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SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Lexie James Turner, #249878,

Docket No. 17-ALJ-15-0009-AP

Appellant,

vs.

ORDER OF DISMISSAL

South Carolina Department of Probation  
Parole and Pardon Services,

Respondent.

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 November 18, 2015, the South Carolina Department of Probation, Parole and Pardon Services notified Appellant that he was ineligible for parole. On March 30, 2017, Appellant filed a notice of appeal with the ALC, and the appeal was assigned to me on April 4, 2017.

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

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.


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SCALC Rule 59 (emphasis added). In this matter, the Appellant received notice of the Department's final decision concerning his parole eligibility on November 23, 2015, but did not file his notice of appeal with the Court until March 30, 2017. 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

April 18, 2017  
Columbia, South Carolina

LEFT PRIVATE UP 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).  
This 18<sup>th</sup> day of April 2017  
By: R. E. [Signature]  
Judicial Law Clerk