

STATE OF SOUTH CAROLINA  
In The Administrative Law Court  
Docket Number 15-ALJ-15-0029

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APPEAL OF FINAL DECISION  
Department of Probation, Parole, and Pardon Services

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REGINALD SPELLMAN, #251838.....APPELLANT

v.

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

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**BRIEF OF RESPONDENT**

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**Tommy Evans, Jr.**  
**Assistant General Counsel**

**South Carolina Department of Probation,  
Parole and Pardon Services  
P.O. Box 50666  
Columbia, South Carolina 29250  
(803) 734-9220**

**ATTORNEY FOR RESPONDENT**

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**TABLE OF AUTHORITIES**

**CASES**

*Al-Shabbaz v. State*, 338 S.C. 334, 527 S.E.2d 724 (2000)..... 2

*Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2002).....2

**RULES**

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**STATEMENT OF ISSUES ON APPEAL**

1. **Is it unlawful to use the facts of the crime as the sole reason to deny the Appellant parole when the facts of the case will never change?**

## STATEMENT OF THE CASE

On January 1, 2006, the Richland County Sheriff's Department was called to a home in response to the alleged rape of a young girl by the Appellant. The child was the step daughter of the Appellant, and this assault was allegedly witnessed by the child's mother. The Appellant was later arrested and charged with the offense of lewd act upon a minor.

On February 27, 2012, the Appellant appeared before the Honorable G. Thomas Cooper for this offense. Upon conclusion of this appearance, the Appellant was sentenced to a fifteen year period of incarceration. At the time the Appellant committed this offense South Carolina law allowed an individual serving a sentence for lewd act parole eligibility upon serving one-fourth of their sentence.

The Appellant made his initial appearance before the Parole Board on January 22, 2014. Upon the conclusion of this appearance, the Board decided to deny the Appellant an opportunity to be released on parole. The Appellant made his last appearance on April 22, 2015. Upon the conclusion of this hearing the Board decided to deny parole due to: 1) the nature and seriousness of the current offense; and 2) a prior criminal record that indicates poor community adjustment. Upon being notified as to his last denial of parole the Appellant decided to file a notice of appeal before the Administrative Law Court. Within this notice of appeal the Appellant alleges that he was unlawfully denied parole due to the Board using the identical reasons in each of his hearings.

The Respondent will argue, this appeal should be subject to dismissal due to the fact the Appellant failed to file his brief within the time allotted pursuant to the rules of the Administrative Law Court. The Respondent's brief supporting this defense follows.

## ARGUMENT

- 1. The Appellant failed to abide to the rules of the Administrative Law Court; therefore, this appeal should be subject to dismissal.**

The ALC's jurisdiction to review a final decision of the Department is derived from the decisions of the South Carolina Supreme Court in *Al-Shabbaz v. State*, 338 S.C. 334, 527 S.E.2d 724 (2000), and *Furtick v. S.C. Dept. of Probation, Parole, and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2002). In *Al-Shabbaz*, the South Carolina Supreme Court created a new avenue by which inmates could seek review of a final decision of a state agency in a "non-collateral" matter related to a conviction or sentence. The Court held that inmates could appeal those final agency decisions to the ALC, and ultimately to the Court of Appeals pursuant to the Administrative Procedures Act. *Al-Shabbaz*, at 376. In *Al-Shabbaz*, the Court recognized that "these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed; and, (2) when an inmate believes prison officials have erroneously calculated his sentence; sentence-related credits or custody status." *Id.*, at 369.

The Court noted that the appealable final decision in *Furtick* arises in the latter manner, where the inmate alleges the Department erroneously determined he was not eligible for parole. The Court held that in order to determine whether an inmate's claim against the Department is entitled review by the ALC under the procedure set forth in *Al-Shabbaz*, it is first necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. *Furtick*, at 149 The Court determined that the permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process. *Id.* The Appellant has filed a notice of appeal before the ALC; therefore, responsibility falls on both parties to follow the rules of the ALC.

This appeal was assigned to the Honorable Shirley Robinson, Administrative Law Court Judge on May 1, 2015. Pursuant to the rules of the Administrative Law Court, the Appellant was

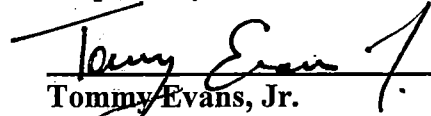
obligated to file and serve his brief on or before July 5. Unless otherwise ordered, the party first noticing the appeal shall file an original brief within sixty-five (65) days after the date of assignment. Rule 60 SCRALC. We are well beyond the time limit imposed under the rules, and the Appellant has yet to file his brief.

