

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

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SC Court of Appeals

George Cleveland, III, #357770, )  
 )  
Appellant, )  
 )  
v. )  
 )  
South Carolina Department of Corrections, )  
 )  
Respondent. )

Docket No. 14-ALJ-04-0664-AP

ORDER OF DISMISSAL

FILED

February 27, 2015

SC ADMIN. LAW COURT

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by George Cleveland, III (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant appeals his February 26, 2014 disciplinary conviction for Offense 810, "Striking an Inmate With or Without a Weapon" (Offense 810) under SCDC Policy OP-22.14.

On February 8, 2014, Appellant was charged with Offense 810 following an altercation with another inmate. A Disciplinary Hearing Officer (DHO) held a hearing on the charge on February 26, 2014. Appellant was represented by counsel substitute and chose not to have his accuser present at the hearing. At the end of the hearing, the DHO found Appellant guilty of the charge and issued several sanctions, including the loss of 60 days of good time.

On February 26, 2014, Appellant filed a Step 1 Grievance regarding his conviction for Offense 810. After the warden denied the conviction, Appellant filed a Step 2 Grievance on March 7, 2014. Appellant filed a Notice of Appeal on August 27, 2014, and the Notice of Assignment was filed September 11, 2014.

On October 20, 2014, Appellant filed an "Affidavit in Support of An Enlargement," requesting an extension until December 5, 2014 to file his Initial Brief. On October 27, 2014, the Department filed a Motion to Enlarge Time to File Record, requesting an extension of thirty days from the date of the Order granting such relief. On November 14, 2014, the Court granted the Department's motion, which not only gave the Department until December 15, 2014 to file the Record on Appeal but also gave Appellant until January 5, 2015 to file his brief, which was more time than Appellant was originally seeking to file his brief. On December 16, 2014, the Department filed a second Motion to Enlarge Time to File Record, requesting an additional

twenty days to file the Record on Appeal. However, three days later, on December 19, 2014, before the Court could rule on this motion, the Department filed the Record on Appeal. On December 29, 2014, Appellant filed a "Motion to Strike and Response to Enlargement," arguing that the Department's filings should be stricken, because it filed both its second Motion to Enlarge Time to File Record and the Record on Appeal after the December 15, 2014 deadline to file to Record on Appeal set by the Court. On December 31, Appellant filed a "Motion to Compel."<sup>1</sup> On January 16, 2015, the Department filed its brief. On February 2, 2015, Appellant filed a Response to Respondent's Brief.

At the outset, I agree with Appellant that the Department did not file its second Motion to Enlarge Time to File Record and the Record on Appeal by the December 15, 2014 deadline set by the Court. The Court **may** resolve the appeal adversely against the Department. ALC Rule 62 allows an Administrative Law Judge to "resolve [an] appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits . . . ." However, in this instance, I do not find that dismissal is warranted because Appellant has not demonstrated any prejudice he suffered as a result of the Department's four-day delay in filing of the Record on Appeal. I therefore deny Appellant's "Motion to Strike and Response to Enlargement."

The Court's November 14, 2014 Order gave Appellant until January 5, 2015 to file his brief, and despite the Department's four-day delay in filing the Record on Appeal, Appellant managed to file a 7-page "Motion to Strike and Response to Enlargement" on December 29, 2014 and a 6-page "Motion to Compel" on December 31, 2014, both after the Record on Appeal was filed and well before Appellant's deadline for filing his Initial Brief. Appellant even filed an 11-page "Response to Respondent's Brief" on February 2, 2015. Notwithstanding the fact that Appellant clearly had the time and ability to draft an Initial Brief and file it, Appellant never did. In the first paragraph of his "Response to Respondent's Brief," Appellant even acknowledged that he had not filed his "original brief."

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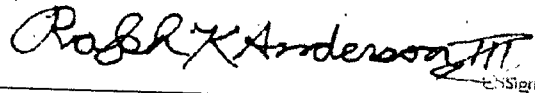
<sup>1</sup> In his "Motion to Compel," Appellant requested a legal packet from the Department and the inclusion in the Record on Appeal of a hand-written statement from an inmate that was allegedly read in part by the DHO and some photos that had purportedly been shown to him at the hearing. First, Appellant has cited to no authority allowing this Court to consider a motion to compel discovery at the appellate level. Second, Appellant had an opportunity at the hearing to seek to introduce documents or photographs into evidence. Therefore, Appellant's motion is denied. Moreover, Appellant's filing of this motion, as will be discussed *infra*, did not absolve Appellant of his responsibility to file his brief, pursuant to Rule 63 of the Rules of Procedure for the ALC (ALC Rules).

Appellant seems to suggest in his response, that he failed to file his "original brief" because "the court had not ruled on [his] pending motion compelling discovery among other things." However, ALC Rule 63 provides that "[t]he filing of a motion does not toll any time limits imposed by these Rules[,]" including the deadline in ALC Rule 60(A) for filing an appellant's brief. Thus, Appellant still had a responsibility to file his Initial Brief. Had Appellant filed his brief up to four days after it was due, the Court, under the facts of this case, would have excused his delay in filing his brief; but Appellant instead has not filed his Initial Brief as of the date of this Order or filed a timely motion requesting additional time to file his brief. According to ALC Rule 62, "on its own motion, an Administrative Law Judge may dismiss an appeal . . . for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section . . . ." Because Appellant failed to file his Initial Brief, and has not notified the ALC of any extenuating circumstances regarding his failure to so file, I conclude *sua sponte* that this matter should be dismissed, pursuant to ALC Rule 62.

**ORDER**

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

**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

February 27, 2015  
Columbia, South Carolina