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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Joseph Kelsey, #217218,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 24-ALJ-15-0027-AP

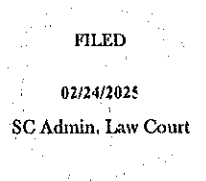
ORDER

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to an appeal filed by Joseph Kelsey, (Appellant), an inmate incarcerated at the South Carolina Department of Corrections. On April 24, 2024, Appellant received notification from the South Carolina Department of Probation, Parole and Pardon Services (Department) that the South Carolina Parole Board (Board) denied Appellant's parole. On May 24, 2024, Appellant filed a request for reconsideration of the Board's decision. On May 30, 2024, the Board sent the Appellant a letter informing him that there was no evidence to support reconsideration.

The ALC received a Notice of Appeal from Appellant on July 1, 2024. On July 2, 2024, a Memorandum was sent to Appellant as notification that the Notice of Appeal was deficient as it did not comply with Rules 57 and 59 of the South Carolina Administrative Law Court (SCALC Rules). Appellant subsequently sent the required information in compliance with the SCALC Rules, and the completed Notice of Appeal was filed on July 9, 2024. This matter was assigned to the undersigned on July 18, 2024.

BACKGROUND

In July 1994, Appellant and two co-defendants, Payne and Lee (Defendants), constructed a number of homemade pipe bombs, two of which were detonated in the backyard of Appellant's friend. Later that evening, Appellant, the Defendants, and four others gathered for a house party. After leaving the house party, Defendants went to a Texaco station where they encountered the victim, who had severely cut her foot. They offered to take the victim to the house and bandage her foot and she accepted. Defendants and the victim returned to the house party after the victim's foot was bandaged. Defendant Payne attempted to have sexual intercourse with the victim, but she



refused. The Defendants crushed up a tablet of Ecstasy into the victim's drink without her knowledge.

Later that evening, at around 3:30 a.m., Appellant and the Defendants offered to take the victim home. Defendant Lee was both the driver and owner of the vehicle, while Appellant was in the passenger seat, and Defendant Payne and the victim were in the backseat. Defendant Lee eventually drove across the Georgia border into South Carolina. While driving, Defendant Lee turned around and saw that Defendant Payne had the victim in a strangle hold. Defendant Lee further testified that he heard sounds of a struggle and when he turned around again the victim's body was limp, her face was pale, and her lips were blue. Defendant Lee eventually parked the car at a bridge between Edgefield and McCormick counties. Defendant Lee testified that the victim was unconscious the entire time but was definitely alive. However, the Appellant testified that he checked her pulse, and he believed that she was dead. Defendant Lee then drove approximately 100 feet down the road before Defendant Payne instructed him to stop. The Appellant and the Defendants then carried the victim out of the car and into the woods where they placed her on the ground. Defendant Lee returned to the car while Defendant Payne and Appellant remained with the victim. The Appellant testified that while he was standing over the victim's body, Defendant Payne instructed him to place a pipe bomb in the victim's mouth. He did so, the fuse was lit, and the two ran. A few seconds later, the pipe bomb exploded.

The Appellant and the Defendants were eventually arrested and charged with murder. The Appellant was arrested in Maryland and brought back to South Carolina to stand trial. His case was transferred from Family Court to the Court of General Sessions where the Appellant and Defendant Payne were tried together as adults. Defendant Payne was found guilty of murder and criminal conspiracy. The Appellant was found guilty of murder, possession of a pipe bomb, and criminal conspiracy. He was sentenced to life imprisonment for murder and consecutive sentences of five years for possession of a pipe bomb and criminal conspiracy.

The Appellant first appeared before the Board on November 18, 2015, and was denied parole. He was also denied at his second appearance before the Board on November 15, 2017. The Appellant's third appearance occurred on November 13, 2019, where his parole was again denied. Appellant's appeal of this denial resulted in the Court of Appeals decision in *Kelsey v. South Carolina Dep't of Probation, Parole and Pardon Services*, 441 S.C. 373, 893 S.E.2d 588 (Ct. App 2023) (cert. denied March 5, 2024). Appellant was subsequently denied parole in 2021 and 2023.

