THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal From The Administrative Law Court

Honorable Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2019-000607

ANTHONY ENRIQUEZ # 215961 .....APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES .....RESPONDENT.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the ALC violated due process and its own procedural rules when it dismissed Enriquez's appeal for want of jurisdiction solely on the basis of the issues he identified in his notice of appeal, without giving him an opportunity to file an initial brief with a statement of issues?
2. Whether the only appropriate remedy for the ALC's summary dismissal, without first assessing its own jurisdiction, is a remand to give the appellant an opportunity to file a brief and a record?

STATEMENT OF THE CASE

Anthony Enriquez has served twenty-five years in prison for a crime he committed when he was seventeen. Unfiled Agency Record p. 1.[1] During that time, he has matured and taken advantage of opportunities to better himself through education and ministry programs. *Id.* 7–9. Nevertheless, he has been denied parole three times. *Id.* 221–23.

Before his most recent parole hearing on January 23, 2019, Enriquez provided the Parole Board (the Board) with a memo explaining adolescent brain development, the circumstances of his childhood and offense, his subsequent rehabilitation, and his future plans for release. *Id.* 1–10. The memo emphasized that Enriquez's crime was a product of his youth and immaturity and explained that Enriquez has taken full responsibility for his impetuous behavior over two decades prior and (repeatedly) expressed profound remorse for his actions. *Id.* 5–6. As evidence of rehabilitation, Enriquez provided the Board with a risk assessment conducted by a licensed psychiatrist who concluded that Enriquez is "a low risk to violently reoffend and is a viable candidate for parole," *id.* 11, copies of transcripts, certificates, awards, and diplomas he has earned in prison, Unfiled Agency Record pp. 14–44, and letters of support (including a promise of gainful employment) from family and friends. *Id.* 56–66. Enriquez spoke at his parole hearing and described his feelings of remorse and his empathy for the victim's family. Recording of Jan. 23, 2019 Parole Hearing. Enriquez also proffered statements from his family, pastor, psychiatrist, and attorney, who described the ways in which he has been rehabilitated and the kind of man he has become as a mature adult. *Id.*

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[1] Enriquez prepared a record on appeal for his case before the ALC but the ALC dismissed the appeal before he could file it. As is explained in greater detail in Part III *infra*, the fact that there was no record before the ALC means that no portion of the agency record is before this Court. *See* Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."). Because there is no record properly before this Court, there is no way for the Court to assess the merits of Enriquez's case. Enriquez provides this background information for the sole purpose of contextualizing the ALC's dismissal.

In addition to explaining Enriquez's background, the parole memo argued that since he has been incarcerated there has been a sea-change in constitutional juvenile sentencing law that "requires decision-makers to consider the influence of the juvenile offender's youth on the offense and juveniles' innate propensity to change." Unfiled Agency Record pp. 1–2. Specifically, Enriquez asked the Board to consider *Miller v. Alabama*, 567 U.S. 460 (2012), which held that no juvenile can be condemned to die in prison unless he has been given an individualized hearing, similar to a capital sentencing, where the sentencer expressly considers the juvenile's "diminished culpability and heightened capacity for change," and *Montgomery v. Louisiana*, 136 S. Ct. 718, 725, 736–37 (2016), which held that *Miller* announced a new substantive rule of constitutional law and therefore applies retroactively. After *Montgomery*, Enriquez argued, "a lifetime in prison is a disproportionate sentence for all but the rarest of children whose crimes reflect 'irreparable corruption,'" and because he is rehabilitated, he did not fall into that category of the rarest, extraordinary child who deserves to die in prison. *Montgomery*, 136 S. Ct. at 736–37; Unfiled Agency Record pp. 7–9.

