

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
Crystal M. Rookard, Administrative Law Judge
Appellate Case No. 2024-002138

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JAN 21 2025
SC Court of Appeals

Ty'Shun Bessellieu, #315758,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

APPPELLANTS INITIAL BRIEF

Ty'Shun Mario Keshen Bessellieu
Ty'Shun Mario Keshen Bessellieu #315758
Kershaw Correctional Institution Oak A 25
4848 GoldMine Highway, Kershaw S.C. 29061

PRO SE APPELLANT

- TABLE OF CONTENTS -

TABLE OF AUTHORITIES
STATEMENT OF ISSUES ON APPEAL
STATEMENT OF THE CASE
~~STATEMENT OF FACTS~~
ARGUMENT

- TABLE OF AUTHORITIES -

Cases:

1. Allen v. SC Dept. of Corrections 434 SC 164 (2023)
2. Elam v. SC Dept. of Transp., 361 SC 4 (2004)
3. Mears v. Mears, 287 SC 168 (1985)
4. Walters v. Laurens Cotton Mills, 53 SC 155 (1898)
5. Wilkins v. United States 143 S.Ct. 870 (2023)

- STATEMENT OF ISSUES ON APPEAL -

- I. Did the Administrative Law Court err in dismissing Appellants Appeal for lack of appellate jurisdiction?
- II. Did the Administrative Law Court err in finding the Respondent was not properly served with the Notice of Appeal?

- STATEMENT OF THE CASE -

On August 14, 2024 Appellant filed a notice of Appeal with the Administrative Law Court appealing the final decision of the South Carolina Department of Corrections. On the notice of Appeal Form Appellant certified that on August 15th, 2024 he served a copy of the notice of Appeal on the South Carolina Department of Corrections by depositing the same in the United States Mail, postage paid, addressed as follows: "South Carolina Department of Corrections "Office of General Counsel", 11111 Broad River Road, Columbia South Carolina, 29210. On November 01st, 2024 the Respondent filed a motion to dismiss with the Administrative Law Court, requesting a dismissal asserting that the Appellant failed to serve the notice of Appeal upon the Department as required by Rules 54 ~~54~~ and 62 of the South Carolina Administrative Law Court Rules. On November 14th, 2024 Appellant filed a response to the Respondent's Motion to dismiss asserting that the Respondent had not proved the allegations made therein. On December 2nd, 2024 The Honorable Crystal M. Rookard {Administrative Law Judge} found that the Appellate had entered the wrong zip code upon serving the Respondent and concluded that the Appellate failed to complete service thus depriving the Administrative Law Court of Appellate jurisdiction to hear the case. This appeal follows.

- ARGUMENT -

I. The Administrative Law Court erred in dismissing Appellants Appeal for lack of appellate jurisdiction.

On June 21st, 2024, Sgt. Melissa Stocky of the South Carolina Department of Corrections filed an SCDC Form 19-24A charging the Appellant with violation of agency charges of B55 - Smuggling and/or Conspiracy to Smuggle in Contraband; and B98 - The possession of any communication device. On July 12th, 2024 the Appellant was called before the institutions disciplinary hearing officer in reference to the charges where the Appellant presented a defense based on the information contained in the SCDC Form 19-24A and procedural violations of SCDC policy. Appellant was found guilty of both charges by the disciplinary hearing officer and sentenced to disciplinary detention, loss of privileges, and loss of accrued good time.

On July 13th, 2024 Appellant filed a step one grievance with the Department of Corrections alleging that he was convicted in violation of SCDC policy and in violation of his right to be afforded due process of law. On July 23rd, 2024 Appellants step one grievance was denied. Subsequently Appellant filed a step two grievance with the department which was denied on July 31st, 2024 and returned to Appellant on August 13th, 2024.

On August 14th, 2024 Appellant filed a notice of Appeal with the Administrative Law Court alleging that the department had violated his Constitutional rights to know the nature and cause of the accusation, his right to due process of law, and his right to equal protection under the laws.

The Notice of Appeal also certified that on August 15th, 2024 the Notice of Appeal was also served upon the Department of Corrections by mailing a copy to the following address

South Carolina Department of Corrections "Office of General Counsel"

4444 Broad River Road, Columbia South Carolina 29210

On November 01st, 2024 the Department filed a motion to dismiss with the Administrative Law Court requesting a dismissal based on the assertion that the Appellant failed to serve the Department a copy of the Notice of Appeal as required by Rules 54, 59, and 62 of the South Carolina Administrative Law Court Rules (SCALC Rules). Appellant filed a response to the Departments motion on November

14th, 2024. On December 02nd, 2024 the AHC found the copy of Appellant's notice of Appeal was addressed to the wrong zip code when sent to the respondent.

