STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPELLATE CASE NO: 2013-000480

APPEAL FROM THE ADMINISTRATIVE LAW COURT
HONORABLE RALPH KING ANDERSON, III

APPEAL FROM FINAL DECISION OF THE
DEPT OF PROBATION PAROLE AND PARDONS
12-ALC-15-0002-AP

CURTIS RICHARDSON — APPELLANT

VS

SCDPPPS — RESPONDENT

PROOF OF SERVICE

THIS IS CERTIFICATION THAT I SERVE RECORD ON APPEAL ON THE FOLLOWING PARTIES BY PLACING A COPY OF SAME IN THE U.S MAIL POSTAGE PREPAID ADDRESSED:

TOMMY EVANS
SCDPPPS
2221 DEVINE ST
COLUMBIA SC
29250

s/ Curtis Richardson
MAY 30, 2013

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Curtis Dale Richardson, #269166 Petitioner, v. South Carolina Department of Probation, Pardon and Parole, Respondent.	Docket No. 13-ALJ-15-0002-AP **ORDER**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Curtis Dale Richardson (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). On January 23, 2013, Appellant filed a Notice of Appeal with this Court.

BACKGROUND

Appellant received a letter from legal counsel for South Carolina Department of Probation, Parole and Pardon Services (PPPS) dated December 7, 2012, informing Appellant that he was scheduled for parole consideration on February 27, 2013. In his Notice of Appeal, Appellant asserts that his parole hearing should have been in June 2012 and that by scheduling his parole hearing in February 2013, PPPS denied him a hearing and eligibility in addition to extending his hearing date for nine (9) months.

DISCUSSION

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) and Furtick v. S.C. Dep't of Probation, Parole and Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003). The Court is authorized to dismiss inmate appeals that do not implicate a state-created liberty or property interest. See 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).

The U.S. Supreme Court has held that "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 7 (1979). In other words, "given a valid

conviction, the criminal defendant has been constitutionally deprived of his liberty." Meachum v. Fano, 427 U.S. 215, 224 (1976). Thus, if Appellant has a liberty interest in parole, then it must emanate from state law. See Ellis v. District of Columbia, 84 F.3d 1413, 1415 (D.C. Cir. 1996).

Moreover, before seeking review of a decision by PPPS, an appellant is required to exhaust his administrative remedies prior to filing an appeal. Steele v. Benjamin, 362 S.C. 66, 606 S.E.2d 499 (Ct. App. 2004). S.C. Code Ann. § 1-23-380 (Supp. 2012) ("A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1."). Here, there is no evidence in this matter that the Appellant allowed PPPS to hear his request for parole before filing his appeal. In fact, Appellant admits in his Notice of Appeal that PPPS will not hear his request for parole until February 2013.

The letter from PPPS dated December 7, 2012 is not a final decision. Appellant, therefore, has not exhausted his administrative remedies prior to filing this appeal, so this matter must be dismissed. Ward v. State, 343 S.C. 14, 538 S.E.2d 245 (2000) ("The failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction.").

IT IS THEREFORE ORDERED that this matter is DISMISSED.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

January 31, 2013
Columbia, South Carolina

ARGUMENTS

1. THE DEPARTMENT DID NOT VIOLATE THE EX POST FACTO CLAUSE.

The Ex Post Facto Clauses of the United States Constitution and the State of South Carolina Constitutions only apply to the retroactive application of laws passed subsequent to the commission of an offense. U.S. Const. art. I, § 10; S.C. Const. art. I, § 4.

In the Appellant's case, the offense was committed on January 23, 2010. While the Crime Reduction and Sentencing Reform Act of 2010 did pass later that year, which amended numerous drug offense penalties and collateral consequences, the Act did not change for the worse the parole eligibility for the Appellant's offense. S.C. Code Ann. 44-53-370(b)(2).

Appellant's brief alleges that the Respondents changed his classification to violent and not parole eligible. That classification comes from the South Carolina Department of Corrections, not the Department of Probation, Parole and Pardon Services. When the error was found, it was corrected and Appellant received his parole hearing in February.

Lastly, the Appellant's assertion that the ex post facto clauses were violated falls short of meeting the definition of ex post facto, because the Appellant is not claiming that he was adversely affected by a change in the law, but in an erroneous classification by the Department of Corrections. State v. Walls, 348 S.C. 26, 558 S.E.2d 524 (2002), sets forth the two conditions for a law to be considered ex post facto:

> For a law to fall within *ex post facto* prohibitions, two critical elements must be present. First, the law must be retroactive so as to apply to events occurring before its enactment. Second, the law must disadvantage the offender affected by it.

Id. at 30, 525.

Before applying the critical elements, the courts must have a law in question. Therefore,