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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

SEP 23 2024

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Tyger River Mailroom

S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2024-001544

Bernard Jackson, #210745

Appellant,

v,

South Carolina Department of Probation,
Parole, and Pardon Services,

Respondent.

INITIAL BRIEF OF APPELLANT

RECEIVED

SEP 25 2024

SC Court of Appeals

Bernard Jackson SCDC# 210745
Tyger River Corr. Inst.
Unit 10-Rm# 211
200 Prison Road
Enoree, SC 29335

Matthew Buchanan
General Counsel, SCDPPPS
P.O. Box 207
Columbia, SC 20202

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TABLE OF AUTHORITIES

Cases:

Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d.742 (2000)
Furtick v. S.C. Dept. of Prob., Parole, and Pardon Ser., 352 S.C. 594 576
S.E.2d. 146 (2003)
Houston v. Lack, 437 U.S. 266 (1988)
Fallen v. United States, 378 U.S. 139, 84 S.Ct. 1689, 12 L.Ed.2d. 760
Camp v. Camp, 386 S.C. 571, 575, 689 S.E.2d. 634 (2010)
Mears v. Mears, 287 S.C. 168, 337 S.E.2d. 206, 207 (1985)
Original Blue Ribbon Taxi Corp. v. S.C. Dept. of Motor Vehicles, 380 S.C. 600,
670 S.E.2d. 674 (Ct. App. (2008)
Bowen v. Bowen, 287 S.C. 188, 337 S.E.2d. 1 (1985)

Statutes

S.C. Code Ann. § 1-23-350
S.C. Code Ann. § 1-23-380 (1)(5); (A)(6)
S.C. Code Ann. § 1-23-600 (B)
S.C. Code. Ann. § 1-23-610 (b)(d)(e)(f)
S.C. Code Ann. § 16-3-20 (c)(A)(7) (Supp. 1991)

Rules

S.C. Admin. Law Court Rule 57
S.C. Admin. Law Court Rule 59
S.C. Admin. Law Court Rule 62
S.C. Supreme Court Rule 1 § 1 (A)
S.C. Supreme Court Rule 1 § 1, Subd. E(2)
S.C. Appellate Court Rule. 203, 208, 209

S.C. Constitution Article I § 22

STATEMENT OF ISSUES ON APPEAL

1. Did the ALC err in dismissing the Appeal as untimely?

STATEMENT OF THE CASE

This case is before the South Carolina Court of Appeals pursuant to the appeal of Bernard Jackson, Appellant (herein after 'Jackson') of the Order of Administrative Law Judge, S. Phillip Lenski dated August 12, 2024, dismissing his Notice of Appeal of the final decision of the Respondent's Parole Board's Notice of Rejection.

On May 22, 1994 after trial and conviction to the offense of murder in the Court of General Sessions of Bamberg County, Jackson was sentenced to Life with parole eligibility after service of thirty (30) years pursuant to S.C. Code Ann. § 16-3-20 (C)(A)(7) (Supp. 1991).

Jackson's first appearance before the Parole Board was on November 10, 2021, where the board denied his parole request stating the following Findings OF FACTS:

- Nature and seriousness of current offense;
- Indication of violence in this or previous offense;
- Use of a deadly weapon in this or previous offense;

At Jackson's next appearance before the board was on January 3, 2024, and unanimous denial, essentially the same FINDINGS OF FACTS was the reasons why he was denied parole. Jackson received written Notice of Rejection Letter from the agency on January 10, 2024.

Jackson filed a Notice of Appeal dated February 7, 2024 to the Administrative Law Court, appealing the parole board's denial of his parole request. His Case was originally assigned to Hon. Milton G. Kimpson on February 16, 2024, but was reassigned to Hon. S. Phillip Lenski by Order dated June 13, 2024.

Subsequently, on August 12, 2024, an order of dismissal was issued because the court determined Jackson's Notice of Appeal was untimely and therefore it does not have jurisdiction to hear it. Jackson appeals this decision as follows:

STANDARD OF REVIEW

The Administrative Procedures Act (APA) establishes the Standard of Review an ALC must apply when reviewing an agency's decision. S.C. Code Ann. § 1-23-380 (A)(6). Section 1-23-610 sets forth the standard of review when the Court of Appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency. "The Review of the Administrative Law Judge's order must be confined to the record." Id. The Court of Appeals may reverse or modify the decision only if substantial rights of the Appellant [have] been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law.

