

The South Carolina Court of Appeals

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JUN 24 2025

SC Court of Appeals

Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Docket No: 24-ALJ-04-0610-IJ

Ben Robert Stewart, 223006, Appellant,

v.

South Carolina Department of Corrections, Respondent,

Initial Brief

Case No: 2024-002076

Ben Robert Stewart
100 Prison Rd
Enoree S.C. 29335

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STANDARD OF REVIEW

South Carolina Constitution Art 1 § 22;

South Carolina Const. Art 1 § 3;

South Carolina Code 1-23-610; 650)

S.C. Administrative Law Court Rule, 60.

United States Constitution 14th Amendment

United States Const 1st Amendment.

CLAIM PRESENTED

Whether the party first noticing the appeal did not file the initial brief, does this violate Rule 60 SCACR? and due process?

STATEMENT OF THE CASE

The Appellant filed two motions and an Affidavit after the date of assignment and prior to the ninety (90) day dead line for initial brief. The actual motions were a (Motion To Consolidate, Proof of Service date October 3, 2024 and A (Affidavit To Motion for Trial And Extension of Time, dated November 27, 2024, see Exh D-1-D2)

These two motions were served upon Respondent and the Court, however, they were not heard nor ruled on.

Before, time for filing brief pursuant to Rule 60, SCALCR, the ninety (90) days for appellant had not expired the Respondent had filed

a proposed order of dismissal without first being briefed and provided the Record on Appeal or exhibits relating to the case for adjudication purposes.

Specifically, the Respondent argued incorrectly that the Court lacked jurisdiction, and further misstated the facts of the case by falsely stating that a 1911 form, (Request to staff member) was not filed although Appellant did in fact file a 1911 form see; Exhibit B-20 Kresh No. and Paper Form Request to staff member and Exh C19. Request to Staff member).

The Respondent has violated the Rules of the ALC and procedures provided for uniform procedures in that context.

Rule 60. SCALCR was denied by the Respondent

and the Court disregarding Appellants rights to participate and be heard and the Respondent has forfeited to appellate argument now and waived its chance to reargue this matter for failure to deny. The Respondent clear: "failure to comply with any of the time limits provided by [this section (v)], or for the failure to provide a factual basis for each expressly and specifically asserted constitutional violation as prescribed by Rule 59(B)" see (ALCR) Rule 62, also SCALCR 60(A.) This appeal should be resolved with the relief requested because the agency final judgement per Warden Stamp gives the Administrative law Court jurisdiction, therefore, the Respondents position that the ACC lacks jurisdiction is baseless and

misplaced. The Judgment of ALC should be reversed or remanded with instructions to vacate order and return Appellant back to Pennsylvania due to S.C.P.C. policy, state and federal statutes violations, because Appellant is mentally ill and does not apply to the IAD pursuant to Art VI (b) of the Interstate Agreement on Detainers Act 17-11-10, s.c code; 18 USCA App 2; 2; Art VI (b), and SCDC Policy OP 21-04 Section 28.4.9 (Mental Iness)) see; Order of Dismissal, Docket No: 24-ALJ-04 0610 IJ filed Nov. 27, 2024) further appellant raised Art III violation of the (IAD) and S.C.D.C policy OP 21-04 28.

ARGUMENT

Whether the party first noticing the appeal did not file the initial brief, does this violate Rule 60 SCALCR?

In this instant case, the Appellant did not have the chance or that chance did not expire and the Appellant wasn't afforded fair participation, see; Rule 8 SCALCR, Note: Right of Parties To Participate, "Parties in a proceeding before the Court have the right to participate or to be represented in all hearings or pre hearing conferences related to their case".

Thus, far has the Appellant's pleadings been properly adjudicated or Ruled on and the facts are clear that regardless of any argument the Respondent may have, their option to expedite the procedures of the ALC violates the noticing party to first file the initial brief" see; Rule 60 SCALCR.

Provided in Rule. 60 SCALCR it states; "Unless otherwise ordered or stayed by the operation of Rule 59, the party first notifying the appeal shall file an original brief within ninety (90) days after the date of assignment."

The Appellant filed two (2) motions a Motion To Consolidate; and A Affidavit For Extension of Time and both motions were not answered or responded to by Respondent.

The Order of Dismissal was not and could not have been supported by substantial evidence, that a Request to Staff form was not filed; see; Exhibit B20 1911 Form Request to Staff Member dated Dec. 7, 2023 Kioash No, 23-03312811 also Exhibit C18 1911 Form Request to Staff Member dated Feb. 19, 2024).

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Pursuant to 1-23-650 (c) Promulgation of Rules 2006 Act No. 387, §53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent a provision of the act conflicts with an existing statute or regulation, the provisions of this act are controlling..."

As the above quoted statute states, "the Rule are uniform procedure for contested cases and appeals", and here, appellant was denied that review because he did not have a chance to file the initial brief, if the Respondent had not violated the procedure the 1911 Form would have been provided because they are cited in the actual Grievances as Exh B-20, Exh C18 etc. However, appellant was denied that chance.

The Appellant properly filed all required forms to officials and received a final decision from the Department.

The Order of Dismissal improperly states; "Appellant filed a Notice of Appeal prior to the issuance of a Step 2 Grievance response."

This argument lacks factual existence because in order, after the Request to staff Member, the step 1 Grievance is filed, then the Step 2 Grievance is filed, therefore the Respondents standpoint lacks standing and appellate argument is forfeited or waived provided in Rules of Court and ALC see;

Therefore a remand or reversal should be granted for the reasons stated herein.

CONCLUSION AND Relief

The Appellant respectfully request that this Honorable Court reverse and remand the decision for failing to comply with the Rules of Administrative Law Court.

~~_____~~
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SC Court of Appeals

South Carolina Court of Appeals
P.O. Box 11629
Columbia S.C. 29211.

June 18, 2025

Re; Case No;(s) Initial Brief

~~24-ALT-04-06-10 FJ~~

~~24-ALT-04-06-11 FJ~~

~~24-ALT-04-06-32 AP~~

~~24-ALT-04-06-33 AP~~

and Affidavit Designation of Matter
To Be Included In the Record
on Appeal Rule 209 SCACR.

Dear Clerk:

In regards to the above named person
Please find the initial briefs in this case and
Designation of Matter affidavit. Please file and
and return a copy for personal file
Thank you.

Ben Robert Stewart, 223006
200 Prison Road
Enoree, S.C. 29335



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