Most importantly, Enriquez drew the Board's attention to *Aiken v. Byars*, a seminal case from the South Carolina Supreme Court that undid life-without-parole sentences for all juvenile offenders in South Carolina, ordered new sentencing hearings for offenders serving those sentences, and, consistent with *Miller*, instituted a new, individualized sentencing process for juveniles facing the harshest penalties. 410 S.C. 534, 536–37, 543, 765 S.E.2d 572, 573, 577 (2014). *Miller*, the *Aiken* Court reasoned, "does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.* Accordingly, in South Carolina today, a juvenile facing the charges that Tony faced in 1994 would be entitled to a hearing that carefully considers the factors outlined in *Aiken* and a reasoned opinion affirmatively taking youth into account. *Id.* No sentencing body, administrative agency, or state official in any role has ever

fully explored the relationship between Enriquez's youth at the time of his crime and the severity of the sentence he received.

The Board did not ask any questions or make any comments at Enriquez's 2019 hearing. Recording of Jan. 23, 2019 Parole Hearing. Thirty seconds after the hearing ended, the Board denied parole by a vote of five to one. *Id.* The Board's reasons focused exclusively on factors that will never change: the nature and seriousness of the current offense, an indication of violence in this or previous offense, and the use of a deadly weapon in this or previous offense. Unfiled Agency Record p. 223.

Enriquez appealed his parole denial to the Administrative Law Court (ALC). R. p. 1. The one-page notice stated that Enriquez "*intends to argue* that the Parole Board has unconstitutionally imposed a life without parole sentence on . . . Enriquez, a juvenile at the time of his offense, when it has consistently denied him parole for the past 5 years in spite of a highly favorable institutional record." *Id.* (emphasis added).[2] Enriquez's appeal was assigned on February 27, 2019 to Judge Deborah Brooks Durden. R. p. 2. This started the ninety-day clock for Enriquez to submit his initial brief. SCALC Rule 60(A). However, on March 12, 2019—thirteen days after the case was assigned to her and over two months too early—Judge Durden dismissed Enriquez's appeal. R. pp. 6–7.

The dismissal order relied on the only information before the ALC: a non-jurisdictional statement in the Notice of Appeal and the Board's January 24, 2019 denial notice. The bulk of the single-page order reads as follows:

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[2] Juvenile offenders have filed similar notices of appeal to the ALC following parole denials in other cases, including Enriquez's first appeal. *See, e.g.*, Notice of Appeal at 1, *Buchanan v. S.C. Dep't of Prob., Parole & Pardon Servs.*, No. 18-ALC-15-0039 (Dec. 12, 2018) ("Appellant intends to argue that the Parole Board has unconstitutionally imposed a life without parole sentence on Stewart Buchanan, a juvenile at the time of his offense, when it has consistently denied him parole for the past 35 years in spite of a highly favorable institutional record."). In those cases, however, the presiding ALC judges have complied with the proper procedure and permitted the parties to file briefs and a record on appeal. *See* Brief of Appellant, *Buchanan v. S.C. Dep't of Prob., Parole & Pardon Servs.*, No. 18-ALC-15-0039 (May 14, 2019).

> Appellant filed an appeal with the ALC on February 25, 2019. Appellant *argues* in his appeal that the Department's Board has unconstitutionally imposed a life without parole sentence on him when it has consistently denied him parole for the past five years in spite of a highly favorable institutional record. . . . [T]his Court's authority to review a decision of the Board is limited to determining if the Board followed the proper procedure and considered the relevant factors. If that procedure was followed, any decision of the Board constitutes a routine denial of parole which this Court has no jurisdiction to hear. The Notice of Rejection dated January 24, 2019, states that the parole board considered the relevant factors in reaching its decision. Thus, this is a routine denial of parole, and the ALC has no authority to consider this appeal.

R. p. 6 (emphasis added). Because Judge Durden dismissed the appeal before the filing deadlines expired, the Department of Probation, Parole and Pardon Services (PPP) was not afforded the opportunity to file a record, Enriquez never had an opportunity to file a brief, and no judicial or quasi-judicial body has ever considered any of the evidence that Enriquez put before the Board. This appeal followed.