Due to the Appellant's failure to file his brief within the time allotted under the rules, the Respondent respectfully request this appeal be subject to dismissal. Upon motion of any party, or in its own motion, an Administrative Law Judge may dismiss an appeal for failure to comply with any of the rules of procedure for appeal, including the failure to comply with any of the time limits provided by this section, or for the failure to provide a factual basis for each expressly and specifically asserted constitutional violation as prescribed by Rule 59(B). Rule 62 SCRALC.

**CONCLUSION**

The Respondent respectfully requests this appeal be dismissed due to the Appellant's failure to follow the rules of the Administrative Law Court.

Respectfully submitted,

  
\_\_\_\_\_  
Tommy Evans, Jr.  
Assistant General Counsel

South Carolina Department of Probation,  
Parole and Pardon Services  
P.O. Box 50666  
Columbia, South Carolina 29250  
(803) 734-9220

Columbia, South Carolina  
July 22, 2015

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NOV 30 2015

SC Court of Appeals

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Ronald Bryan Spillman, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ronald Bryan Spillman  
Applicant

SWORN or affirmed to and subscribed before me this  
13 day of July, 2015.

Cathrine A. Comera  
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

RICHLAND COUNTY  
FILED  
2015 AUG 25 PM 2: 08  
JEANETTE W. HOSBRIDE  
C.C.P. & G.S.

RECEIVED

Kershaw  
C.I.

AUG 13 2015

**INMATE TRUST FUND ACCOUNT REPORT  
for SOUTH CAROLINA COURT FILING FEES**

HD 137

KerCI  
MAILROOM

**INSTRUCTIONS TO INMATE:** Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

INMATE NAME (print): Reginald Spellman

SCDC # 251838 - INMATE SIGNATURE: Reginald Spellman

I plan to file this action in the SC County of Richland

RICHLAND COUNTY  
FILED  
AUG 25 PM 2:08  
JENNIFER M. GIBBIE  
CLERK  
S.C.P. & A.S.

*The section below is for SCDC - Financial Accounting Branch's use ONLY.*

(1) Total deposits to inmate's account for preceding six months' period*	\$	<u>237.76</u>
(2) Twenty percent (20%) of line 1	\$	<u>47.55</u>
(3) Account balance - current date	\$	<u>0.13</u>
(4) PAYMENT AMOUNT ** (lesser of line 2 or line 3) Enclosed check # _____	\$	<u>0</u>

**\*\*NOTE to COURT:** If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections  
Financial Accounting - Room 234  
PO Box 21787  
Columbia, SC 29221-1787

\*Admission date is noted here if inmate incarcerated less than six months      /      /     

Prepared by [Signature] Financial Accounting Branch - SCDC Date 8/11/15 efileinstru5prepared 1/97

STATE OF SOUTH CAROLINA  
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**SC Court of Appeals**

APPEAL OF FINAL DECISION  
Department of Probation, Parole, and Pardon Services

REGINALD SPELLMAN, #251838 ..... APPELLANT

v.

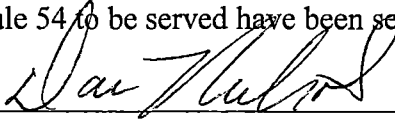
S.C. DEPARTMENT OF PROBATION, PAROLE AND  
PARDON SERVICES, ..... RESPONDENT

**CERTIFICATE OF SERVICE**

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Respondent, certify that I have served the within *Brief of Respondent*, dated July 22, 2015, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 22<sup>nd</sup> day of July, 2015, addressed to:

Reginald Spellman, #251383  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

I further certify that all parties required by Rule 54 to be served have been served.

  
**Dawn Nichols**  
**Executive Administrative Assistant**  
South Carolina Department of Probation,  
Parole, and Pardon Services  
P. O. Box 50666  
Columbia, South Carolina 29250

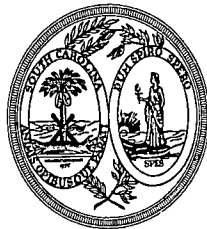
State of South Carolina  
Department of Probation, Parole and Pardon Services

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SC Court of Appeals

NIKKI R. HALEY  
Governor



JERRY B. ADGER  
Director

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July 22, 2015

The Honorable Shirley Robinson  
Judge, Administrative Law Court  
1205 Pendleton Street, Suite 224  
Columbia, S.C. 29201

**RE: Reginald Spellman, #251838 v. S.C. Department of Probation, Parole and Pardon Services**

Dear Judge Robinson:

Please find enclosed for filing the *Brief of Respondent* dated July 22, 2015, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Tommy Evans, Jr.".

Tommy Evans, Jr.  
Assistant General Counsel

TE:dn

Enclosures

cc: Reginald Spellman