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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Crystal M. Rookard, Administrative Law Judge
Docket Number 24-ALJ-15-0027-AP

Appellate Case No.: 2025-000646

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SC Court of Appeals

JOSEPH KELSEY, #217218, ...APPELLANT

v.

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

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. **Did the Administrative Law Court 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?**

2. **Whether the ALC properly dismissed the appeal because the Parole Board followed the requirements of *Cooper* and *Compton*?**

STATEMENT OF THE CASE

In early July, 1994, Joseph Kelsey (Appellant), and co-defendants Geoffrey Payne, and Jamie Lynn Lee[1] met a fifteen-year-old girl (victim) whom they invited to a party after spending the day making pipe bombs in Georgia. The three eventually drove the victim into McCormick County, South Carolina. During that drive, the victim was beaten and sexually assaulted. Believing the victim to be dead, the three co-defendants dragged the victim into the woods, put a pipe bomb into her mouth, and detonated it.

All three defendants were eventually arrested and charged with murder. Appellant was also charged for manufacturing the pipe bomb. Appellant was arrested in Maryland and brought back to South Carolina to stand trial. Appellant's case was transferred from Family Court to the Court of General Sessions where Appellant and Payne were tried together as adults.[2] Payne was found guilty of murder and criminal conspiracy. Appellant was found guilty of murder, possession of a pipe bomb, and criminal conspiracy. Appellant was sentenced to life imprisonment for murder and consecutive sentences of five years for possession of a pipe bomb and criminal conspiracy.

Appellant first appeared before the Board on November 18, 2015 and was denied. He was denied again on November 15, 2017. The Appellant's third hearing occurred on November 13, 2019, where parole was again denied. After this denial, Appellant's appeal resulted in this Court's

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[1] Appellant was a week away from turning seventeen, while Payne had turned seventeen the month earlier.

[2] Although at trial Lee and the Appellant both testified that Payne was the principal actor, Payne and Lee had made statements to investigators that the most responsible individual was Kelsey. As explained by Justice Pleicones: "Kelsey testified, and admitted his guilt of the charges other than conspiracy and murder: petitioner [Payne] did not testify. A third youth [Lee] involved in the crimes testified for the State; he had initially identified Kelsey as the perpetrator, but in later statements and in his trial testimony he identified [Payne] as the responsible individual." *Payne v. State*, 355 S.C. 642, 648, 586 S.E.2d 857, 860 (2003) (Pleicones, concurring).

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 subsequently appeared before the Board in 2021,[3] and then on November 29, 2023.[4] Appellant's most recent hearing was pursuant to the remand of *Kelsey* and held on April 24, 2024. The Board denied parole by a 2-3 vote, listing the reasons for rejection as the nature and seriousness of the offense, indication of violence, and use of a deadly weapon. (R.p.104). Appellant made a request for a rehearing on May 24, 2024, which was denied on May 30, 2024. (R.p.120-p. 121).

Appellant improperly filed his notice of appeal with the Administrative Law Court (ALC) on June 27, 2024. (R.p.111-p.121). His notice of appeal was refiled on July 9, 2024. (R.p.125-p.131). Administrative Law Judge Crystal M. Rookard dismissed the appeal, determining that Appellant had until July 1, 2024, to file an appeal. She also noted that because the Parole Board followed the procedure outlined in *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008), that the ALC still lacked the authority to hear the appeal. Order, p. 4, fn 3.(R.p.2-p.6).

Appellant now brings this appeal arguing the ALC's dismissal of his appeal violated his due process rights. In response, Respondent would submit that the ALC correctly adhered to its rules in dismissing the appeal and that Appellant's due process rights are severely limited because this appeal arose from a routine denial of parole.

The brief of Respondent follows.

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[3] The denial of parole from this hearing was upheld in Unpublished Opinion 2024-UP-206.
[4] Appellant has appealed that denial in appellate case 2024-001471.

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 Envtl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

ARGUMENTS

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 and adherence to its forms.**

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.

The filing of proper notice within the prescribed timeframe is a jurisdictional requirement, and courts may not extend the deadlines. *Hill*, 389 S.C. at 21, 698 S.E.2d at 623.

Appellant claims that the ALC erred when it dismissed his appeal. As a creation of statute, the ALC only has the authority given to it by the General Assembly and it must follow the Rules of Procedure, as must the appellants appearing before it.

As noted by the ALC, SCALC Rule 59 requires that the notice of appeal must be filed within thirty days of the receipt of the decision. In this case, the final decision was dated April 26, 2023. Appellant did not file his Notice of Appeal until June 1, 2023.

The ALC does not have the authority to extend the time in which an appellant may file his notice of appeal. *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985). This is a firm jurisdictional limit imposed upon the ALC. Therefore, the ALC did not err and the dismissal of the appeal should be upheld.

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." Failure to abide by these rules allows an administrative law judge to dismiss the appeal, "including the failure to comply with any of the time limits provided by this section (V)." SCALC Rule 62.

Appellant makes a curious assertion that Respondent did not object to the June 27 and July 9 filings. Appellant's Br., p. 10. Contrary to that assertion, Respondent argued to the ALC that the filing was untimely, but also SCALC Rule 62 allows for the ALC judge to dismiss the appeal on its own motion. In either scenario, the ALC judge did not err by dismissing the untimely appeal.

