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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

ALC Case No. 23-ALJ-04-0451-AP
Appellate Case No. 2024-001077

TERRANCE MCCALL, # 339911,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL FOR APPELLANT'S FAILURE TO FILE A BRIEF.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Terrance McCall, an inmate in the custody of the South Carolina Department of Corrections (SCDC). On July 25, 2023, Appellant submitted a Step 1 Grievance. That grievance was elevated to the Step 2 level the same day. The Step 2 grievance was denied on October 24, 2023. (See Step 1 & 2 Grievances). Appellant filed a Notice of Appeal in the Administrative Law Court dated October 31, 2023. Respondent filed a Motion for Extension of Time to File the Record, which was granted on February 6, 2024. (See Order Granting Extension). That Order specified that the Appellant's brief was to be filed within thirty days after the Record was filed. (See Order Granting Extension). The Record was filed on March 25, 2024, making Appellant's brief due on April 24, 2024. (See Order of Dismissal, page 1). On June 13, 2024, the Administrative Law Court issued an Order of Dismissal dismissing the case for Appellant's failure to file a brief. (See Order of Dismissal). This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or 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.

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL FOR APPELLANT'S FAILURE TO FILE A BRIEF.

Initially, most of the issues presented in Appellant's Brief are not preserved for review because they were not the issues that were ruled upon by the Administrative Law Court (ALC). The ALC only ruled on one issue – Appellant's failure to file a brief. (See Order of Dismissal dated June 13, 2024). The ALC dismissed the case on the sole ground that Appellant failed to comply with the rules of procedure by failing to file a brief. (See Order of Dismissal, page 1). Accordingly, the unrelated issues presented in Appellant's brief on appeal are not preserved for review. See State v. Wise, 359 S.C. 14, 596 S.E.2d 475 (2004) (“Arguments not raised to or ruled upon by the trial court are not preserved for appellate review.”); State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004) (in order for an issue to be preserved for appellate review, it must have been raised and ruled upon below).

Secondly, the ALC properly dismissed the appeal for Appellant's failure to file a brief. SCALC Rule 62 provides that an Administrative Law Judge may dismiss an inmate's appeal for failure to comply with the rules of procedure for appeals or failure to comply with any time limits set forth in an appeal. See South Carolina Administrative Law Court Rules, Rule 62, SCALC (“Dismissal of Appeal; Sanctions. Upon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section (V), or for the failure to provide a factual basis for each expressly and specifically asserted constitutional violation as prescribed by Rule 59(B). Notwithstanding the time frames established herein, the Administrative Law Judge has the

discretion to determine that a document is timely filed upon a finding that the party who filed the document made a good faith effort to file the document within the applicable time limits. If the presiding judge determines that the appeal is frivolous or taken solely for purposes of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.”). As the ALC stated in its Order, Appellant was afforded ample time to file his brief, yet he failed to file one and failed to notify the ALC of any extenuating circumstances. (See Order of Dismissal, page 1). Therefore, the ALC properly dismissed the appeal.

CONCLUSION

For the foregoing reasons, this Court should affirm the Administrative Law Court’s decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
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