

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the Administrative Law Court
The Honorable Ralph K. Anderson, III, Chief Administrative Law Judge
Docket Number 23-ALJ-15-0025-AP

Appellate Case No.: 2024-000204

ROGER CURTIS, #143635,.....APPELLANT

v.

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

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Did the ALC properly dismiss the appeal when the notice of appeal was clearly filed outside of the limit required by SCALC Rule 59, and that the prior notice was in the improper format required by SCALC Rule 57?

STATEMENT OF THE CASE

On January 5, 1987, Appellant entered the Fast Fare convenience store on Highway 56 in Spartanburg, South Carolina. The victim while working in the store was forced out by Appellant to Zimmerman Lake Road where he sexually assaulted her. Appellant then released the victim in an apartment complex, allowing her to return to the Fast Fare where she contacted the authorities. Later on January 12, 1987, Appellant entered another Fast Fare on Reidville and Oak Grove Road in Spartanburg County. Once again the victim who was working was taken out by force to an unknown location. Once at that location he also sexually assaulted this victim then released her into a housing development. She was able to find her way back to the Fast Fare where she also contacted the authorities.

Upon the completion of their investigation the authorities arrested Appellant and charged him with two counts of kidnapping, and two counts of criminal sexual conduct in the first degree (CSC 1st). He was later indicted by the Spartanburg County Grand Jury for each of these offenses.

On July 22, 1987, and again on November 2, 1987, Appellant appeared before the Honorable Dan Laney, Jr. for the offenses of kidnapping and CSC 1st. Upon the conclusion of the appearances the court sentenced Appellant to a period of incarceration for the remainder of his natural life for kidnapping and thirty years for CSC 1st. He was given the identical sentence for each offense and each were to be served consecutively. At the time the Appellant committed these offenses South Carolina law allowed an inmate serving a life sentence for kidnapping parole eligibility upon the service of ten years.

On September 3, 1997, the Appellant made his initial appearance before the Parole Board, which denied parole. Since this initial denial the Appellant has appeared an additional

fourteen times each resulting in a denial of parole. Appellant's last appearance occurred on May 24, 2023, during which the Board unanimously denied parole due to: 1) the nature and seriousness of the current offense; and, 2) an indication of violence in this or a previous offense. (R. p. 1) Upon being denied parole the Appellant requested a reconsideration. On July 11, 2023, the Appellant was informed that his request for reconsideration was denied. (R. p. 3) After being denied this reconsideration the Appellant filed a notice of appeal before the Administrative Law Court (ALC) on August 31, 2023.

In an order filed January 11, 2024, the ALC dismissed Appellant's appeal due to the fact that he filed the notice of appeal out of the time allowed by ALC rules. Appellant now brings this appeal arguing that he did file his notice within the allotted time, although it had been in the improper format.

In reply, Respondent will argue that the ALC properly dismissed the appeal. This brief follows.

STANDARD OF REVIEW

In criminal cases the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. When reviewing a parole case, the ALC sits in an appellate capacity. *Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2004). Under the appellate standard of the Administrative Procedures Act, the ALC's review is limited to the record, absent irregularities in the procedure of the agency. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). However, "an administrative law judge shall not hear... an appeal

involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.” S.C. Code Ann. § 1-23-600(D).

In an appeal from an ALC decision, the Administrative Procedures Act provides the standard of review. S.C. Code Ann. §1-23-610(B). This Court may only reverse the decision of the ALC if that decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Id.

“The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact.” *Id.* In determining whether the ALC's decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached. *Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

ARGUMENT

1. The Administrative Law Court properly dismissed the appeal because SCALC Rule 59 requires notice of appeal within thirty days of receipt of the final decision.

Appellant argues that he filed his notice of appeal within the designated time frame as required by SCALC Rule 59, which requires the notice of appeal to be served within thirty days of receipt of the final decision. However, his prior attempt was not in the proper format as required by SCALC Rule 57.¹

As Judge Anderson stated in his order, the filing of proper notice within the prescribed timeframe is a jurisdictional requirement, and courts may not extend the deadlines. *Hill v. S.C. Dep't of Health & Env't Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010).

