

Michael Pettinato, #218404,
Appellant,
v.
South Carolina Department of Probation,
Parole and Pardon Services,
Respondent.

ORDER OF DISMISSAL

SC Court of Appeals

SC Admin. Law Court

66 S.E.2d 106 (2008) (Court's authority to review a decision of the Board is limited to determining if Board followed proper procedure and considered relevant statutory factors). Pursuant to *Al-Shabazz*, an inmate seeking to appeal must file and serve a notice of appeal on all parties within thirty (30) days of written notice of the Department's final decision. *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754; *see also* Rule 59, SCALCR (providing that inmate must file and serve an appeal from a decision of the Department within thirty (30) days of receipt of decision).

At the outset, it should be noted that there is an apparent discrepancy between the Record that was before this Court and the information used by the Court of Appeals.¹ Irrespectively, Appellant received the Department's letter in response to his Motion to Vacate, or Rehearing, or Reconsideration (Motion for Reconsideration) on June 15, 2023.² Accordingly, Appellant was required to file a notice of appeal within 30 days of June 15, 2023, or by July 17, 2023.

Appellant appears to have attempted to contact the Court on June 23, 2023, requesting that the Court provide him a copy of the Notice of Appeal form for filing a notice of appeal. It is unclear from the Record whether the Court received this letter. While the Department is responsible for providing a Notice of Appeal form upon issuance of a final decision, the ALC, nevertheless, supplies Notice of Appeal forms to litigants presenting proof of a Department decision.³

Appellant contacted the Court again on or around August 3, 2023. While he indicated in his August 3rd letter that he previously sent a Notice of Appeal and other documents to the Court on or about July 5, 2023, which included:

- a copy of a Notice of Appeal dated June 26, 2023, not on the Court's prescribed form,

¹ Specifically, the Record before the ALC does not include copies of Appellant's March 27, 2023 and April 26, 2023 letters to the Department, the envelope to the ALC (post-marked August 4, 2023), the envelope to Appellant (post-marked September 18, 2023), or Appellant's August 17, 2023 letter to the ALC.

² The Court notes that the Department's letter states that the Department's final decision is reflected in its April 12, 2023 parole denial. Thus, Appellant had 30 days from receipt of that written notice to provide his Notice of Appeal to this Court. Yet, Appellant did not provide the Court with any of the required documentation pursuant to Rule 59, SCALCR, until August 3, 2023 which is beyond the thirty-day timeframe to file an appeal of the Department's decision. Moreover, as discussed above, even if I were to construe the Department's June 12, 2023 response as the final decision, Appellant's appeal is still, nevertheless, untimely.

³ The basis for requesting a copy of a final decision is to prevent filings of premature appeals and misuse of Court resources. Notably, a review of the Record shows that Appellant has previously requested Notice of Appeal forms prematurely. In fact, on April 16, 2026, and again on July 27, 2026, Appellant even requested forms to file a contested case hearing even though there is no statutory authority granting the ALC jurisdiction to preside over contested cases from Department of Corrections or Department of Probation, Parole and Pardon Services decisions. Therefore, Appellant is clearly aware of the Court's requirements for requesting Notice of Appeal forms.

- a copy of the Department's April 12th denial of parole letter and the Department's letter in response to his Motion for Reconsideration, and
- a July 5, 2023 certificate of service on the Institutional Mail room to be delivered to the Department's General Counsel, Matthew Buchanan,⁴

the Court never received these documents. Nonetheless, the Clerk's Office promptly responded to Appellant's August 3rd letter on August 7, 2023, informing him that he must use the Notice of Appeal form which, the Court provided along with its response.

Thereafter, on September 17, 2023,⁵ Appellant sent yet another letter to the Court stating this was his "THIRD ATTEMPT" at appealing the Department's decision. (emphasis in original). In that letter, Appellant acknowledged that the Court had not received the documents he delivered to the Institution Mail room on July 5, 2023 and, he further contended that he has had trouble with the Institution Mail room mishandling his mail on multiple occasions. He asserted that he nevertheless "did timely deliver the documents to the Mail room and [that he] had no control after that, as far as what became of those documents." Notably, Appellant's September 17 letter did not include a Notice of Appeal despite, as he acknowledged, having been provided two of those forms by the Court.

On September 18, 2023, the Clerk's Office again notified Appellant by memorandum that his case would not be assigned until his appeal was submitted on the Court's required Notice of Appeal form.⁶ The Clerk's Office provided him with another copy of the prescribed form for filing a notice of appeal. Then, on September 26, 2023, Appellant finally filed a Notice of Appeal on the mandatory Court forms.

Here, although Appellant allegedly attempted to file a Notice of Appeal on or about July 5, 2023, the Court did not receive a properly perfected Notice of Appeal from Appellant until

⁴ The Department confirmed that it received Appellant's Notice of Appeal on July 12, 2023.