STANDARD OF REVIEW

This Court's review of a decision from the ALC is confined to the record that was before the ALC, and the Court "may not substitute its judgment for the judgment of the [ALC] as to the weight of evidence on questions of fact." S.C. Code Ann. § 1-23-610(B); Rule 210(c), SCACR. The Court reviews questions of law *de novo* and may "reverse or modify" the ALC's decision "if the substantive rights of the petitioner have been prejudiced" because the ALC's decision violates "constitutional or statutory provisions," was "made upon unlawful procedure," or is "characterized by abuse of discretion or clearly unwarranted exercise of discretion." S.C. Code Ann. § 1-23-610(B); *see also Barton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 404 S.C. 395, 400, 745 S.E.2d 110, 113 (2013).

ARGUMENT

"Subject matter jurisdiction refers to [a court's] power to hear and determine cases of the general class to which the proceedings in question belong." *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004) (internal quotation marks omitted). The ALC is a statutory creation whose

jurisdiction is limited to *de novo* review of "contested cases"[3] and appellate review of certain agency decisions. S.C. Code Ann. § 1-23-320(A); *Al-Shabazz v. State*, 338 S.C. 354, 376, 527 S.E.2d 742, 754 (2000). When the ALC sits in an appellate capacity, its review is confined to the record that was before the agency and some but not all of the SCALC Rules governing contested cases apply. *See Al-Shabazz*, 338 S.C. at 376, 527 S.E.2d at 754; Rule 210(c), SCACR. Specifically, SCALC Rules 9 through 32, which lay out the procedures for a contested, on-the-record evidentiary hearing before the ALC, do not apply when the ALC sits in its appellate capacity. SCALC Rules 33 through 40 and the Special Appeals Rules, which govern the filing of the notice of appeal and briefs, do apply in such circumstances. *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754.[4]

The South Carolina Supreme Court has repeatedly addressed the question of when the ALC has power to decide an inmate's appeal from a decision by PPP or the Department of Corrections. *See, e.g.*, *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 497, 661 S.E.2d 106, 110–11 (2008); *Al-Shabazz*, 338 S.C. at 367–77, 527 S.E.2d at 749–54; *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 441, 586 S.E.2d 124, 126 (2003). Over time, the Court has settled on the rule that the ALC has subject-matter jurisdiction over an agency's final decision that "abrogates an inmate's right to parole eligibility" but not over "a routine denial of parole." *Cooper*, 377 S.C. at 495, 499, 661 S.E.2d at 109, 111. This flows from the precept that "parole is a privilege, not a right," so an inmate's claim that he has been

[3] The legislature has defined that term: "'Contested case' means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." S.C. Code Ann. § 1-23-310(3).

[4] Section V of the SCALC Rules, captioned Special Appeals, "are the exclusive rules of procedure used in appeals from the Department of Corrections and the Department of Probation, Parole and Pardon Services." SCALC Rule 51, 2009 Rev. Notes. Where a Special Appeals Rule does not apply, the general appellate rules (SCALC Rules 33 through 40) apply.

denied parole in the ordinary course must be dismissed as a matter of agency discretion. *See Sullivan*, 355 S.C. at 443, n.4, 586 S.E.2d at 127, n.4.

Thus, when the ALC reviews a parole denial, the first question it must answer is whether the inmate's claim involves a "routine denial of parole" or if, instead, it implicates a statutory or constitutional right. *See Cooper*, 377 S.C. at 499–500, 661 S.E.2d at 111–12. If the claim is routine, the ALC lacks subject-matter jurisdiction and must dismiss it. *Id.* If, however, the claim implicates a statutory or constitutional right—by, for example, alleging that PPP failed to follow procedural rules or violated the inmate's substantive due process rights—the ALC has subject-matter jurisdiction and must address the claim on the merits. *Id.*; *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 279 n.5, 633 S.E.2d 910, 917 n.5 (Ct. App. 2006) (finding that the ALC "improperly dismissed [a prisoner's] appeal" as a routine parole denial where the ALC "had jurisdiction to dismiss the appeal on the merits").

