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**Dec 29 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Administrative Law Judge Shirley C. Robinson

ALC Case No. 22-ALJ-04-047-AP  
Appellate Case No. 2023-001786

Genuine T. Banner, #375165.....Appellant,

v.

South Carolina Department of Corrections .....Respondent.

**RESPONDENT’S MOTION TO DISMISS**

This case should be dismissed because Appellant failed to timely perfect his appeal and therefore this Court lacks jurisdiction over this appeal. The South Carolina Code specifically provides:

(A)(1) For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. ...

S.C. Code Ann. 1-23-610 (A) (1).

Timely filing and service of a notice of appeal is a jurisdictional requirement and this Court does not have authority to extend or expand the time for filing such an appeal. *See Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985); *Southbridge Properties, Inc. v.*

*Jones*, 292 S.C. 198, 199, 355 S.E.2d 535, 536 (1987); *Miller v. State*, 269 S.C. 113, 236 S.E.2d 422 (1997).

Here, the Notice of Appeal was received by this Court on November 15, 2023, and the envelope shows that Appellant placed the Notice of Appeal in the institutional mailroom on November 13, 2023. *See* Notice of Appeal. Administrative Law Judge Shirley Robinson signed the order being appealed on November 3, 2022, more than a year before this appeal was filed. *See* Order Dated November 3, 2022. Appellant had to file and serve the notice of appeal within thirty (30) days after receipt of the order of the administrative law judge. *See* S.C. Code Ann. 1-23-610 (A)(1). Significantly, Appellant specifically acknowledges in his Notice of Appeal that the time to appeal expired. *See* Notice of Appeal. The notice of appeal is plainly untimely and therefore this case should be dismissed.

Based upon the foregoing, Respondent respectfully requests that this Court dismiss the appeal for lack of jurisdiction. Respondent also asks that this Court hold the time period for any filings in abeyance pending resolution of this motion.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

BY: 

**Joseph R. Shakibanasab**  
Deputy General Counsel  
Office of General Counsel  
S.C. Department of Corrections  
Post Office Box 21787  
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Phone: (803) 896-1278

December 29, 2023

**ATTORNEY FOR RESPONDENT**

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**PROOF OF SERVICE**

The undersigned counsel hereby certifies that on today's date he mailed a copy of the **Respondent's Motion to Dismiss** to Appellant, addressed as follows: Genuine Truth Banner, #375165, Dorm-Room-Bunk: SB-0218-A, Broad River Secure Facility, 4460 Broad River Road, Columbia, SC 29210.

**Joseph R. Shakibanasab, SC Bar No. 102825**  
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December 29, 2023

*Counsel for Respondent*



**SOUTH CAROLINA**  
DEPARTMENT OF CORRECTIONS  
*Safety, Service, and Stewardship*

HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

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**SC Court of Appeals**

OFFICE OF GENERAL COUNSEL

December 29, 2023

*Via Email to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)*

The Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

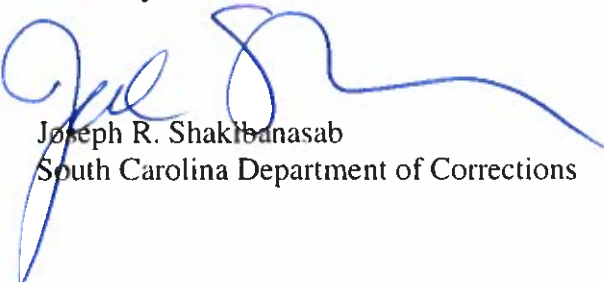
**RE: Genuine T. Banner, #375165 v. South Carolina Department of Corrections**  
**Appellate Case No. 2023-001786**

Dear Ms. Kitchings:

Enclosed, please find the **Respondent's Motion to Dismiss** in the above captioned appeal, along with the **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,



Joseph R. Shakibanab  
South Carolina Department of Corrections

Enclosures

cc: Inmate Genuine Truth Banner, #375165