In reference to SCACR Rule 62 the AHC stated "where it concerns a notice of Appeal, dismissal for failure to meet timeliness deadlines is not discretionary". The AHC bases its ruling on four separate and distinct South Carolina Supreme Court cases (1) *Etam v. S.C. Dept. of Transp.*, 361 S.C. 9 (2004); (2) *Mears v. Mears*, 287 S.C. 168 (1985); (3) *Walters v. Laurens Cotton Mills*, 53 S.C. 155 (1898); and (4) *Allen v. SC Dept of Corr.*, 439 S.C. 164 (2023)

The reasoning and authorities relied on by the AHC fail in respect to Appellant's appeal for several reasons. In *Etam v. South Carolina Dept. of Transp.*, 361 S.C. 9 (2004) the South Carolina Supreme Court stated "the notice of appeal in a case appealed from the Court of Common Pleas must be served on all respondents within thirty days after receipt of written notice of entry of the order or judgment. Rule 203 (b)(1), SCACR. The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lack 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." citing *Mears v. Mears*, 287 S.C. 168 (1985). The AHC erred in this application whereas Rule 203, SCACR does not apply to Appeals from State agencies such as the South Carolina Department of Corrections and only applies to (1) Appeals from the Court of Common Pleas, (2) Appeals from the Court of General Sessions, (3) Appeals from the Family Court, (4) Appeals from Masters and Special Referees, (5) Appeals from the Probate Court, and (6) Appeals from the Administrative Tribunals. Moreover the cited opinion from *Mears v. Mears*, 287 S.C. 168 (1985) that "the service of the notice of intent to appeal is a jurisdictional requirement and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served", derives from a petition for the Supreme Court to relax Supreme Court Rule 1, & 1A and 1C. Like-wise this Supreme Court Rule has no application in the AHC regarding this opinion as dicta. Furthermore the AHC and inmate Appeals from the South Carolina Department of Corrections are governed by Article V of the Rules of Procedure for the Administrative Law Court. The non discretionary statements

arising from *Mears v. Mears*, 287 S.C. 168 (1985) were clearly not meant for inmate appeals from the Department of Corrections whereas Administrative Law Court Rule 62 specifically provides that

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.

As far as the cited case of *Allen v. South Carolina Department of Corrections* is concerned the Allen Court stated that "the ALC has appellate jurisdiction over any matter where the procedural requirements for perfecting an appeal has been met." see *Allen v. South Carolina Department of Corrections*, 439 S.C. 164 (2023). In accordance with this ruling and the construction of Administrative Law Court, Rule 62 it appears that the procedural requirements for perfecting Appellants appeal to the ALC were met upon Appellants timely service of notice of intent to appeal upon the ALC and attempted service upon the Respondent. But for the wrong zip code it appears that Appellant had made a good faith effort to serve the Respondent within the required time frame and that the ALC erred in its application of law by summarily dismissing Appellants appeal for lack of jurisdiction. "If a decision simply states that 'the Court is dismissing for lack of jurisdiction when some threshold fact has not been established,' it is understood as a drive-by jurisdictional ruling." see *Wilkins v. United States*, 143 S.Ct. 870 (2023).

II. The Administrative Law Court erred in finding the Respondent was not properly served with the Notice of Appeal.

The ALC erred in its finding that the Respondent was not properly served in accordance with Administrative Law Court, Rule 54 which provides in part:

Service shall be made by delivery, or by mail to the last known address. Service is deemed complete upon mailing. Service that complies with Rule 5 (b)(1), SCRCP, also shall satisfy this Rule. Rule 5 (b)(1) provides in part that:

Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court.

Whereas the Step 2 {SCDC Form 10-5A} Grievance Form provided to inmates does not include the mailing address for service of the Respondent, inmates are required to essentially guess at the mailing address or serve the documents according to the last known address embedded in the inmates memory. Notwithstanding this fact, is that if Appellant did not know the address or mistakenly sent the required documents to the wrong zip code, the documents are still considered served because a copy of such was left with the clerk for the Administrative Law Court, satisfying the requirements of Rule 5(b)(1). SCRCP thus satisfying Administrative Law Court Rule 54.

- CONCLUSION -

Therefore for the above mentioned reasons the rulings of the Administrative Law Court should be reversed.

Respectfully Submitted

TyShun Mario Kristian Bessellio

TyShun Mario Kristian Bessellio #375738

Kershaw Correctional Institution Cell A 25

1848 GoldMine Highway, Kershaw S.C. 29051

Dated: January 08th, 2025

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NOTE OF SERVICE

I certify that I have served on the SCDC a copy of Appellants Initial Brief, by depositing a copy of such in the United States mail, pre paid postage, addressed as follows:

South Carolina Department of Corrections
Post Office Box 21787, Columbia SC 29221

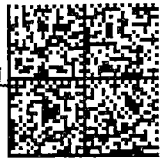
Respectfully Submitted
Ty'Shon Bessellieu
Ty'Shon Mario Williams Bessellieu #575758
Kershaw Correctional Institution Oak # 23
4848 Goldmine Highway, Kershaw S.C.
29067

Dated: January 08th, 2025

Ty'Shan Mario Killion Bessellier #375758
Kershaw Correctional Institution Oak # 25
NB4B Gold Mine Highway, Kershaw S.C. 29067

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South Carolina Court of Appeals
Jenny Abbott Kitchinas, Clerk
Post Office Box 11629, Columbia S.C.
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LEGAL
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