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IN THE STATE OF SOUTH CAROLINA  
IN the South Carolina Court of Appeals

MAR 29 2017

APPEAL FROM ADMINISTRATIVE LAW COURT S.C. SUPREME COURT  
Ralph King ANDERSON, III, Administrative Law Judge  
Docket No. 16-ALJ-15-0012-IJ

APPELLATE COURT CASE NO. 2016-002100

Basil W. AKBAR, #065498

Appellant,

v.

South Carolina Department of Probation, Parole & Pardon Services, et al.

Respondent.

AMENDED RECORD ON APPEAL

Basil W. Akbar, #065498  
Lee County Institution  
990 Wisacky Hwy., F-6B, 2213  
Bishopville, S.C. 29010  
PRO SE

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**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Basil W. Akbar, #065498,	)	Docket No. 16-ALJ-15-0012-IJ
	)	
Appellant,	)	
	)	
vs.	)	<b>ORDER OF DISMISSAL</b>
	)	
South Carolina Department of Probation,	)	
Parole and Pardon Services,	)	
	)	
Respondent.	)	
<hr/>		

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Basil Akbar (Appellant) from a decision of the South Carolina Department of Probation, Parole and Pardon Services (Department or PPS) denying him parole.

The Parole Board denied Appellant parole on September 24, 2015, the day after the parole hearing. Appellant requested reconsideration of the decision. However, the Department informed Appellant in a letter dated November 17, 2015 that his request for reconsideration was denied because "there is no appeal process for the routine denial of parole." Appellant filed his Notice of Appeal with this Court on April 19, 2016, later filing his brief on June 13, 2016.<sup>1</sup>

**DISCUSSION**

Rule 59 of the Rules of Procedure for the Administrative Law Court (SCALC Rules) states in pertinent part that "[t]he 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,

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<sup>1</sup> The Department misstated the date of Appellant's filing date at February 22, 2016. Appellant attempted to file a document entitled "Notice of Appeal," on which the date "February 22, 2016" appears. However, this document did not comply with SCALC Rules 57 and 59 (requiring a Notice of Appeal to be on the form prescribed by the Court pursuant to SCALC Rule 57) and was, therefore, not filed. Appellant did not file a proper Notice of Appeal until April 19, 2016. Additionally, even had Appellant filed the Notice of Appeal on February 22, 2016, it would still have been late.

Appellant also drafted documents entitled "Appellant's Request for Admission" and "Appellant's First Set of Interrogatories, and Production." Also, on August 2, 2016, Appellant filed a Notice of Motion and Motion to Compel, seeking the Court to require the Department to answer the aforementioned documents. However, these documents were never, nor could ever have been, filed in this Court, because such documents are appropriate only in contested cases, whereas this case involved an appeal. Moreover, Appellant has cited no authority that would allow such documents to be filed in an appeal before this Court. Therefore, the Department was not required to respond to Appellant's discovery requests, and Appellant's Motion to Compel is denied.

**FILED**

September 23, 2016

SC ADMIN. LAW COURT

including the agency, **within thirty (30) days of receipt of the decision from which the appeal is taken. . .**” (emphasis added). *See also* S.C. Code Ann. § 1-23-600(E) and -380(1) (Supp. 2015) (authorizing appellate review by the ALC and requiring the filing and service of the notice of appeal within thirty days after a final agency decision or, if there was a request for rehearing, thirty days from the date after a decision as to that request). Thus, “[t]he requirement of [filing and] service of the notice of appeal is jurisdictional , *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for [filing and] service of the notice.” *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 413 S.C. 642, 647, 413 S.E.2d 575, 578 (Ct. App. 2015) (quoting *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008)).<sup>2</sup>

In this case, Appellant requested a reconsideration of his parole denial, and the Department denied his request on November 17, 2015. Appellant argues that the thirty-day filing period did not begin to run until after he received a final letter from the Department denying his request for the release of records relating to information upon which the Board relied in rendering its final decision denying Appellant parole. However, pursuant to SCALC Rule 59 and S.C. Code Ann. § 1-23-380(1), the thirty-day filing period begins thirty days after receipt of the final decision from which the appeal is taken. Because there was a request for reconsideration below, the Department’s November 17, 2015 denial of that request became the final decision from which the appeal was taken. Therefore, the thirty days began to run from the date of Appellant’s receipt of that letter denying his request for reconsideration.<sup>3</sup>