His 2021 denial was upheld by an unpublished opinion, and his 2023 denial is currently under appeal at the South Carolina Court of Appeals. The appeal in *Kelsey*, for Appellant's 2019 parole denial, granted the Appellant a rehearing on April 24, 2024. On April 24, 2024, Appellant's parole hearing was held, and on the same day, the Board issued a Notice of Rejection denying his parole. This parole denial is currently under appeal in this case. Appellant sent a request for reconsideration to the Board on May 24, 2024. This request was denied on May 30, 2024. This appeal followed.

The Department filed the Record on Appeal on August 27, 2024. An initial brief was filed by Appellant on October 16, 2024. On October 24, 2024, the Department filed a Motion to Strike Appellant's initial brief due to his failure to comply with SCALC Rule 60(A). The Court granted the Department's Motion to Strike on November 4, 2024, and amended the filing deadlines while also allowing Appellant to submit a brief that conformed with this Court's rules. Appellant filed his Amended Brief on November 13, 2024, and Respondent filed its brief on December 10, 2024. A Reply Brief was filed by Appellant on December 19, 2024.

DISCUSSION

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."); *see also* S.C. Code Ann. §§ 1-23-380(1) & -600(D)&(E) (Supp. 2022) (establishing 30-day deadline for filing of inmate appeals); *see also Furtick v. South Carolina Department of Probation, Parole, and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (generally extending *Al-Shabazz* jurisdiction to the Administrative Law Court) (2003). 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.")).

Appellant filed a request for reconsideration thirty (30) days following the issuance of Appellant's parole denial by the Board. The Department asserts that the Board is not required to allow reconsiderations of routine parole denials, but rather has instituted a policy of allowing review of the Board's decision. However, the Parole Board Manual indicates these requests must be made within fifteen (15) days.¹ The Department argues in its brief that because Appellant did not make the request for reconsideration within the 15-day requirement that he should not be allowed to utilize this delay to stay the timeframe for filing an appeal with this Court. As such, the Department requests the case be dismissed because Appellant failed to timely file his Notice of Appeal pursuant SCALC Rule 62. The Appellant argues in opposition that his Notice of Appeal was timely filed. Appellant contends that there is no statutory deadline for requesting reconsideration of a parole hearing and further alleges, that the Department rarely enforces the 15-day requirement found in the Board's Manual. Appellant additionally argues that agency decisions are not final until any request for reconsideration has been decided and consequently, that the thirty (30) day requirement to file a Notice of Appeal does not begin to run until such decision has been reached.

The Appellant is correct in stating that the South Carolina Administrative Procedures Act specifies that a notice of appeal must be filed within thirty (30) days after the final decision or, if a rehearing is requested, within thirty (30) days after that decision is rendered. S.C. Code Ann. § 1-23-380(1). However, as the request for reconsideration was denied on May 30, 2024, the Appellant had until July 1, 2024, to file an appeal with this Court.² In this matter, Appellant's completed Notice of Appeal was not filed until July 9, 2024. Therefore, because Appellant's appeal was untimely, Appellant failed to properly invoke this Court's jurisdiction.³


¹ The Parole Board manual states that, "if within fifteen (15) days of the date of the notice of rejection letter, the inmate or the inmate's attorney submits a letter to the Director of Board Support Services requesting a reconsideration hearing, and provides information that the Board may have based its decision on erroneous information or can provide additional information that the Board did not have during the hearing, the Board may decide to grant a reconsideration hearing."

² In computing time, "[t]he last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday." SCALC Rule 3(A).

³ If the appeal had been timely filed, this Court still lacks the authority to interfere with the Department's determination. In this instance, the Board's April 24, 2024 denial letter reflects the Board's consideration of the factors outlined in section 24-21-640 and subsection 24-21-10(F)(1) of the South Carolina Code, factors published in the Department's Form 1212 (Criteria for Parole Consideration) and, it included specific findings of fact to support its findings. *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. at 500, 661 S.E.2d at 112 (Board's adherence to procedure constitutes a routine denial).

ORDER

IT IS THEREFORE ORDERED that this appeal is **DISMISSED WITH PREJUDICE.**
AND IT IS SO ORDERED.


The Honorable Crystal M. Rookard
South Carolina Administrative Law Judge

February 24, 2025
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

February 24, 2025
Columbia, South Carolina