

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bernard McFadden, #199135)
)
 Appellant,)
)
 v.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 16-ALJ-04-0844-AP

ORDER OF DISMISSAL

RECEIVED

MAY 17 2017

MAY 27 2017

SC Court of Appeals

ADMINISTRATIVE LAW COURT

This matter is before the court on the appeal of Bernard McFadden (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). On February 23, 2017, the Department filed a Motion to Dismiss, citing SCALC Rules 59 and 71, as well as *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). The Department argues that this court should dismiss this appeal because the “Appellant has not properly filed this case and the time to do so has long past.” The Department explained that the Appellant was required to pay a filing fee of twenty-five dollars because this appeal represented his fourth case in calendar year 2015. The Department noted that “[a]most two years after filing the Notice of Appeal, the Appellant has not paid the filing fee, nor has he properly applied for waiver under Rule 71.

SCALC Rule 59 provides that a “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...within thirty (30) days of receipt of the decision from which the appeal is taken.” The Department’s Final Decision with regard to Grievance Number KRCI-0165 was delivered to the Appellant on July 21, 2015, and the Appellant filed a Notice of Appeal with this court on December 2, 2016.¹ Because the Appellant received the Department’s decision on July 21, 2015, the date for

¹ As background, this appeal is the Appellant’s second attempt in two (2) years to appeal Grievance Number KRCI-0165, involving a January 30, 2015, assault on another inmate. A Department Hearing Officer conducted a hearing on the matter on February 11, 2015, and ultimately found the Appellant guilty of Striking an Inmate Without a Weapon, in violation of Section 810 of SCDC Policy OP-22.14. The Appellant lost sixty (60) days good time credit, among other punishments. The Appellant filed Step 1 and Step 2 Grievances in 2015, seeking reversal of this conviction based on insufficient evidence and lack of due process, both of which were denied at the Department level.

The Department denied the Appellant’s Step 2 Grievance on July 9, 2015, and served him on July 21, 2015. The Appellant timely filed his Notice of Appeal with this court on July 29, 2015. The Appellant contended that he

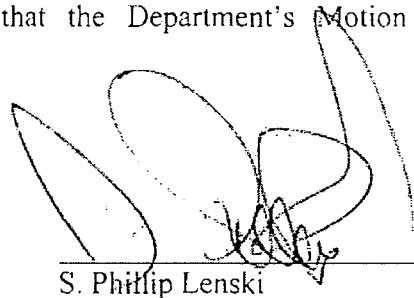
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perfecting an appeal from the decision was August 20, 2015.

Timely filing and service of a notice of appeal is a jurisdictional requirement and this court does not have the authority to extend or expand the time for filing such appeal. See *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985); *State v. Brown*, 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001). Because the Appellant failed to timely file his Notice of Appeal with this court, this court does not have jurisdiction to hear it. Pursuant to the Department's motion, this court concludes that this matter must be dismissed.

IT IS THEREFORE ORDERED that the Department's Motion to Dismiss is **GRANTED** and this appeal is **DISMISSED**.

AND IT IS SO ORDERED.²



S. Philip Lenski
Administrative Law Judge

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Columbia, South Carolina

27th April 2017
Law Clerk

was denied the opportunity to present witnesses and evidence. Shortly after filing his Notice of Appeal, sometime in early August 2015, this court's clerk notified the Appellant that because he had already filed three (3) appeals within a calendar year, that his appeal could not be assigned until he paid the requisite twenty-five dollar filing fee, as required under the provisions of S.C. Code Ann. § 1-23-670 (Supp. 2015). The Appellant's appeal was returned unprocessed and the Appellant never paid the filing fee. Thereafter, on September 11, 2015, the Appellant filed a motion to compel the Clerk's Office of this court to file his appeal, or, in the alternative, to proceed *in forma pauperis*. As a ground for the motion, the Appellant argued that because he is indigent and because the case involved fundamental rights, the filing fee must be waived. The Appellant then apparently filed a petition for a writ of mandamus in the Supreme Court of South Carolina and simultaneously moved for the Supreme Court to waive the filing fee that applied to the mandamus petition. The Supreme Court denied the motion to waive the filing fee and, because it could not be accepted absent the filing fee, dismissed the mandamus petition.

The Appellant then filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina pursuant to 22 U.S.C. § 2241 on November 16, 2015, challenging his conviction in the disciplinary proceeding at the state correctional institution where he was incarcerated. On July 6, 2016, the Magistrate Judge issued a Report and Recommendation, recommending the Appellant's Petition be dismissed, and concluding the Appellant failed to perfect the filing of his appeal in this court and failed to exhaust his state court administrative remedies. On September 19, 2015, the District Court accepted the Magistrate Judge's Report and Recommendation and granted the Respondent's Motion to Dismiss. In addition, the District Court also found that the legal standard for the issuance of a certificate of appealability had not been met.

On December 2, 2016, the Appellant resubmitted the same Notice of Appeal dated July 29, 2015, with a letter to this court indicating that he was refiling his Appeal in the exact same matter from 2015 involving Grievance # KRCI-0165.

² The Appellant filed several motions during the pendency of this matter. All motions not specifically addressed in this Order of Dismissal are hereby denied.

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