

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
The Honorable L. Casey Manning, Circuit Court Judge  
Case No. 2010-CP-40-704

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HARTFORD R. BEST, #105214, ..... APPELLANT

v.

SAMUEL B. GLOVER, DIRECTOR OF THE SOUTH  
CAROLINA DEPARTMENT OF PROBATION,  
PAROLE AND PARDON SERVICES, ..... RESPONDENT

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**FINAL BRIEF OF RESPONDENT**

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**J. Benjamin Aplin  
Chief Legal Counsel**

**South Carolina Department of Probation,  
Parole and Pardon Services  
P.O. Box 50666  
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**ATTORNEY FOR THE RESPONDENT**

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**JUN 06 2012**

**SC Court of Appeals**

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## **STATEMENT OF ISSUES ON APPEAL**

1. Whether the circuit court properly dismissed Appellant's petition for a writ of mandamus based on a lack of subject matter jurisdiction and Appellant's failure to state facts sufficient to support a cause of action?
2. Whether Appellant's remaining issues are not preserved for appellate review because they were not ruled upon by the lower court?

## STATEMENT OF THE CASE

This matter was brought before the circuit court by way of Appellant's "Petition for Writ of Mandamus and Summons Complaint," dated August 7, 2009, filed February 1, 2010, and initially received via mail by Respondent, Samuel B. Glover, former Director<sup>1</sup> of the South Carolina Department of Probation, Parole and Pardon Services (the Department), on February 10, 2010. (Supp. R.p.1-p.5). Appellant subsequently submitted a "Motion for Declaratory Judgment and Petition for Default Judgment" dated May 14, 2010. (Supp. R.p.6-p.10). On May 24, 2010, Respondent, by his attorney, the Department's Assistant Chief Legal Counsel, J. Benjamin Aplin, submitted a "Return and Motion to Dismiss Petition for Writ of Mandamus." (Supp. R.p.11-p.16). Appellant then submitted a "Memorandum in Opposition to Respondent's Return and Motion to Dismiss Petitioner's Writ of Mandamus" dated June 29, 2010; a "Plaintiff's Brief in Opposition to Respondent's Return and Motion to Dismiss Petition for Writ of Mandamus" dated July 19, 2010; and a "Motion to Amend" dated August 3, 2010, seeking to specifically add the Parole Board as a Respondent to the Action. (Supp. R.p.26-p.38). On August 12, 2010, Respondent filed a "Return to Motion to Amend." (Supp. R.p.39-p.40).

On August 12, 2010, a motion hearing was convened before the Honorable James R. Barber, III, at the Richland County Courthouse. Appellant was present and appeared pro se, and Mr. Aplin appeared on behalf of Respondent. Judge Barber granted Appellant's motion to amend with consent of defense counsel but declined to address the substantive motions until a later date. On August 16, 2010, Judge Barber issued a written Order to this effect.

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<sup>1</sup> Mr. Glover is no longer the Director of the Department. The current Director is Kela E. Thomas.

(Supp. R.p.41).

On September 1, 2010, a motion hearing was convened before the lower court at the Richland County Courthouse. Appellant was present and appeared pro se, and Mr. Aplin appeared on behalf of the Defendant. At the hearing, the parties argued their respective positions in regard to Respondent's Motion to Dismiss. After carefully considering arguments from both parties, the court denied Appellant's motion for declaratory judgment and petition for default, and found that the entire matter must be dismissed with prejudice. (R.p.1).

**I. The circuit court properly dismissed Appellant's petition for a writ of mandamus based on a lack of subject matter jurisdiction and Appellant's failure to state facts sufficient to support a cause of action.**

In his original petition, Appellant asked the circuit court to issue a writ of mandamus directing the South Carolina Board of Probation, Parole and Pardon Services (Parole Board) to reinstate him on parole. He argued he was not afforded minimal due process rights in regard to his September 12, 2007, parole revocation hearing because he was not first given a "preliminary hearing" to determine whether there was probable cause that he had committed a parole violation. Appellant further contended that since he was never ultimately convicted of a weapon charge, his revocation, which was based in part upon an allegation that he had possession of a firearm, should be reversed. For these reasons, he argued that the court should issue a writ of mandamus compelling the Parole Board to reinstate him on parole. The circuit court found that Appellant's Petition for Writ of Mandamus should be dismissed for lack of subject matter jurisdiction, lack of jurisdiction over the person, insufficiency of service of process, and failure to state facts sufficient to constitute a cause of action or to support the relief requested.

