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**JAN 12 2024**

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**S.C. SUPREME COURT**

Robert Foster, #194085,

Docket No. 23-ALJ-04-0367-AP

Appellant,

**ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS**

vs.

South Carolina Department of Corrections,

Respondent.

**STATEMENT OF THE CASE**

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Robert Foster (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (SCDC or the Department).

Appellant filed a Step 1 Grievance on June 14, 2023. Appellant contended that charges against him had been expunged and that an indictment for a charge of taking hostages while in prison had been dismissed. Appellant claimed that, given this absence of a criminal conviction against him, he should not be held. He demanded to be released by the Department and for criminal charges to be brought against several public officials. The Warden reviewed the matter and denied it on June 27, 2023, after confirming a valid sentence for possession with intent to distribute. Appellant received the Warden's decision on the same day.

Appellant submitted a Step 2 Grievance on June 29, 2023. In his grievance, Appellant stated:

I am challenging the Warden decision in the first step grievance. I present evidence of my Affidavit K-285779 was dismissed on after May 22, 2008 ... Sept 26, 2008. I have been held in SCDC (24-13-450) Hostage. Every legal documents attach to this Grievance clearly support my arguments that I'm being held without a charge or conviction. Why have I not being release. If further proof needed produce contact me. K-285779 Jan 31, 2020 And Expungement was filed Oct 09, 2020. [sic]



The Responsible Official denied Appellant's Step 2 Grievance on August 9, 2023, and the response provided was seemingly unrelated to the concerns raised by the Appellant.<sup>1</sup> Appellant represents he received the decision on September 14, 2023.

On September 15, 2023, Appellant filed his Notice of Appeal with the Court. In his Notice of Appeal, Appellant stated:

Is clear that the Warden does not know what he is talking about concerning this DUI .... which I don't have a DUI charge or arrest. This Grievance was filed concerning my criminal charge and arrest K-285779. On Oct 03, 2007, which the 7<sup>th</sup> Judicial Circuit office did in fact dismiss affidavit K-285779 on Sept 26, 2008. My Question is "why" have I not been release. It clear that the 7<sup>th</sup> Judicial Circuit Solicitor office failed to present any evidence to the Grand Jury (2007-GS-42-6029) was dismiss on 10/5/2007 (PWDI) and (2008-GS-42-2261) is related to the same Affidavit K-285779 after 119 dys later from May 22, 2008. See Warden Decision Step 1. [sic]

This matter was assigned to the undersigned on October 9, 2023.

On December 19, 2023, the Department filed a Motion to Dismiss, arguing the Court should dismiss this appeal on the basis that Appellant's request for release may only be made under the Uniform Post-Conviction Procedures Act, thereby depriving the Court of jurisdiction. Specifically, the Department points to section 17-27-20(A)(5) (2014) which provides "[a]ny person who has been convicted of, or sentenced for, a crime and who claims: ... (5)[t]hat his sentence has expired, ... or he is otherwise unlawfully held in custody or other restraint ... may institute, ..., a proceeding under this chapter to secure relief." Additionally, the Department highlights that the Act provides in part: "it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them." S.C. Code Ann. § 17-27-20(B).

On December 20, 2023, Appellant filed a document which the Court construes as Appellant's initial brief. While the cover letter to the Court refers to the document as a "Notice of Appeal," the document contains a Statement of The Case, Argument, and Conclusion, which are

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<sup>1</sup> The Department, in its Motion to Dismiss, provided a footnote explaining "there was an error in the Step Two response, as the response is related to a separate inmate's grievance."

typical sections of an appellate brief. The body of Appellant's filing touches on issues raised in the Step 2 Grievance but also raises new claims not addressed below.<sup>2</sup>

As of the date of this order, the Court has received nothing else from Appellant and the time period for responding to the motion to dismiss has now passed.

