

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Tyshun Bessellieu, #375758,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

Docket No. 24-ALJ-04-0575-AP

Grievance No. KRCI 0501-24

ORDER

RECEIVED

DEC 19 2024

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Tyshun Bessellieu (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the decision of the Department denying his Step 2 Grievance. On November 1, 2024, the Department filed a Motion to Dismiss (Motion) requesting a dismissal based upon Appellant's failure to serve his Notice of Appeal on the Department as required by Rules 54, 59 and 62 of the South Carolina Administrative Law Court Rules (SCALC Rules). Appellant filed a response to the Department's Motion on November 14, 2024.

In order to initiate an appeal, SCALC Rule 59 Rules requires an aggrieved party file Notice of Appeal upon the Court and, serve a copy of the same upon the Department, within thirty days of receipt of the decision from which the appeal is taken. *See Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) ("inmate must file and serve a notice of appeal upon specified parties within thirty days of receipt of written notice of Department's final decision."). Pursuant to this Court's rules, service is made by "delivery, or by mail to the last known address. Service is deemed complete upon mailing." SCALC Rule 54. Additionally, the date of mailing is the postmark or date stamp affixed by the mail room at appellant's correctional institution. SCALC Rule 53(A). Thus, service is completed when deposited in the mail, properly addressed and postage paid. *Walters v. Laurens Cotton Mills*, 53 S.C. 155, 31 S.E. 1 (1898) (service by mail complete).

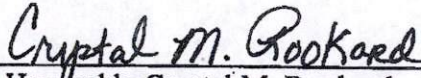
SCALC Rule 62 further provides that upon motion of a party, the Court may dismiss an appeal for failure to comply with deadlines proscribed by Court rules. Where it concerns a Notice of Appeal, dismissal for failure to meet timeliness deadlines is not discretionary. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985) ("The requirement of service of the notice of appeal is jurisdictional,

i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.").

The Department maintains that Appellant did not serve it with the Notice of Appeal in this matter. The Department's assertion is corroborated by an attestation of nonreceipt of the Notice of Appeal from Cheron Hess, the Department's Administrative Coordinator. The Notice of Appeal form provided to inmates informs that "[a] copy of the Notice of Appeal must also be forwarded to the Office of General Counsel at the Department of Corrections." A close review of the certificate of service on the Notice of Appeal filed upon the Court reveals that, in completing the form, Appellant sent the Notice of Appeal to the South Carolina Department of Corrections Office of General Counsel but entered the wrong zip code. Appellant, in completing the certificate of service, entered the zip code 29210 as opposed to the correct zip code of 29221. The Appellant did submit a response to the Motion to dispute the Department's assertion, but the response does not address the incorrect zip code of the certificate of service or if any additional efforts were made to serve the Department. In the absence of any corroborating evidence to establish that Appellant properly made delivery upon the Department, the Court is left to conclude that Appellant failed to complete service of the Notice of Appeal. As such, the Court finds service was not properly completed and thus, the appeal must be dismissed for lack of appellate jurisdiction. *Walters v. Laurens Cotton Mills*, 53 S.C. 155, 31 S.E. 1 (1898); see *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 886 S.E.2d 671 (2023) (ALC has jurisdiction over properly perfected appeal).

IT IS THEREFORE HEREBY ORDERED that the Department's Motion to Dismiss is **GRANTED**, and this appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



The Honorable Crystal M. Rookard
South Carolina Administrative Law Judge

December 2, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Elizabeth Brown, hereby certify that I have 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).

Elizabeth Brown

Elizabeth Brown
Judicial Law Clerk

December 2, 2024
Columbia, South Carolina