STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Willie Sturkey, 146039, Appellant, v. South Carolina Department of Corrections, Respondent.	Docket No.: 14-ALJ-04-0123-IJ Grievance No.: ECI 1597-13 **ORDER GRANTING MOTION TO DISMISS**

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Notice of Appeal filed on February 10, 2014 by Willie Sturkey ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Department"). On or about November 28, 2013, the Appellant filed a Step One Grievance with the Department complaining that he was wrongfully convicted of Possession of Any Communication Device without sufficient evidence presented against him. As a result of the conviction, Appellant received sanctions that included the loss of two hundred and seventy (270) days of accrued good-time.

The Department responded to the Appellant's Step One Grievance on December 12, 2013 indicating that the Grievance would not be processed because the Appellant pled guilty to the disciplinary offense and guilty pleas are considered "non-grievable" by the Department. In addition, the Appellant failed to follow proper Inmate Grievance Procedures in filing his Step One Grievance. Subsequently, the Appellant submitted correspondence to the Inmate Grievance Branch complaining that his Step One Grievance was improperly unprocessed. The Appellant received a formal response from the Inmate Grievance Branch Chief on January 22, 2014 which upheld the Appellant's disciplinary conviction. The Appellant then filed a Notice of Appeal with this Court on February 10, 2014.

On April 7, 2014, the Department filed a motion seeking dismissal of this appeal based on the Appellant's failure to comply with ALC Rule 59. On April 18, 2014, a response to the Department's motion was filed by the Appellant.

ALC Rule 59 sets forth, in relevant part, that:

> The notice of appeal from the final decision to be heard by the Administrative Law Court shall be filed with the Court and a copy served on each party, including the agency, within thirty (30) days of receipt of the decision from which the appeal is taken. (emphasis added).

Moreover, based upon a fundamental rule of appellate practice, it is well established that a court does not have the authority to extend the time for taking an appeal from a decision of an administrative agency. See, e.g., Sadico of Greenville, Inc. v. Greenville County Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000); Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985); Burnett v. S.C. State Highway Dep't, 252 S.C. 568, 167 S.E.2d 571 (1969). Further, pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), the ALC sits in an appellate capacity when reviewing final decisions of the Department regarding inmate grievance matters, and in order to perfect an appeal, "[t]he inmate must file and serve a notice of appeal upon specified parties within thirty days of receipt of written notice of [the] Department's final decision." Id. at 377, 527 S.E.2d at 754. (emphasis added).

In this matter, the Department argues that the Appellant failed to serve his Notice of Appeal upon the Department and therefore, this Court lacks jurisdiction over this appeal. In response, the Appellant asserts that his Notice of Appeal was mailed to the Department the same day he mailed his Notice of Appeal to the Administrative Law Court. The Appellant explains that while in "lock up," he gave his legal mail to a correctional officer and asked that it be placed in the institution's outgoing mail. The Appellant argues that if his Notice of Appeal never reached the Department, he should not be held liable as he had to rely upon the assistance of correctional officers to handle his legal documents because inmates on "lock up" are generally not allowed to exit their cells.

Nonetheless, a careful review of the Notice of Appeal form completed by the Appellant reflects that the Appellant's Notice of Appeal was only served upon the Court. There is no indication the same was also served upon the Department and the Department denies that it ever received the Notice. Thus, the Court's jurisdiction over this appeal has not been triggered as service of the Appellant's Notice of Appeal upon the Department was never perfected. While this Court recognizes the harsh result of this decision, it is constrained by the rules and legal precedent in this State. See McClain v. Ingram, 314 S.C. 359, 444 S.E.2d 512 (1994). Accordingly, this matter must be dismissed.

IT IS THEREFORE ORDERED that the Department's Motion to Dismiss is

GRANTED and the above-referenced appeal is **DISMISSED**.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

April 23rd, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s)

This 23 day of April 2014

By: _____
Hearing Law Clerk