In cases like Enriquez's, the question of the ALC's subject-matter jurisdiction overlaps with the merits: the ALC cannot know if it has jurisdiction without first assessing whether the inmate's claim implicates a liberty interest. *See Skipper*, 370 S.C. at 279 n.5, 633 S.E.2d at 917 n.5. This case, then, boils down to whether the statement of issues in the notice of appeal—the sole filing before the ALC when it dismissed Enriquez's appeal—is a sufficient basis from which the ALC can assess its own jurisdiction. For the reasons that follow, the answer is no.

I. The ALC's dismissal for want of jurisdiction, based solely on its assessment of Enriquez's notice of appeal rather than a formal statement of issues, violated the procedural rules applicable to the ALC and minimum due process requirements.

Administrative agencies and the quasi-judicial bodies that review agency actions must follow their own rules and regulations. *See Triska v. Dep't of Health and Envtl. Control*, 292 S.C. 190, 194, 355 S.E.2d 531, 533 (1987). Although an agency's failure to follow its own rules does not automatically require a reversal, an agency must give "sound reasons for deviating from a rule" and "a court will look very closely

at the reasons and will hold the agency to very high standards in justifying the deviation." Charles Alan Wright, Charles H. Koch, Jr., & Richard Murphy, 32 Fed. Prac. & Proc. § 8165 (1st ed. 2019); *see also Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision)*, 332 S.C. 551, 562, 505 S.E.2d 598, 603 (Ct. App. 1998), *overruled on other grounds by Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 560 S.E.2d 410 (2002). Moreover, the SCALC's promulgating statute makes the Rules mandatory, meaning the ALC's failure to apply them is a statutory violation: "All hearings before an administrative law judge must be conducted exclusively in accordance with the rules of procedure promulgated by the court pursuant to this section." S.C. Code Ann. § 1-23-650(C); SCALC Rule 1 ("The promulgation of these Rules is authorized by [§ 1-23-650]. These Rules shall govern all proceedings before the Administrative Law Court . . . [and] apply exclusively in all proceedings before the Administrative Law Court.").

Here, the ALC failed to comply with the express terms of the SCALC Rules by dismissing Enriquez's case on the basis of the notice of appeal alone. Specifically, the ALC violated its own Rules by: not giving Enriquez an opportunity to file an initial brief; not giving Enriquez an opportunity to amend, supplement, or modify the statement of issues on appeal in his initial brief; and not giving PPP or Enriquez an opportunity to file a record on appeal. *See* SCALC Rules 51, 59–61.

A. The SCALC Rules require the ALC to give the party seeking review an opportunity to file a statement of issues on appeal in an initial brief.

SCALC Rule 59 contemplates that the notice of appeal will act as a non-substantive place-holder, not as a jurisdictional gatekeeper. It requires the appellant to include in the notice "a brief factual basis for each expressly and specifically asserted constitutional violation." SCALC Rule 59(B); *see also* SCALC Rule 33(B) (notice of appeal must include "a general statement of the grounds for appeal" but "[t]he grounds for appeal may be amended, supplemented or modified in the statement of issues in the brief required by Rule 37(B)(1)"). This explicit statement about the role of the notice of appeal is reinforced by

the fact that Rule 59's other requirements are non-substantive. SCALC Rule 59 (requiring inmate contact information, a copy of the final decision, and proof of service). Perhaps most telling is that the Rules contain a procedure other than dismissal for remedying a notice of appeal that does not contain the necessary information—the case is not assigned to a judge: "Notices which are not in compliance with [the Rules] will not be assigned to an administrative law judge until all required information and applicable fees are received." SCALC Rule 59, 2014 Rev. Notes.

Rule 60(B), which governs the content of briefs filed with the ALC in its appellate capacity, confirms an understanding of the notice of appeal as a non-jurisdictional placeholder. *See* SCALC Rule 60(B)(1). The Rule provides that the appellant's brief must contain a statement of issues on appeal that is "concise and direct as to each issue and may be stated in question form." *Id.* Consistent with Rule 59's role as a place-keeper, Rule 60(B)(1) clearly governs the jurisdictional, substantive statement of issues: "no point will be considered that is not set forth in the statement of issues on appeal." *Id.* Moreover, the Rule is mandatory in that it requires the appellant to file a brief within the time period (ninety days from case assignment) or risk dismissal. SCALC Rules 60(A), 62. While a party's failure to timely file a brief may constitute waiver, the ALC's refusal to accept a brief violates the SCALC Rules. *Cf.* SCALC Rule 62 (providing for dismissal of appeal for failure to comply with the Rules).