Furthermore, submitting notice using the proper forms is also a mandatory requirement. SCALC Rule 57. "The Court shall prescribe the content and format of forms required by these rules. The use of required forms as prescribed is mandatory."

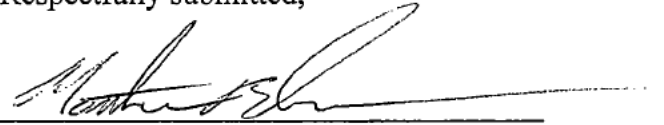
CONCLUSION

The ALC properly dismissed the appeal because notice of the appeal was untimely. The ALC was constrained to dismiss the appeal in light of the clear jurisdictional limitations when notice of the appeal is not filed within the proscribed time limit. Therefore, Respondent respectfully requests this Court to affirm and dismiss this appeal.

(Signature appears on following page)

¹ The memorandum from the ALC is listed as Item 5 in the Designation of Matter, but marked as "Exhibit 2" in Appellant's materials.

Respectfully submitted,



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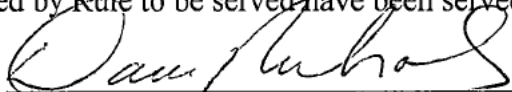
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within *Initial Brief of Respondent and Designation of Matter* dated May 14, 2024, on Appellant the 14th day of May, 2024, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Roger Curtis, #143635
Tyger River Correctional Inst-U7-205A
200 Prison Road
Enoree, SC 29335

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



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

Re Roger Curtis v. SCDPPPS
2024-0025

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter dated May 14, 2024, along with proof of service in the above referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan", followed by a horizontal line.

Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures

cc: Roger Curtis

State of South Carolina

Department of Probation, Parole, and Pardon Services

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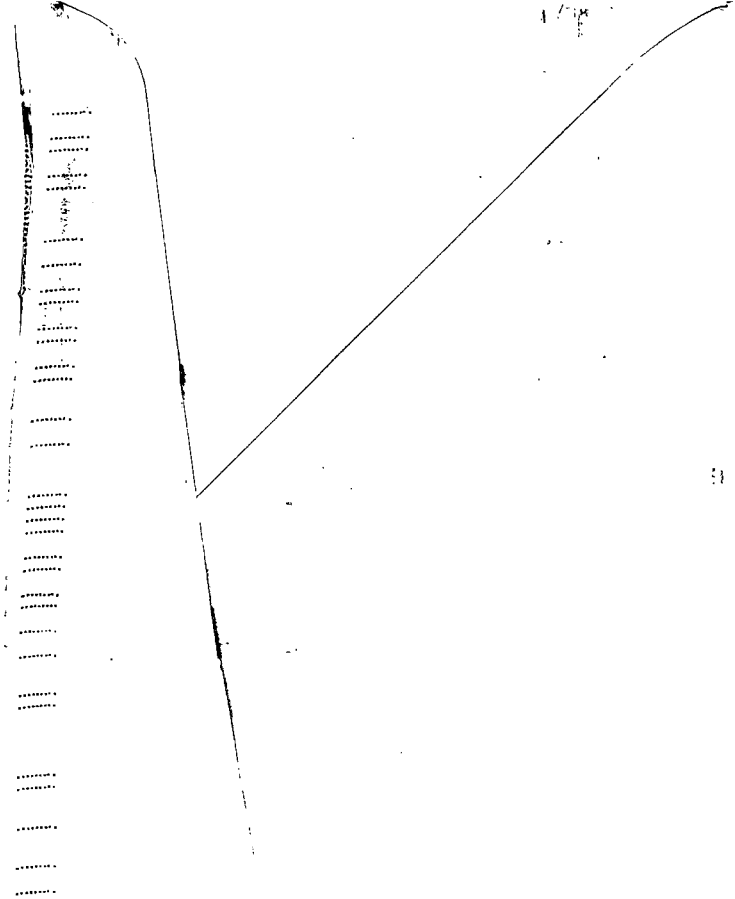
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