

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

OCT 24 2022

**SC Court of Appeals**

---

Appeal from the Administrative Law Court  
The Honorable Ralph K. Anderson III, Chief Administrative Law Judge  
Docket Number 22-ALJ-15-0004-AP

---

Appellate Case No.: 2022-000965

---

JOSEPH KELSEY, #217218.....APPELLANT

v.

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

---

**MOTION TO STRIKE BRIEF  
OF APPELLANT AND DISMISS**

---

**Matthew C. Buchanan, #73740  
General Counsel**

**South Carolina Department of Probation,  
Parole and Pardon Services  
P.O. Box 207  
Columbia, South Carolina 20202  
(803) 734-9220**

**ATTORNEY FOR RESPONDENT**

Now comes Respondent, through its counsel and pursuant to Rule 240, SCACR, respectfully requesting this Court strike appellant's brief in its entirety and dismiss Appellant's appeal for failure to present or argue any issues which are preserved for appellate review.

Appellant's appeal in the Administrative Law Court (ALC) was dismissed solely on the procedural basis that he failed to file a brief. As a result, any appeal from the dismissal is limited to challenging that procedural basis, and may not include an attempt to appeal or bootstrap substantive issues which were never raised to and ruled upon by the ALC. Furthermore, by failing to now present or argue any challenge to the procedural dismissal by the ALC, that ruling is now the law of the case. ML-Lee Acquisition Fund, L.P., v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling, right or wrong, becomes the law of the case); State v. Brewton, 437 S.C. 44, 60, 876 S.E.2d 141, 150 (Ct. App. 2022).

It is undisputed that Appellant did not file a brief as part of his appeal before the Administrative Law Court. SCALC Rule 60(A) clearly states that "the party first noticing the appeal shall file an original brief within ninety (90) days after the date of assignment." Instead of filing a brief, Appellant made a motion to supplement the record and then filed a "motion to compel respondent to complete the record on appeal." Both motions were denied by the Honorable Ralph K. Anderson, III. Respondent then filed a motion to dismiss, pursuant to Rule 60(A), specifically because Appellant failed to file a brief and generally because the ALC lacked the authority to hear an appeal from an otherwise parole-eligible inmate, pursuant to S.C. Code § 1-23-600(D).<sup>1</sup>

---

<sup>1</sup> Respondent submits that while it would have also been proper for the ALC to have dismissed the appeal for lack of jurisdiction pursuant to § 1-23-600(D), and reserves that argument for future briefing if this Court denies this Motion to Dismiss, the ALC solely dismissed the matter for failure to file a timely brief under SCALC Rule 60(A).

In his reply to Respondent's motion to dismiss, Appellant stated that he had presumed the ALC's denial of his motion to supplement the record was tantamount to a dismissal and requested a final order from which he could appeal. See Appellant's Reply to Respondent's Motion to Dismiss. Notably, there was no attempt by Appellant to comply with the rules of the ALC and file a brief, even belatedly. See July 8, 2022 Order, P. 4, n. 3.

Consequently, Judge Anderson dismissed the appeal pursuant to SCALC Rule 62, which states the judge may dismiss an appeal for failing to follow the rules of procedure. He specifically dismissed the matter finding Appellant violated SCALC Rule 60(A) by not timely filing a brief.

Quite simply, this Court should find Appellant's procedural shortcomings dispositive and no further analysis should be necessary. Failing to brief one's appeal is fatal to the case because it leaves the court without an argument upon which to rule. No issues were preserved for review by this Court because no issues were raised below.

Notably, Appellant's brief in the instant appeal does not allege Judge Anderson dismissed the appeal in error or abused his discretion found within SCALC Rule 62. Appellant's reasons for failing to file a brief are couched entirely within Judge Anderson's denial of his motion to supplement the record. Appellant claims that it would be "frivolous (and pointless)" to file a brief. Appellant's Brief, p. 13. Yet, filing a brief is not an optional rule of the ALC. Rule 60 states that the parties **shall** file briefs which include a statement of the issues presented, a statement of the case, arguments, and conclusions. Following the rules of the court is fundamental, not frivolous.