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<sup>2</sup> These cases are based on Rule 203(b)(6) of the South Carolina Appellate Court Rules (SCACR). However, the same requirement under that rule is found in ALC Rule 59 with respect to a thirty-day filing and service requirement, the only difference being that in DEW cases, the thirty days starts from the date of mailing of the final agency decision instead of from the receipt thereof. Moreover, Section 1-23-380(1) requires “serving and filing notice of appeal [in the ALC] **as provided in the South Carolina Appellate Court Rules** within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered.” (emphasis added). *Cf. Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 96, 668 S.E.2d 795, 797-798 (2008) (recognizing the jurisdictional nature of the service requirement in the revised version S.C. Code Ann. § 1-23-380(A)(1)). *See also S.C. Coastal Conservation League v. S.C. Dep’t of Health and Env’tl. Control*, 380 S.C. 349, 377-378, 669 S.E.2d 899, 914 (Ct. App. 2008) (finding that the ALC was deprived of jurisdiction where the party failed to comply with the filing deadlines for requesting a review before the DHEC Board pursuant to S.C. Code Ann. § 44-1-60(E)), *overruled on other grounds by S.C. Coastal Conservation League v. S.C. Dep’t of Health and Env’tl. Control*, 390 S.C. 418, 702 S.E.2d 246 (2010).

<sup>3</sup> It is also noteworthy that Appellant’s request for documents that he may use in substantiating his appeal are not required or necessary for the filing of a notice of appeal.

Here, Appellant filed his Notice of Appeal on April 19, 2016, well beyond the thirty-day deadline, which expired on or around December 17, 2015. According to SCALC Rule 62, an Administrative Law Judge may dismiss an inmate's appeal for failure to comply with the rules of procedure for appeals or for failure to comply with any time limits set forth in an appeal. Appellant's delay is well beyond the time period set forth in the SCALC Rules. Since Appellant was afforded ample time to file his brief, failed to do so, and did not set forth any extenuating circumstances regarding his failure to do so, I conclude that this matter should be dismissed.<sup>4</sup> Accordingly,

**IT IS HEREBY ORDERED** that Appellant's appeal is **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

September 23, 2016  
Columbia, South Carolina

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<sup>4</sup> Appellant's brief included ten separate issues on appeal. However, in light of the Court's disposition of Appellant's appeal, the Court need not address these issues. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that an appellate court need not address remaining issues when disposition of a prior issue is dispositive). Similarly, in light of the Court's disposition of Appellant's appeal, the Court hereby denies Appellant's "Motion to Challenge Respondent's Record on Appeal as Submitted" filed on August 25, 2016 and his "Objections to Respondent's Brief in its Entirety and Motion to Strike Respondent's Brief" filed August 30, 2016.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

*E. Harvin Belser Fair*

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E. Harvin Belser Fair  
Judicial Law Clerk

September 23, 2016  
Columbia, South Carolina

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

NIKKI R. HALEY  
Governor



JERRY B. ADGER  
Director

2221 Devine Street, Suite 600  
Post Office Box 50666  
Columbia, South Carolina 29250  
Telephone: (803) 734-9220  
Fax: (803) 734-9440  
www.dppps.sc.gov

September 24, 2015

Mr. Basil Akbar #00065498  
Lee Correctional Institution  
990 Wisaky Hwy.  
Bishopville, SC 29010

RE: NOTICE OF REJECTION

Dear Mr. Akbar:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Prior Criminal Record Indicates Poor Community Adjustment  
Failure To Successfully Complete A Community Supervision Program

Sincerely,

Handwritten signature of Larry Ray Patton, Jr.

Larry Ray Patton, Jr.  
Director of Parole Board Support Services

**RECEIVED**

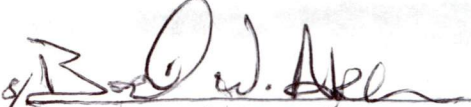
MAR 29 2017

CERTIFICATE OF SERVICE

S.C. SUPREME COURT

I Basil W. Akbar, hereby certify that copy of Appellant's,  
Amended Record on Appeal, was served on Respondent's attorney  
of the record, postage prepaid at: Mr. Tommy Edds, attorney  
at law, 2221 Dedline Street, Suite 600, Columbia, S.C. 29250.

Date: March 23, 2017

  
Basil W. Akbar, #065498, Pro Se  
Lee County Institution  
990 Wisocky Hwy, F-6B, 2213  
Bishopville, S.C. 29010

LEE CI MAIL ROOM  
MAR 24 2017  
**RECEIVED**

THE DEPARTMENT OF CORRECTIONS HAS NOT CENSORED  
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT  
ASSUME RESPONSIBILITY FOR ITS WRITTEN CONTENTS.  
LEE CORRECTIONAL INSTITUTE  
SC DEPARTMENT OF CORRECTIONS

Basil W. Akbar, #065498, F-6B, 2213  
Lee County Institution  
990 Wissook Highway  
Bishopville, S.C. 29010

ENTER-DEPARTMENTAL MAIL SYSTEM

**SCDC**

MAR 23 2017

MAIL ROOM

ENTER-DEPARTMENTAL MAIL SYSTEM

THE HON. DANIEL B. SHEAROUSE, CLERK OF COURT  
THE SUPREME COURT OF SOUTH CAROLINA  
1231 GERVAIS ST.  
COLUMBIA, S.C. 29211