

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Rice, #083744,

Appellant,

vs.

South Carolina Department of Probation
Parole and Pardon Services,

Respondent.

Docket No. 16-ALJ-15-0002-AP

ORDER OF DISMISSAL
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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant above named, who is incarcerated with the South Carolina Department of Corrections. On October 22, 2015, the South Carolina Department of Probation, Parole and Pardon Services notified Appellant that he was denied parole. On January 27, 2016, Appellant filed a notice of appeal with the ALC¹, and the appeal was assigned to me on February 3, 2016.

In the above-captioned matter, the Appellant failed to file the notice of appeal with the ALC within thirty (30) days of his notice of the Department's final decision in this matter, and as a result, the Court does not have jurisdiction over the Appellant's appeal.

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 Dept., 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). ALC Rule 59 sets forth, in relevant part, that:

¹ Appellant indicates that the final decision is dated December 17, 2015 and he received it on January 11, 2016. The December 17, 2015 document attached to his Notice of Appeal is not correspondence from the Department.

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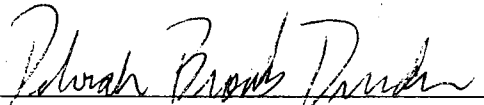
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The notice of appeal from the final decision to be heard by the Administrative Law Court shall be filed with the Court and a copy served on each party, including the agency, within thirty (30) days of receipt of the decision from which the appeal is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

ALC Rule 59 (emphasis added). In this matter, the Appellant received notice of the Department's October 22, 2015 final decision concerning his parole eligibility, but did not file his notice of appeal with the Court until January 27, 2016. The Appellant was given notice of the Department's decision as well as the opportunity to pursue review of that decision before becoming bound by the terms of the decision. S.C. Const. art. I, § 22. ("No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; . . . and he shall have in all such instances the right to judicial review."). By his own inaction, the Appellant simply failed to take advantage of his right to judicial review in this matter. Zaman v. S.C. State Bd. of Medical Exam'rs, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("One cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it."). Therefore, this Court finds that the Appellant did not file his notice of appeal in a timely fashion with the Court, and thus failed to properly invoke the jurisdiction of the ALC. 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 HEREBY ORDERED that this appeal is **DISMISSED, WITH PREJUDICE.**
AND IT IS SO ORDERED.


Deborah Brooks Durden
Administrative Law Judge

February 8, 2016
Columbia, South Carolina

NOTICE 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).

On 8th day of February 2016
by R.S. Loh
Judicial Law Clerk