This Case raises a jurisdictional question of the ALC's calculations of the thirty (30) day time limit after receipt of written Notice of Rejection Letter of the Department of Probation, Parole and Pardon Services or order or judgment.

ARGUMENT

I. Did the ALC err in dismissing the appeal as untimely?

To begin with, the Special Appeals Rules are the exclusive rules of procedure used in appeals from final decisions of the Department of Probation, Parole, and Pardon Services. The court's jurisdiction to hear such matters is derived entirely from 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. Dept. of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d. 146 (2003). These Rules are based upon the Court's existing general procedural and appellate rules, with adaptations for this specific type of appeal.

The Notice of Appeal from the final decision to be heard by the ALC shall be filed with the court and a copy served on each party, including the agency within thirty (30) days of receipt of the decision from which the Appeal is taken. S.C.A.L.C.R. 59. The agency provides two copies of a Notice of Appeal form pursuant to agency policies and procedures and Rule 57 and require at a minimum:

- A. the name, address, SCDC number and telephone number of the party requesting the appeal, and the name, address and telephone number of the attorney or authorized representatives, if any, representing the party;
- B. a brief factual basis for each expressly and specifically asserted constitutional violation;
- C. a copy of the final decision which is the subject of the appeal and the date received;
- D. Proof of Service of the Notice of Appeal on all parties.

Rule 59 S.C.A.L.C.R.

Inmates must file and serve Notice of Appeal within thirty (30) days of the receipt of written notice of the Department's final decision . Al-Shabazz v. state, 338 S.C. 354, 527 S.E.2d 742 (2000). Service of Notice of Appeal is a jurisdictional prerequisite to the hearing of the appeal. See Houston v Lack, 487 U.S. 266 (1988); also Fallen v. United States, 378 U.S. 139, 84 S.Ct. 1689, 12 L.Ed.2d. 760; and Camp v. Camp, 386 S.C. 571, 575, 689 S.E.2d. 634, 636 (2010) (quoting Mears v. Mears, 287 S.C. 168, 337 S.E.2d. 206, 207 (1985)).

The record shows that Jackson submitted his Notice of Appeal to the ALC and SCDPPPS on February 7, 2024 approximately twenty-eight days after receiving written "Notice of Rejection" on January 10, 2024, dated January 3, 2024 at the Perry Correctional Institution Mail room. See Designation of Matter #2: Envelope dated January 10, 2024.

Jackson did all he could do under the circumstances and timely submitted his Notice of Appeal and should not have been summarily deprived of his Appellate rights. Jackson was proceeding pro-se when he drafted his Notice of Appeal on February 7, 2024 and deposited the Notice with the Prison Authorities for mailing to the Administrative Law Court. This miscalculation by the ALC is in error due to the unreasonable application of Rule 59 (a) which states in relevant part:

"...The Notice of Appeal from the final decision to be heard by the ALC... within thirty (30) days of receipt of the decision from which the Appeal is taken..."

Rule 59(a) S.C.A.L.C.R.(2019)

Moreover, the ALC's Order of Dismissal does not reach or decide the merits of Jackson's claims which is an error of law and the order cannot stand. The reference to a "final decision" in this context does not include a final decision on a procedural or other intermediate point that does not resolve the merits of

the claims. Otherwise, there would be no need for the explicit exception in section 1-23-380 allowing immediate review by the Court of Appeals, "[A] preliminary, procedural, or intermediate agency action or ruling when the claimant would be left with an inadequate remedy on Appeal. Houston v. Lack, 487 U.S. 266, 104 S.Ct. 2379, 10 L.Ed.2d. 245 (1988); Al-Shabazz v. state, 338 S.C. 354, 527 S.E.2d 742 (inmate must file and serve Notice of Appeal within thirty (30) days of receipt of written Notice of the department's final decision); Original Blue Ribbon Taxi Corp. v. S.C. Dept. of Motor Vehicles, 380 S.C. 600, 604, 670 S.E.2d. 674, 676 (Ct. App. 2008)("The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law"); S.C. Code Ann. §1-23-600 (B); also see S.C. Code Ann. §1-23-350 (requiring final agency decision be in writing or stated in the record and directing that Parties shall be notified either personally or by mail of any decision or order).