Finally, the ALC's dismissal violated Rules 36, 58, and 61 which govern the filing of a record on appeal. Rule 36 provides that "the agency with possession of the Record shall file an original and one (1) electronic copy of the Record with the Court and serve one (1) copy on each party to the appeal" within forty-five days of the date of notice of assignment to an administrative law judge. SCALC Rule 36(A). The notes explain that this requirement applies to all agencies "other than the Department of Employment and Workforce" and that the rule "ensures that the agency must file the record only after the appellant has perfected the appeal by filing the notice of appeal and submitting the appropriate filing fee." SCALC Rule

36, 2014 Rev. Notes. Rule 58 (made applicable to appeals from the PPP by Rule 61) outlines the contents of the record on appeal, which must include "[a]ll documents filed" and "[a]ll evidence considered." SCALC Rules 58(A), (B), 61.

Here, the ALC dismissed Enriquez's case thirteen days after assignment—more than two months before PPP's time to file the record ran out, SCALC Rule 59, and nearly three months before the time for Enriquez to file his initial brief and jurisdictional statement of issues expired, SCALC Rule 60(A). When the ALC sits in its appellate capacity, SCALC Rules 36 and 51 through 66 apply. Those rules require the ALC to give the appellant an opportunity to file a brief and the agency an opportunity to file the record. By dismissing Enriquez's case on the basis of a document intended only to stop the running of the clock, the ALC violated its own rules and Enriquez is therefore entitled to a remand.

B. Minimum due process requirements prohibit the ALC from dismissing a case without assessing its own jurisdiction.

The constitutional requirements of due process encompass notice, an opportunity to be heard in a meaningful way, and judicial review. U.S. Const. amend. XIV; S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health & Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). "The constitutional right to be heard is a basic aspect of the duty of the government to follow a fair process of decisionmaking." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). "[T]he fair process of decision making that [notice and an opportunity to be heard] guarantee[] works, by itself, to protect against arbitrary [decisions]." *Id.* at 81. "It has long been recognized that 'fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . . And no better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.'" *Id.* (cleaned up).

When a statutory or regulatory scheme gives notice in the form of an express time limitation, the party subject to the deadline must be made aware of it in advance. *See Link v. Wabash R. Co.*, 370 U.S.

626, 632–33 (1962) (except in circumstances of a failure to prosecute, dismissal of a complaint without notice generally violates due process). What constitutes appropriate notice therefore depends on "the knowledge which the circumstances show such party may be taken to have of the consequences of his own conduct." *Id.*; *see also Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 63, 492 S.E.2d 62, 69 (1997) (finding proper notice when the appellant was "fully and fairly apprised of the matters asserted in such time and manner so as to be able to meaningfully respond at the hearing"). Where a party is wholly unaware of a deadline, or when an agency or quasi-judicial body applies an unannounced deadline, the party receives insufficient notice. *See Link*, 370 U.S. at 632–33.

Thus, a party cannot be said to have had notice where a judge dismisses a case two months before the time to file has run; the party seeking review in such a case has no advance knowledge that failure to act ahead of the deadline might affect his rights. *Cf. id.* at 633–34. And no party can be said to have received a "meaningful opportunity to be heard" if the decision-maker never receives any information relevant to the legal decision before it. *See Thompson v. State*, 415 S.C. 560, 566, 785 S.E.2d 189, 192 (2016); *S.C. Dep't of Social Servs. ex rel Texas v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849–50 (1995). To the contrary; a decision based on no information is, by its nature, arbitrary. *See Fuentes*, 407 U.S. at 87 (holding that states violated due process and issued arbitrary decisions by not providing pre-seizure hearings on prejudgment writs of replevin).

