

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, *Administrative Law Judge*

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Lower Case No. 2016-ALJ-04-0844-AP

Appellate Case No. 2017-001181

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**RECEIVED**  
JUN 09 2017  
SC Court of Appeals

Bernard McFadden, # 199135,.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

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**MOTION TO DISMISS APPEAL OR, ALTERNATIVELY, TO SUMMARILY  
AFFIRM PURSUANT TO RULE 220(C), SCACR**

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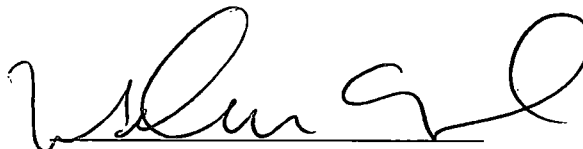
COMES NOW, Respondent, South Carolina Department of Corrections (SCDC or Department) and, pursuant to Rule 240, SCACR, moves this Honorable Court for an order dismissing this appeal.

Appellant's notice of appeal should be dismissed because the case is not yet ripe for review. Section (a) of Rule 201 of the South Carolina Appellate Court Rules provides that an "[a]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision." Section (b) of Rule 201 states that "[o]nly a party aggrieved by an order, judgment, sentence, or decision may appeal." Here, the Administrative Law Court

has not yet issued a final decision ruling on McFadden's grievance appeal. Therefore, his notice of appeal is premature and should be dismissed.

WHEREFORE the Department respectfully requests that the Court dismiss this appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Melissa J. Arnold', written over a horizontal line.

Melissa J. Arnold  
Staff Attorney  
S.C. Department of Corrections  
P.O. Box 21787  
Columbia, South Carolina 29221  
(803) 896-1278 [direct]

*Counsel for Respondent*

Columbia, South Carolina

June 6, 2017

THE STATE OF SOUTH CAROLINA  
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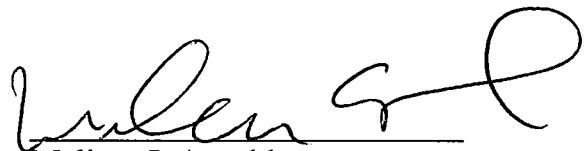
South Carolina Department of Corrections.....Respondent.

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**AMENDED CERTIFICATE OF SERVICE**

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I hereby certify that on **June 6, 2017**, I served a copy of the foregoing ***MOTION TO DISMISS APPEAL*** upon Appellant by depositing a copy of same in the United States Mail, addressed to: Bernard McFadden, SCDC #199135, Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, S.C. 29067.



Melissa J. Arnold  
Staff Attorney  
S.C. Department of Corrections  
P.O. Box 21787  
Columbia, South Carolina 29221  
(803) 896-1278 [direct]

June 6, 2017



HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

June 6, 2017

**RECEIVED**

JUN 09 2017

SC Court of Appeals

Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Reference: App. Case No.: 2017-001181 (*Bernard McFadden, # 199135*  
*v. South Carolina Department of Corrections*)

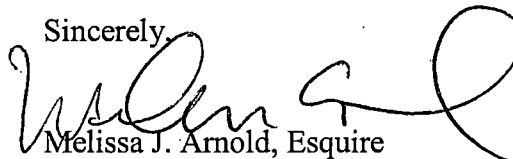
Dear Ms. Kitchings:

Enclosed herein, please find:

- One (1) original Motion to Dismiss;
- One (1) Copy of the Motion to Dismiss to be stamped and returned;
- Six (6) copies of the Motion to Dismiss.

If you would, please mail the stamped copy in the enclosed stamped self-addressed envelope.

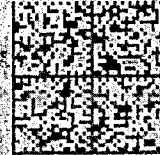
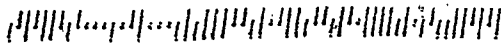
Sincerely,



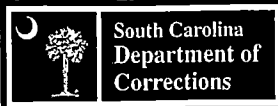
Melissa J. Arnold, Esquire

Enclosures

Cc: Bernard McFadden, # 199135  
Kershaw Correctional Institution



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Office of General Counsel  
P.O. Box 21787/4444 Broad River Road  
Columbia, South Carolina 29221-1787

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**JUN 09 2017**  
**SC Court of Appeals**

Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211