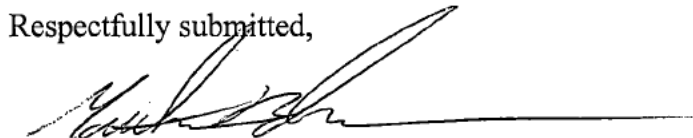
Without setting forth issues, arguments, and conclusions at the lower court level, Appellant has preserved no issues for this Court to consider. "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge." Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011), citing Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731,

733 (1998). This rule applies to constitutional arguments, State v. Langford, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (2012), as well as appeals from state agencies. DuRant v. S.C. Dept. of Health and Environmental Control, 361 S.C. 416, 424-25, 604 S.E.2d 704709 (Ct. App. 2004).

Consequently, all the points raised in Appellant’s brief should be stricken and the appeal should be summarily dismissed. It is clear error for an appellate court to consider an issue not preserved for review. *See* Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 464 S.E.2d 112 (1995) (“Since the issue...was not preserved for review, it should not have been addressed.”).

Respondent respectfully submits that this Court should strike the brief of appellant and dismiss this Appeal. Appellant offered no argument that the ALC erred in dismissing the appeal for failure to file a brief; therefore, that ruling is the law of the case. Without a brief filed in the lower court, no issues are preserved for this Court to review. Appellant’s brief must therefore be stricken in its entirety, and this appeal must therefore be dismissed with prejudice.

Respectfully submitted,



**Matthew C. Buchanan**  
**General Counsel**

South Carolina Department of Probation,  
Parole and Pardon Services  
P.O. Box 293  
Columbia, South Carolina 29202  
(803) 734-9220

Columbia, South Carolina  
October 19, 2022

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

OCT 24 2022

**SC Court of Appeals**

Appeal from the Administrative Law Court  
The Honorable Ralph K. Anderson III, Chief Administrative Law Judge  
Docket Number 22-ALJ-15-0004-AP

Appellate Case No.: 2022-000965

JOSEPH KELSEY, #217218.....APPELLANT

v.

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

**CERTIFICATE OF SERVICE**

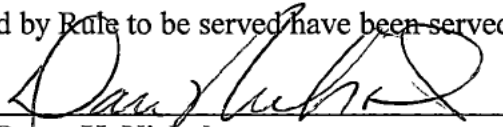
I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within *Motion to Strike Brief of Appellant and Dismiss* dated October 19, 2022, on Respondent this 19<sup>th</sup> day of October, 2022, by depositing a copy of the same in the United States mail, postage prepaid, addressed to

Allison Franz, #105189  
Hannah Freedman, #103373  
Justice 360  
900 Elmwood Ave., Suite 200  
Columbia, S.C. 29201

John H. Blume, #747  
Cornell Law School  
159 Charles Evans Hughes Hall  
Ithaca, NY 14853

Jon Ozmint, #7107  
The Ozmint Law Firm  
PO Box 17554  
Greenville, S.C. 29606

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



**Dawn K. Nichols**  
**Executive Assistant**  
South Carolina Department of Probation,  
Parole, and Pardon Services  
P. O. Box 207  
Columbia, South Carolina 29202

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

HENRY McMASTER  
Governor



JERRY B. ADGER  
Director

293 GREYSTONE BLVD  
POST OFFICE BOX 207  
COLUMBIA, SOUTH CAROLINA 29202  
Telephone: (803) 734-9220  
Facsimile: (803) 734-9440  
www.state.sc.us/ppp

**RECEIVED**  
OCT 24 2022  
SC Court of Appeals

October 19, 2022

The Honorable Jenny Kitchings  
Clerk of the S.C. Court of Appeals  
P. O. Box 11629  
Columbia, South Carolina 29211


**RE: Joseph Kelsey, #217218 v. SCDPPPS**  
Case No.: 22-000965

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent's *Motion to Strike Brief of Appellant and Dismiss* in the above referenced matter, along with proof of service.

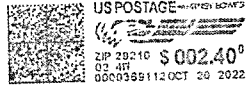
Thank you for your assistance in this matter.

Sincerely,

  
Matthew C. Buchanan  
General Counsel

MCB:dn  
Enclosures

cc: Allison Franz, Esquire  
Hannah Freeman, Esquire  
John Blume, Esquire  
Jon Ozmint, Esquire



State of South Carolina  
Department of Probation, Parole, and Pardon Services  
283 GREYSTONE BOULEVARD, POST OFFICE BOX 207  
COLUMBIA, SOUTH CAROLINA 29202

**RECEIVED**

OCT 24 2022

SC Court of Appeals

The Honorable Jenny Kitchings  
Clerk of the S.C. Court of Appeals  
P. O. Box 11629  
Columbia, South Carolina 29211