⁵ The Court notes that the Court of Appeal's decision mentions that Appellant also sent the Court a letter on August 17, 2023. However, the Record before this Court did **not** contain this letter. Nevertheless, in that letter, Appellant acknowledged receipt of communication from this Court "two weeks prior" which included "2 forms for filing appeals." Interestingly, in a subsequent letter dated October 17, 2023, Appellant claimed the Court did not provide him with copies of the Court's prescribed Notice of Appeal form until September; however, Appellant's contention is clearly contradicted by his acknowledgment in his September 17th letter of receipt of Court forms in August. As will be discussed henceforth, Appellant, however, did not refile these forms with the Court until September 26, 2023.

⁶ The Court acknowledges that the Clerk's memorandum indicated that Appellant's documents were received on July 10, 2023. However, as explained above, the Court did not receive any documents from Appellant until August 7, 2023. In fact, Appellant acknowledged in his September 17, 2023 letter that the documents delivered to the Institutional Mail room on or about July 5, 2023 were not received by the Court. As such, I find this to be a clerical error.

September 26, 2023. *See* Rule 59, SCALCR, (providing notice **shall** be on a form prescribed by the Court pursuant to Rule 57 and shall contain the following information...) (emphasis added); *see also* Rule 57, SCALCR (providing Court **shall** prescribe the content and format of forms required by these Rules. **The use of required forms as prescribed is mandatory.**) (emphasis added). Importantly, South Carolina appellate courts have consistently pronounced that appeal deadlines are jurisdictional in nature. *See Burnette v. S.C. State Highway Dep't*, 252 S.C. 568, 167 S.E. 2d 571 (1969) (holding a court does not have the authority to extend the time for filing an appeal, or for serving notice of appeal, from a decision of an administrative agency); *see also Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 169, 886 S.E.2d 671, 673 (2023) (recognizing "ALC has jurisdiction over all properly perfected inmate appeals."). Accordingly, the Court would lack the authority to consider whether Appellant's efforts to timely file his Notice of Appeal were sufficient. *But see* Rule 62, SCALCR (providing ALJ with discretion to determine whether a party made a good faith effort to file a document within the applicable time limits).

Nonetheless, even considering Appellant's alleged attempts to file his Notice of Appeal, the Court finds Appellant did not make a good faith effort to comply with proper procedures and file his Notice of Appeal within the required time limits. Rule 59, SCALCR, plainly states that the Notice of Appeal **shall** be on a form prescribed by the Court. Although Appellant was timely given the Court's prescribed form and informed of the requirement to file his Notice of Appeal, Appellant waited until September 26, 2023 to properly file his Notice of Appeal with this Court. Significantly, the Legislature has directed the Court to promulgate rules of procedure for the Court, and those rules are strictly enforced. S.C. Code Ann. § 1-23-650 (Supp. 2025).

Furthermore, the documents that were allegedly delivered to the Institutional Mail room on July 5th, which included a copy of a Notice of Appeal that was similar to the Court's prescribed form, were only served on the Department. Here again, the Court did not receive a copy of that notice until Appellant included a copy with his August 3rd letter. Therefore, even if the Court were to accept Appellant's Notice of Appeal that was not on the Court's prescribed form, it was not submitted to the Court until August 3, 2023, which was seventeen (17) days beyond the timeframe to file an appeal of the Department's June 12, 2023 response.

Additionally, the Court is not persuaded by Appellant claims that he did not have access to the mandatory Court forms. Indeed, Appellant acknowledged that he received the Court's prescribed form in August yet he failed to promptly refile his Notice of Appeal until September

26, 2023, fifty (50) days after the Court provided them.⁷ Appellant did not make a good faith effort to file his Notice of Appeal within the required time limits considering his awareness of the proper filing procedures and his possession of the Court's prescribed forms.

For these reasons, Appellant's appeal must be dismissed. Rule 59, SCALCR.

ORDER

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



Ralph K. Anderson, III
Chief Administrative Law Judge

August 31, 2026
Columbia, South Carolina

⁷ In fact, even after the case was assigned, Appellant contacted the Court on November 21, 2023 requesting return of the copies of his notice of appeal in the provided pre-paid envelope. Yet, here again, Appellant never provided copies of his notice of appeal or a pre-paid envelope to the Court. Interestingly, Appellant explained in his July 27, 2026 letter that "one notice of appeal that was sent to him was used by another inmate" for whom, he further explained he "used his typewriter to put a signature line on it, however, when [the other inmate] filed it, it was returned as being not a Notice of Appeal form in accordance with Rules 57 and 59 of the SCALC Rules." Surely this implies that Appellant has not only received the Court's prescribed forms but that he has modified them for other inmates rather than for his personal use.

CERTIFICATE OF SERVICE

I, Stephanie Armada, 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, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Armada
Judicial Law Clerk

August 31, 2026
Columbia, South Carolina