### DISCUSSION

The Court generally has jurisdiction to hear inmate appeals that have been properly filed and served. *See* S.C. Code Ann. § 1-23-600(D); *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 170, 886 S.E.2d 671, 674 (2023) ("[T]he ALC has subject matter jurisdiction over inmate grievance appeals that have been properly filed."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331 605 S.E.2d 506, 507 (2004); *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). However, the Court is obligated to dismiss an appeal if jurisdiction is otherwise lacking. *See Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 380, 762 S.E.2d 44, 47 (Ct. App. 2014) (stating the appealability of an order can be raised at any time); *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 571, 698 S.E.2d 856, 858 (Ct. App. 2010) ("An appellate court may determine the question of appealability of a decision from a [trial] court as a matter of law."); 4 C.J.S. Appeal and Error § 84 (Aug 2023 Update) ("An appellate court has the duty to determine the question of its and the lower court's jurisdiction on its own motion, and dismiss an appeal if jurisdiction is lacking, even when the parties do not raise the issue.").

Presently, the Department urges the Court to dismiss this appeal for lack of jurisdiction over the Appellant's request to be released. The Department argues that Appellant's claim falls exclusively within the realm of Post Conviction Relief ("PCR") proceedings. Section 17-27-20(A) addresses the type of claims which may be raised in a PCR proceeding. It correctly notes that if a claim fits within one of the categories of claims enumerated in section 17-27-20(A), then PCR proceedings provide the exclusive remedy for that claim. S.C. Code Ann. § 17-27-20(B); *Carpenter v. S.C. Dep't of Corr.*, 431 S.C. 512, 526, 848 S.E.2d 346, 349 (Ct. App. 2020).

The Department contends that Appellant's claim fits within section 17-27-20(A)(5), which provides that PCR proceedings are available for a person who claims that "his sentence has

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<sup>2</sup> Other factors also cut against construing the filing as a response to the Department's motion. For example, the filing does not mention or refer to the Department's motion to dismiss. Additionally, the Department's motion was mailed on December 18, 2023. Appellant's filing was mailed December 19, 2023. While possible, it is unlikely that Appellant would have received and been able to respond to a motion on December 19, 2023 when the motion itself was first mailed on December 18, 2023.

expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint” S.C. Code Ann. § 17-27-20(A)(5). Appellant’s core claim manifest in the Step 1 Grievance, Step 2 Grievance, Notice of Appeal, and even the December 20, 2023 filing, is that he should be released because there is no conviction of record against him. The Court construes this claim as one that Appellant is “otherwise unlawfully held in custody.”

The claim is therefore covered by the Uniform Post Conviction Relief Proceedings Act.<sup>3</sup> The Department is correct that pursuant to the Uniform Post-Conviction Procedures Act, this Court has no authority to entertain Appellant’s appeal of a sentencing or incarceration error. Appellant may pursue his desired relief through other avenues provided by law, but this Court is obligated to dismiss this appeal.

**ORDER**

**IT IS THEREFORE ORDERED** that the Department's motion to dismiss is **GRANTED** and this matter is **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**



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The Honorable Robert L. Reibold  
Administrative Law Judge

January 5, 2024  
Columbia, South Carolina

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<sup>3</sup> Appellant’s claim also fits within section 17-27-20(A)(1), which provides that PCR proceedings are available for a person who claims that his conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State.”

CERTIFICATE OF SERVICE

I, George Cox Beighley, Junior, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



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George Cox Beighley, Junior  
Judicial Staff Attorney

January 5, 2024  
Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF Spartanburg )

IN THE COURT OF GENERAL SESSIONS  
ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA )  
v. )  
Robert Lee Foster )  
Defendant )  
AKA )

Race Black Sex Male Age 55  
DOB 02/01/1965 SSN 251-25-0470

SID # SC00408833 FBI-983586CA3

Charges were disposed of in the court indicated below:

Magistrate  Municipal  General Sessions

IT APPEARS that the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed or sealed according to the applicable section of the South Carolina Code of Laws indicated below:

K285779

Warrant/GS No. 2007-GS-42-06029 Date of Arrest 10/04/2007 Place of Arrest Spartanburg (PD) County, S.C.

