

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge John D. McLeod

ALC Case No. 14-ALJ-04-0324-AP
ALC Case No. 14-ALJ-04-0325-AP

Appellate Case No. 2014-001481

JOHN B. CAMPBELL, # 228072,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEALS WHERE APPELLANT FAILED TO TIMELY FILE BRIEFS PURSUANT TO THE ADMINISTRATIVE LAW COURT RULES.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of John B. Campbell, an inmate in the custody of the South Carolina Department of Corrections. With respect to ALC case number 14-ALJ-04-0324-AP (grievance number PCI-1249-13), Appellant submitted a Step One Grievance on May 23, 2013, arguing that SCDC was misinterpreting his sentence for attempted kidnapping. This grievance was investigated and denied by the warden on June 3, 2013. Appellant submitted a Step Two Grievance form on June 11, 2013, which was also investigated and was denied on March 3, 2014.

With respect to ALC case number 14-ALJ-04-0325-AP (grievance number PCI-1267-13), Appellant submitted a Step One Grievance on June 20, 2013 arguing that an SCDC classification employee destroyed two of his sentence sheets. This grievance was investigated and denied by the warden on June 14, 2013. Appellant then submitted a Step Two Grievance form on June 20, 2013, arguing that the warden and the prison's classification personnel were not properly interpreting his sentence. This grievance was denied on March 3, 2014.

Appellant appealed both grievances to the Administrative Law Court, and Administrative Law Judge John D. McLeod dismissed both appeals by separate orders dated and filed June 27, 2014. Judge McLeod concluded that dismissal of the appeals was proper under ALC Rule 60 and Rule 62 because Appellant failed to timely file a brief to support his case. Appellant appealed to this Court on July 2, 2014. On December 16, 2014, this Court dismissed the appeal due to deficiencies in the Initial Brief of Appellant and Designation of Matter. Appellant submitted a motion to reinstate in January 2015, and this Court reinstated the appeal by order dated March 24, 2015. On October 27, 2015, this Court again dismissed

the appeal due to Appellant's failure to cure certain deficiencies. Appellant filed a second motion to reinstate in November 2015. This Court reinstated the appeal by order dated January 7, 2016. This Brief of Respondent follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or 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.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to

findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEALS WHERE APPELLANT FAILED TO TIMELY FILE BRIEFS PURSUANT TO THE ADMINISTRATIVE LAW COURT RULES.

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). In Al-Shabazz, the Supreme Court created a new avenue by which inmates could seek review of final decisions of SCDC in "non-collateral" matters, i.e., matters in which an inmate does not challenge the validity of a conviction or sentence, by appealing those decisions to the ALC. Id. at 373, 376, 527 S.E.2d at 752, 754. The language in Rule 60 states:

Unless otherwise ordered, the party first noticing the appeal shall file an original brief within ninety (90) days after the date of the assignment. Within one hundred-ten (110) days after the date of assignment, the respondent shall file an original brief in response. . . .

Rule 62 states that:

Upon motion of any party, or 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 . . .

Here, pursuant to ALC Rule 60, Appellant was required to file and serve original briefs in both of his appeals by June 16, 2014. Rule 62 specifically provides that an Administrative Law Judge may dismiss an appeal for failure to comply with any of the rules of procedure, including the failure to comply with any time limits. Appellant had an obligation to advance his position and was given ample time to do so, yet he failed to file a brief in either of his

appeals as was required by the ALC rules. Notably, in the time period before the due date of his brief, Appellant failed to submit any requests for continuances or any valid explanations regarding why he was unable to file a brief.

Based upon the foregoing, the Administrative Law Judge was fully justified in dismissing both of Appellant's appeals for failure to comply with the Administrative Law Court Rules. The lower court's order of dismissal should be upheld.¹

CONCLUSION

For the foregoing reasons, this Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 

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February 3, 2016

¹ While this Court need not reach the merits of Appellant's case due to the procedural defaults discussed above, Respondent would note that, contrary to Appellant's argument on pages 5-6 of his Brief, SCDC has properly calculated and interpreted Appellant's sentence for attempted kidnapping using the correct statute. See S.C. Code 16-1-80 ("A person who commits the common law offense of attempt, upon conviction, must be punished as for the principal offense.") see also S.C. Code 16-1-60 (specifically stating that attempt to commit an offense classified as a "violent" offense is also a "violent" offense).

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APPELLANT,

v.

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RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date I mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: **John B. Campbell, # 228072**, Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, South Carolina 29067.


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February 3, 2016



OFFICE OF GENERAL COUNSEL

NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

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SC Court of Appeals

February 3, 2016

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: John B. Campbell, # 228072 v. South Carolina Department of Corrections
Appellate Case No. 2014-001481

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: John B. Campbell, # 228072
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