Jackson further contends after the case had been assigned and briefed on the merits by both parties, any perceived defects or procedural irregularities of timeliness was curable. The ALC either never reviewed the Notice of Appeal form submitted by Jackson, or completely disregarded the obvious indicating January 10, 2024 as the date of the written receipt of the agency's final decision. The ALC could have ordered Jackson to show proof of filing timely, giving a statement of when he received the Notice of rejection letter which would have eliminated the need for an order of dismissal. S.ct. Rule 1 § 1(A); S.Ct. Rule 1 § 1. subd. E(2); S.C. Const. Art. I § 22.

The ALC overlooked the fact that the rules are not and were not intended to be, a rigid code to have an inflexible meaning irrespective to the circumstances, but rather they should be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and

delay. The rules was not approached with sympathy for their purpose is apparent when the circumstances of this case is examined.

Mence, the ALC order of dismissal is without substantial evidence on the whole record, or is affected by an error of law, or can be characterized by an abuse of discretion which falls squarely in the statutory perview of section 1-23-610 giving this reviewing court the authority to reverse , remand or modify the ALC decision.

CONCLUSION

Based on the aforementioned facts, circumstances and arguments, Jackson avers for this court to consider whether the restrictive reading of the rules by the ALC was reasonable, fair and justified under the circumstances of this case and conclude that it was not and accordingly remand the case for disposition of Jackson's appeal on the merits.

Respectfully Submitted,

/s/ 

Bernard Jackson, #210745
pro se litigant

Dated: September 23, 2024

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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Bernard Jackson, #210745

Appellant,

v,

South Carolina Department of Probation,
Parole, and Pardon Services,

Respondent.

PROOF OF SERVICE

I, Bernard Jackson, #210745, hereby certify that I have served the INITIAL BRIEF OF APPELLANT and DESIGNATION OF MATTER in the above-captioned appeal to the Respondent's Counsel of Record, Olivia Y. Wright, and the Administrative Law Court by depositing a copy of same in the U.S. Mail, postage prepaid and addressed as follows:

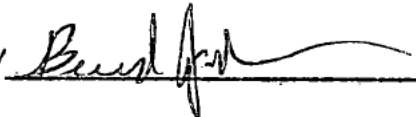
Matthew L. Buchanan
Ass. General Counsel, SCDPPS
P.O. Box 207
Columbia, SC 29202

Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

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On this 23 day of September, 2024

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Bernard Jackson #210745
Tyger River Correctional Inst. SEP 23 2024
Unit 10-Rm. #211
200 Prison Road
Enoree, SC 29335

Tyger River Mailroom

September 23, 2024

S.C. Court of Appeals
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, SC 29211

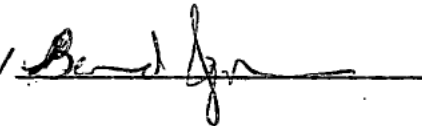
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RE: Bernard Jackson, #210745 v. SCDPPPS
Appellate Case No. 2024-001544

Dear Honorable Clerk:

Enclosed please find the INITIAL BRIEF OF APPELLANT and the DESIGNATION OF MATTER in the above referenced case, for filing in your office and with the court,

By copy of this letter and PROOF OF SERVICE I have also served a copy to the Respondent's Counsel of Record, Matthew C. Buchanan, Assistant General Counsel.

/s/ 

Cc: Matthew C. Buchanan
P.O. Box 207
Columbia, SC 29202

Bernard Jackson #210745

Tyger River Cor Institution

Unit 10 - Rm #210

200 Prisons Road

Endree, SC 29335



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Jenny Abbott Kitchings, Clerk

Post Office Box 11629

Columbia, SC 29211

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