Respondent submits the circuit court properly found that it lacked jurisdiction over the subject matter of Appellant's Petition pursuant to Rule 12(b)(1), SCRCPP. Appellant failed to make "a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends," Rule 8(a), SCRCPP; therefore, his Petition failed to establish the lower court's jurisdiction. Indeed, the South Carolina Code provides that the Parole Board "shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed . . . ." S.C. Code Ann. § 24-21-680 (2007). Furthermore, to the extent Appellant contended his parole was unlawfully revoked, his exclusive remedy was through the Uniform

Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-20 (2003). Thus, Respondent submits the lower court properly concluded that outside of the context of an Application for post-conviction relief, it lacked jurisdiction to address alleged deficiencies regarding parole revocation proceedings. Therefore, Respondent submits the court properly concluded that it must dismiss Appellant's Petition for lack of subject matter jurisdiction.

Respondent further submits that Appellant's Petition was properly dismissed pursuant to Rule 12(b)(6), SCRPC, or alternatively pursuant to Rule 56, SCRPC, due to Appellant's failure to state facts sufficient to constitute a cause of action or to support the requested relief.

Mandamus is the highest judicial writ known to law. Wilben v. Long, 262 S.C. 430, 205 S.E.2d 174 (1974). A writ of mandamus can only be issued where there is a specific legal right to be enforced or a positive duty to be performed. State v. Fuller, 18 S.C. 246 (1882). To warrant the grant of a writ of mandamus requiring the performance of some act the petitioner must show the coexistence of four (4) elements:

1. A duty of the respondent to perform the act;
2. the ministerial nature of the act;
3. the petitioner's specific legal right for which the discharge of the duty is necessary, and;
4. the lack of any other legal remedy.

Redmond v. Lexington Co. Sch. Dist., 314 S.C. 431, 445 S.E.2d 441 (1994).

Respondent submits the court properly found he had neither the authority nor the duty to perform the specific act Petitioner is asking this Court to direct. Indeed, as explained above, the Director of the Department does not control the Parole Board. In any event, Respondent submits

the Court properly found that Appellant had failed to present any facts to support any conclusion other than that the Board acted in full compliance with all duties established in the relevant statutes and the due process clauses of the South Carolina and United States Constitutions. In addition, Respondent submits the court properly found Appellant had failed to show a specific legal right for which the discharge of any duty was necessary. He was charged with multiple parole violations in four separate arrest warrants, including a charge of failing to appear at a scheduled preliminary hearing, the very hearing which he then complained about not having had. On September 12, 2007, Appellant ultimately appeared before the Parole Board for a violation hearing at which he was afforded due process. Finally, Respondent submits the court properly found Appellant had failed to demonstrate the lack of any other legal remedy. Appellant could challenge his parole revocation by pursuing post-conviction relief. In conclusion, Respondent submits that since Appellant failed to show the co-existence of the four elements listed above, the lower court properly found Appellant was not entitled to a writ of mandamus. Redmond, supra.

**II. Appellant's remaining issues are not preserved for appellate review because they were not ruled upon by the lower court.**

Respondent submits Issues 1 through 6, as set forth in the Initial Brief of Appellant, are not preserved for appellate review and should be dismissed. It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review. Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). Here, the trial court dismissed Appellant's Petition based on a lack of subject matter jurisdiction and his failure to state a claim for which relief could be granted. As a result, none of the issues argued in Appellant's brief were ruled upon by the trial court, and Respondent submits they may not now be raised on appeal.

**CONCLUSION**

THEREFORE, for all of the reasons stated above, this Court concludes that Plaintiff's Petition for Writ of Mandamus must be summarily dismissed with prejudice. This Court does not recommend that the South Carolina Department of Corrections revoke all of Plaintiff's earned work, education, or good conduct credits that have been earned through the date of this decision

Respectfully submitted,

J. Benjamin Aplin  
Chief Legal Counsel

South Carolina Department of  
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(803) 734-9220

BY: \_\_\_\_\_

  
J. Benjamin Aplin  
Chief Legal Counsel

Columbia, South Carolina  
May 31, 2012

THE STATE OF SOUTH CAROLINA  
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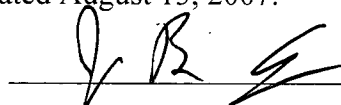
SAMUEL B. GLOVER, DIRECTOR OF THE SOUTH  
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***CERTIFICATE OF COUNSEL***

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The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.



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**J. Benjamin Aplin**  
**Chief Legal Counsel**

May 31, 2012

THE STATE OF SOUTH CAROLINA  
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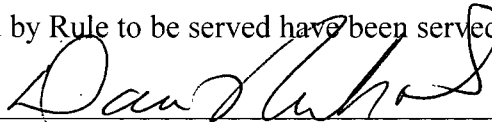
**CERTIFICATE OF SERVICE**

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I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the  
within *Final Brief of Respondent* dated May 31, 2012, on Appellant this 5<sup>th</sup> day of June, 2012, by  
depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Hartford Best, #105214  
Lieber Correctional Institution  
PO Box 205  
Ridgeville, South Carolina 29472-0205

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



**Dawn K. Nichols**  
**Executive Administrative Assistant**

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