Appellant's argument is rooted in an incorrect assumption that the ALC was *required* to accept the late filing, and that dismissal of the appeal was somehow prohibited. Appellant's litany of cited cases generally show that appellate courts *may* accept filings with technical defects. *Becker v. Montgomery*, 532 U.S. 757, 761 (2001), for example, involved a *pro se* appellant, who would not be held to the same standards as an attorney. *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 317 (1988) stated that "a court *may* nonetheless find that the litigant has complied with the rule if the litigant's actions is the functional equivalent of what the rule requires." (Emphasis added).

Respondent would submit that the ALC judge had discretion to ignore the filing defect and adjudicate the matter on the merits, but was not required to. To hold that she erred by enforcing the rules of the ALC would undermine the rules' purpose. Furthermore, as will be discussed in Part 2, the ALC had limited authority to hear the case anyway. Respondent respectfully submits that an appeal from a routine denial of parole does not rise to the same level of import as a criminal defendant's one and only chance to appeal a conviction or submit a petition for *habeas*.

2. The ALC did not err when it dismissed the appeal and acknowledged that the Parole Board followed the requirements of *Cooper* thus determining this to be a routine denial of parole.

Respondent would also submit that the ALC was correct in recognizing its limited authority to hear routine denials of parole, noting that the letter notifying Appellant of its decision to deny parole met the requirements of *Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services,* 377 S.C. 489, 661 S.E.2d 106 (2008). *See* Order, p. 4, fn 3.

Inmates who are denied parole and appeal to the ALC are limited to review of whether the Board complied with statutory requirements. As held by *Cooper*, the notice of rejection must clearly state that the Board considered the factors published in Department Form 1212, the factors outlined in S.C. Code Ann. § 24-24-640 and consideration of the actuarial needs assessment required by § 24-21-10(F)(1).

This holding was further clarified in *Compton v. South Carolina Dept. of Probation, Parole and Pardon Services*, 385 S.C. 476, 685 S.E.2d 175 (2009). In *Compton*, the Supreme Court held that no specific findings of fact regarding consideration of the inmate's record were required in the notice of rejection. *Id.*, 385 S.C. at 479, 685 S.E.2d at 177. Because these requirements were met in Appellant's instant parole denial, there was no authority for the ALC to review the matter. Thus,

the ALC did not err by dismissing the appeal for technical grounds when it also acknowledged that the Board complied with *Cooper*.

Appellant further argues that his due process rights were violated by the ALC judge's dismissal of his appeal. Respondent would submit that Appellant has no liberty interest in being granted parole, and as such does not have a liberty interest that would rise to rights to due process to appeal a routine denial of parole. Only "the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process." *Furtick v. South Carolina Dep't of Probation, Parole and Pardon Services*, 352 S.C. at 598, 576 S.E.2d at 149 (Emphasis in original). Consequently, his claims to having due process rights to appeal the Parole Board's decision to deny him parole and not parole eligibility are wildly overstated.

Appellant cites to *Bundy v. Shirley*, 412 S.C. 292, 303, 772 S.E.2d 163, 169 (2015), in arguing that due process should afford him an opportunity to receive judicial review. Yet even *Bundy* acknowledges the point made by the U.S. Supreme Court in *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), that "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." Thus, a situation where an appellant can only claim minimal to no due process suffers nothing when a court dismisses the matter for a procedural defect.

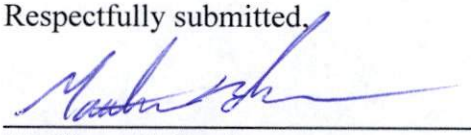
Lastly, the dispute over the facts of the original offense that Appellant decries as necessitating full appellate review and intervention go specifically to the decision-making duty of the Parole Board. Respectfully, appellate courts are not finders of fact and do not disturb the factual findings of the lower courts. *Wright v. Craft*, 372 S.C. 1, 18, 640 S.E.2d 486, 495 (Ct.App. 2006). Appellant had the opportunity to review his file and address the Board regarding any perceived errors and inaccuracies. *Kelsey v. South Carolina Dep't of Probation, Parole and Pardon Services*, 441 S.C. 373, 893 S.E.2d 588. Thus, his appeal goes straight to the Board's own decision-making

authority, which is outside the limited authority given to the ALC by *Cooper* and § 1-23-600(D). The ALC's role is to ascertain if the Board followed proper procedure, not to make sure the facts of the underlying criminal offense are tailored to Appellant's liking. "[T]he court system's role does not include looking behind the Board's statement that it has considered all of the factors and made its decision." *Buchanan v. S.C. Dep't of Prob., Parole & Pardon Srvs.*, 442 S.C. 393, 405, 899 S.E.2d 600, 607 (Ct. App. 2023) *cert. denied* (Apr. 16, 2024). The ALC therefore did not err in dismissing the case for an untimely notice of appeal, and the primary issue Appellant raises is not of the importance that would demand the ALC to overlook the filing deficiency – especially when the ALC also noted that the Board followed the procedure of *Cooper*. This Court should therefore affirm the ALC's order.

CONCLUSION

Appellant untimely filed his notice of appeal. Although the ALC judge could have overlooked the technical deficiency, she did not err when also the Board routinely denied parole and followed the requirements of *Cooper*; therefore, the ALC had limited authority to review the matter regardless. The ALC's decision to dismiss the case should be affirmed.

Respectfully submitted,



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June 26, 2025

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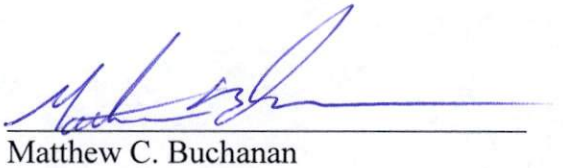
CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 26th day of June, 2025.



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