This case is a textbook example of a due process violation. Enriquez filed a non-jurisdictional notice to perfect his appeal and preserve his rights under the SCALC Rules and the corresponding statutes. R. p. 1. PPP had seventy days to file a record, and Enriquez had ninety days to file his brief with, potentially, an amended statement of the issues on appeal. That is the process provided for under the ALC's governing statutes and required by the state and federal constitutions. Enriquez never got the benefit of that process because without warning, the ALC dismissed his appeal over two months before

the time to file expired and before it had before it any substantive information about the appeal. Its reason for dismissal—the argument it assumed Enriquez might make would constitute a routine parole denial—is unsupported because Enriquez never formally told the ALC what his appeal involved; the court dismissed his case before he had an opportunity to invoke its jurisdiction.[5]

II. The only appropriate remedy is to reverse the dismissal and remand to the ALC to give Enriquez an opportunity to invoke the ALC's jurisdiction in a formal statement of issues in his initial brief.

This Court by statute has only three remedial options: "affirm the decision of the agency"; "remand the case for further proceedings" where there is a question as to the weight of evidence; or "reverse or modify the decision" where the appellant's "substantial rights" are prejudiced because the ALC's decision is "made upon unlawful procedure," "affected by [an] error of law," or is "arbitrary and capricious or characterized by abuse of discretion." S.C. Code Ann. § 1-23-380(5); *see also id.* § 1-23-380(4) ("In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for actions as the court considers appropriate."). Here, the only plausible option is to reverse the ALC's dismissal and remand to give Enriquez the opportunity to file a record and a brief on the merits.

First, this court may not consider a "matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR. "For this court to evaluate the merits of a disputed issue," it must have before it "a sufficient record pertaining to that issue; otherwise there is nothing for this court to review." *Schultze v. Schultze*, 403 S.C. 1, 8, 741 S.E.2d 593, 597 (Ct. App. 2013) (internal quotation marks omitted). There is

[5] If this Court were to endorse what the ALC did here, it would create a perverse incentive for putative parolees to include inaccurate information in their notices of appeal in order to clear the jurisdictional hurdle. If the notice becomes a substantive bar, inmates appealing parole denials will simply claim in their notices that their appeals do not involve routine parole denials—even if they in fact are routine parole denials. The better practice (and the one mandated by existing law) is to use the notice of appeal as a placeholder that clues the ALC into the general nature of the appeal and allow inmates to file substantive briefs that include binding statements of the issues on appeal.

no record in this case because the ALC dismissed the appeal before PPP filed one and the only thing that was before the lower tribunal was the notice of appeal. Accordingly, "there is nothing for this court to review," and the only way to create a record sufficient for intelligent appellate review is to remand the case to the ALC. *See id.*

Second, the ALC's determination that this was a routine denial of parole is unsupported because there was no record and therefore insufficient argument or evidence for it to render a decision as to its subject-matter jurisdiction. This Court is no better equipped than the ALC to determine the jurisdictional question on the basis of the notice of appeal alone. Enriquez, simply put, is entitled to file a brief on the merits. The dismissal without process was an "unlawful procedure" that resulted in an "arbitrary" decision, and because this Court cannot create a record, the only way to correct the error is to remand for further proceedings. S.C. Code Ann. § 1-23-380(5).

Third, the sole question on appeal is a pure question of law: whether the notice of appeal is an appropriate vehicle for the ALC to decide its own jurisdiction. By dismissing Enriquez's case, the ALC erroneously answered that question in the affirmative. The ALC's premature dismissal affected Enriquez's "substantial rights" by cutting off his access to an appeal. Because no tribunal has ever ruled on the merits of Enriquez's claim the Court must remand to the ALC for an opportunity to resolve this case on the merits.

CONCLUSION

For the reasons described above, the Court should reverse the ALC's dismissal and remand to give Enriquez an opportunity to put before the ALC a complete record and an initial brief on the merits.

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