

6

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAY 22 2017

APPEAL FROM THE ADMINISTRATIVE LAW COURT of Appeals

Administrative Law Judge H.W. Funderburk, Jr.

ALC Case No. 16-ALJ-04-0730-AP
Appellate Case No. 2017-000694

JEROME OWENS, # 299108,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

Annie Laurie Rumler
Staff Attorney
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1355

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF THE ISSUE ON APPEAL1

STATEMENT OF THE CASE2

STANDARD OF REVIEW3

ARGUMENT4

CONCLUSION.....5

TABLE OF AUTHORITIES

CASES

Hendley v. Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996).. 3
Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).....4, 5

STATUTES

S.C. Code § 1-23-610..... 3
SCALC Rule 59.....4
SCALC Rule 62.....4

STATEMENT OF ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL WHERE APPELLANT FAILED TO FOLLOW COURT RULES REGARDING FILINGS?

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Jerome Owens, an inmate in the custody of the South Carolina Department of Corrections (“SCDC”). On June 23, 2016 Appellant filed a Step 1 Grievance arguing that his sentence had been incorrectly calculated and seeking that it be recalculated. On July 20, 2016, SCDC denied the Step 1 grievance because it was determined that Appellant’s sentence had been correctly calculated. Thereafter, on July 22, 2016, Appellant filed a Step 2 grievance alleging, again, that his sentence had been incorrectly calculated. On August 30, 2016, SCDC denied the Step 2 grievance, and Appellant appealed to the Administrative Law Court. On March 8, 2017, Administrative Law H.W. Funderburk, Jr. filed an order dismissing Appellant’s appeal for noncompliance with SCALC Rule 59. This appeal 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 the 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 APPEAL WHERE APPELLANT FAILED TO FOLLOW COURT RULES REGARDING FILINGS.

Rule 59 of the South Carolina Administrative Law Court Rules states, in relevant part,

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. The notice shall be on the form prescribed by the Court pursuant to Rule 57 and shall contain the following information: . . . *D. proof of service of the notice of appeal on all parties. . . .*

SCALC Rule 59, Emphasis added. Rule 62 of the South Carolina Administrative Law Court Rules states, in relevant part, “[u]pon 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 . . .” SCALC Rule 62.

In his March 8, 2017 Order of Dismissal, Judge Funderburk clearly stated that Appellant failed to provide the court with proof of service of his Notice of Appeal on the Department as required by subpart D of SCALC Rule 59 saying “Appellant has not timely provided proof of service that the Notice of Appeal has been served on SCDC. Pursuant to SCALC Rule 62, this matter shall be dismissed due to noncompliance with SCALC Rule 59. It is therefore ordered that this appeal is dismissed.” (Order of Dismissal, March 8, 2017.) Judge Funderburk properly exercised the discretion given him by SCALC Rule 62 in dismissing Appellant’s appeal due to Appellant’s failure to comply with SCALC Rule 59.

In *Henning v. Kaye*, the South Carolina Supreme Court said of the South Carolina

Appellate Rules, these rules “are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). While this case concerns a violation of the South Carolina Administrative Law Court Rules, not the South Carolina Appellate Court Rules, the South Carolina Administrative Law Court Rules serve for the South Carolina Administrative Law Court the same purpose the South Carolina Appellate Court Rules serve for the South Carolina Court of Appeals and South Carolina Supreme Court when sitting in its appellate capacity; thus the Court’s reasoning still applies.

A court’s procedural rules are an important guide to litigants. Appellant failed to follow the South Carolina Administrative Law Court Rules and Judge Funderburk properly exercised his discretion when he dismissed Appellant’s appeal for that reason. Therefore, Respondent respectfully requests that the order of the Administrative Law Judge be upheld.

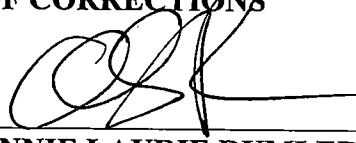
CONCLUSION

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

Signature block on following page.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



ANNIE LAURIE RUMLER
South Carolina Bar # 101851
Staff Attorney
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1355

May 22, 2017

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAY 22 2017

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S.C. Court of Appeals

Administrative Law Judge H.W. Funderburk, Jr.

ALC Case No. 16-ALJ-04-0730-AP
Appellate Case No. 2017-000694

JEROME OWENS, # 299108,

APPELLANT,

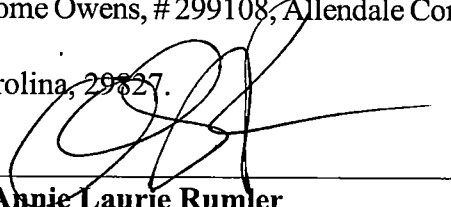
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

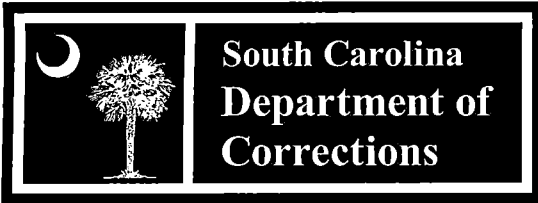
RESPONDENT.

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: Jerome Owens, # 299108, Allendale Correctional Institution, P.O. Box 1151, Fairfax, South Carolina, 29827.


Annie Laurie Rumler
Staff Attorney
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-1355

May 22, 2017



South Carolina
Department of
Corrections

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

May 22, 2017

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

RECEIVED

MAY 22 2017

SC Court of Appeals

RE: Jerome Owens, # 299108, v. South Carolina Department of Corrections
Appellate Case No. 2017-00-694

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,

Annie Laurie Rumler
Staff Attorney
South Carolina Department of Corrections

cc: Jerome Owens, # 299108
Allendale Correctional Institution
P.O. Box 1151
Fairfax, South Carolina 29067