

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from the Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Docket Number 24-ALJ-15-0008-AP

OCT 10 2024
SC Court of Appeals

Appellate Case No.: 2024-001544

BERNARD JACKSON, #210745,APPELLANT

v.

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

BRIEF OF RESPONDENT

Octavia Y. Wright
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
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Attorney for 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 November 21, 1991 in Bamberg County, South Carolina Highway Patrol Trooper Marvin Titus stopped a vehicle containing five men. Four of these men vacated the vehicle and ran before the vehicle sped away. Trooper Titus gave chase until the vehicle wrecked almost a mile away from the initial stop. Appellant¹ fled into the woods and Trooper Titus gave chase. His patrol vehicle was found in Denmark, approximately a mile and a half from the crash, with his body behind it, bearing gunshot wounds in the head and torso. A manhunt began for the individuals involved that included bloodhounds and helicopters. Law enforcement received a tip that a man was attempting to pawn Trooper Titus's gun in nearby Norway. His apprehension involved another shootout, after which he was treated and taken to jail on charges of assault and battery with intent to kill and auto theft.

Appellant proceeded to trial before the Honorable Luke N. Brown, Jr. in May 1994. He was found guilty of the murder of Trooper Titus and sentenced to life in prison after the jury could not agree whether to sentence him to death or a life sentence.² It is unclear from available records whether he engaged in the direct appeal process.

Appellant became parole eligible in November 2021 and received his fist hearing on November 10, 2021, at which he was unanimously rejected. Appellant filed a notice of appeal to this court on or about December 14, 2021³, which Respondent received December 16, 2021. In his brief filed February 7, 2022, Appellant alleged that, because he was not informed of the criteria of Form 1212 prior to his parole hearing, the denial of parole constituted a denial of minimum due

¹ Court records refer to Appellant both as Bernard Jackson and Stacy Jackson. Agency records list his name as Brandon Stacy Jackson.

² Appellant states that the jury's indecision was due to the jury's lack of knowledge or clarification on how long Appellant would serve before he was parole eligible.

³ The actual notice of appeal is undated. Respondent's records show only the date of receipt, which is also the day that Judge Lenski was assigned.

process as considered in Al-Shabazz and Furtick. On January 3, 2024, the Appellant received his second hearing, at which he was unanimously rejected. The Appellant filed a second notice of appeal on or about February 7, 2024. On August 12, 2024, the Honorable S. Phillip Lenski issued an Order of Dismissal because the Appellant's Notice of Appeal was untimely and the court did not have jurisdiction to hear it.

The 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 Env'tl. 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 57.⁴

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)

Respectfully submitted,

Octavia Y. Wright
Assistant General Counsel

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Columbia, South Carolina
October 8, 2024

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v.

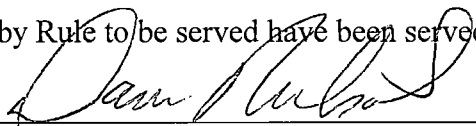
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

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 October 8, 2024, on Appellant the
8th day of October, 2024, by depositing a copy of the same in the United States mail, postage
prepaid, addressed to:

Bernard Jackson, #210745
Tyger River Correctional Institution-Unit 10-Rm 211
200 Prison Road
Enoree, SC 29335

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



Dawn K. Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202

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SC Court of Appeals

October 8, 2024

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

Re: Bernard Jackson v. SCDPPPS
2024-001544

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter dated October 8, 2024, along with proof of service in the above referenced case.

Sincerely,

A handwritten signature in cursive script that reads "Octavia Y. Wright".

Octavia Y. Wright
Assistant General Counsel

OYW:dn

Enclosures

cc: Bernard Jackson, #210745

State of South Carolina

Department of Probation, Parole, and Pardon Services

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SC Court of Appeals

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