Arrest Charge Trafficking Ice, Crank, Crack >10G but <28 G - 1st

<input checked="" type="checkbox"/>	§ 17-1-40. The charge was dismissed, <i>nolle prossed</i> , or the defendant was found not guilty on <u>09/26/2008</u> .
<input type="checkbox"/>	§ 22-5-910. The defendant was convicted of an offense in magistrate, municipal or general sessions court for a crime carrying a penalty of not more than 30 days imprisonment or a fine of \$1,000, or both, on _____, that offense did not involve an offense involving the operation of a motor vehicle, and no additional criminal conviction as defined by §22-5-910 has taken place within three years from date of conviction or five years from the date of conviction for first offense criminal domestic violence (conduct occurring prior to June 4, 2015) or third degree domestic violence under §16-25-20. ( <i>Summary court judge must attest to eligibility if disposed of in that court.</i> )
<input type="checkbox"/>	§ 22-5-920. The defendant was convicted of a first offense as a youthful offender on _____, that offense did not involve the exceptions enumerated in § 22-5-920, and no additional criminal conviction as defined by §22-5-920 has taken place during a five-year period following completion of his sentence, including probation and parole as a youthful offender. The sentence was completed on _____.
<input type="checkbox"/>	§ 22-5-930(A). The defendant was convicted of a first offense simple possession of a controlled substance under Article 3, Chapter 53, Title 44 or unlawful possession of a prescription drug under Section 40-43-86 (EE) on _____ and no additional convictions, to include out-of-state convictions, have taken place during a three-year period following completion of his sentence, including probation and parole. The sentence was completed on _____.
<input type="checkbox"/>	§ 22-5-930(B). The defendant was convicted of a first offense possession with intent to distribute a controlled substance under Article 3, Chapter 53, Title 44 on _____ and no additional convictions, to include out-of-state convictions, have taken place during a twenty-year period following completion of his sentence, including probation and parole. The sentence was completed on _____.
<input type="checkbox"/>	§ 34-11-90(e). The defendant was convicted of a first offense misdemeanor under the fraudulent check law on _____ and no additional criminal conviction as defined by §34-11-90(e) has taken place in one year from date of conviction.
<input type="checkbox"/>	§ 44-53-450(B). The defendant, who has not previously been convicted of any offense under Article 3, Chapter 53, Title 44 or any offense under any state or federal statute relating to marijuana, stimulant, depressant, or hallucinogenic drugs, successfully completed all terms of and received a conditional discharge of possession of a controlled substance under Section 44-53-370(c) and (d), or Section 44-53-375(A).
<input type="checkbox"/>	§ 56-5-750(F). The defendant was convicted of a misdemeanor first offense failure to stop motor vehicle on _____ and no additional criminal conviction has taken place for three years after completion of the sentence. The sentence was completed on _____.

SLED verifies the offense listed above is eligible for expungement:  Yes  No SLED \_\_\_\_\_ Date \_\_\_\_\_

IT IS ORDERED that all records relating to such arrest and subsequent discharge, including associated bench warrants, pursuant to the above-referenced section be expunged and destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except as follows:

- (1) arrest and booking record, associated bench warrants, mug shots and fingerprints of the defendant shall be retained under seal pursuant to § 17-1-40, by law enforcement, detention, correctional and prosecution agencies for three years and one hundred twenty days, and law enforcement and prosecution agencies may retain the information indefinitely under seal for purposes set forth in § 17-1-40 (B)(1)(a) and (b); under § 17-1-40 (C)(1), this order does not require the destruction of evidence gathered, unredacted incident and supplemental reports, and investigative files, which statutorily shall be retained under seal for three years and one hundred twenty days, and may be retained indefinitely under seal for purposes set forth in § 17-1-40 (C)(1); and information retained under seal by law enforcement, detention, correctional and prosecution agencies pursuant to § 17-1-40 is not a public information and is exempt from disclosure, except by court order;
- (2) probation records retained by S.C. Department of Probation, Pardon, and Parole Services pursuant to § 17-1-40 (B)(3) whose charges were dismissed by conditional discharge pursuant to § 44-53-450;
- (3) nonpublic information retained by S.C. Law Enforcement Division (SLED) pursuant to § 22-5-910, § 22-5-920, § 34-11-90(e), and §44-53-450; and
- (4) nonpublic information retained by SLED and S.C. Department of Public Safety/Department of Motor Vehicles pursuant to § 56-5-750(F), as well as any nonpublic records retained by S.C. Commission on Prosecution Coordination as required by law.