Appellant's Motion to Supplement the Record on Appeal*, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

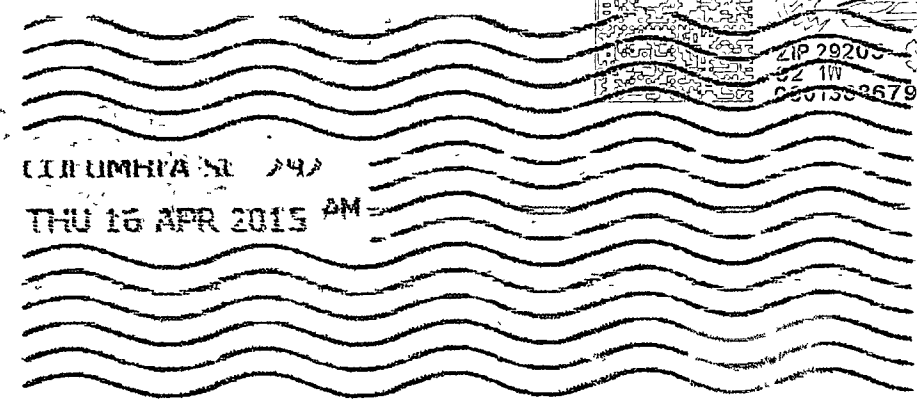
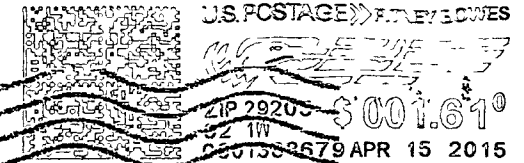
Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures

cc: Kenneth Green



COLUMBIA SC 29205
THU 16 APR 2015 AM

State of South Carolina
Department of Probation, Parole, and Pardon Services
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COLUMBIA, SOUTH CAROLINA 29250

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