

The State of South Carolina
In The Court of Appeals

IV. STATEMENT OF CLAIM - continued.

Appeal From The Administrative Law
S. Phillip Lenski, Administrative Law Judge

RECEIVED

JUN 16 2017

Case # 2016 - ALJ - 04 - 0844 - AP

SC Court of Appeals

Appellate Case # 2017-1001181

Bernard McFadden, 199135,

Appellant,

VS:

South Carolina Dept. of Corrections,

Respondent.

(2) Oppositions To Respondent's Motion To Dismiss Appeal Or,
Alternatively, To Summarily Affirm Pursuant To Rule 220(c)
SCACR - Received 06/09/2017

Where Respondent's Motion states Appellant's notice of appeal should be dismissed because the case is not yet ripe for review, that section (b) of 201 states that only a party aggrieved by an order, judgment, sentence, or decision may appeal, and that the ALC has not issued a final decision ruling on McFadden's grievance appeal, and therefore, his notice is premature and should be dismissed. at pgs. 1 and 2 of 2, McFadden directs this Court's attention to the fact that Respondent is applying the wrong set of rules of court. She is applying the rules for which an appeal is taken from this court of appeals to S.C. Supreme Court for a writ of certiorari. (See Rule 226(c) in this court, stating in relevant part, "A decision of the Court of Appeals is not final for the purpose of review by

the Supreme Court until the petition for rehearing or reinstatement has been acted on by the by the Court of Appeals..." No petition for rehearing is required when appealing to this court from the ALC. (See ALC Rule 65, stating in relevant part, "... The decision of the Administrative Law Judge is a final decision and motions for reconsiderations will not be considered. Judicial review of any decision of the Court shall be as provided in 5.C Code Ann. § 1-23-610. (1996) (as amended)).

Thus, the ALC's decision is final.

2) Where Respondent has waited for more than (30) days to file its motion to dismiss on the grounds that the Administrative Law Court's order affirming the Department's decision is not a final, or otherwise waited until Appellant has completely submitted the Initial Brief in this court, McFadden contends that Respondent has clearly waived this argument because their motion is untimely and should be rejected.

Thus, because Respondent has waited more than (30) days after receiving McFadden's Notice of Appeal, and because the Initial Brief has been submitted in this cause, Respondent's motion to DISMISS should be rejected.

WHEREFORE, for all of the foregoing reasons, Appellant prays that an order issues denying Respondent's motion to DISMISS and hearing the merits of the Final Brief that will be submitted in the not too distant future.

Respectfully Submitted,

Date: 06/13/2017

1) Because law library Mr. Michau has drastically cut the law library hours as ordered by all Wardens and Major Ford, no case law can be offered at this time to support oppositions at this time.

Saw and Subscribed Before Me

This 13 day of June 2017

Cheryl R. West

Notary Public For South Carolina

My commission expires on 27, 2025



Bernard McFadden, 199135

Kershaw CIT 0A37

4848 Goldmine Hwy

Kershaw, S.C. 29067

Appellant, pro se

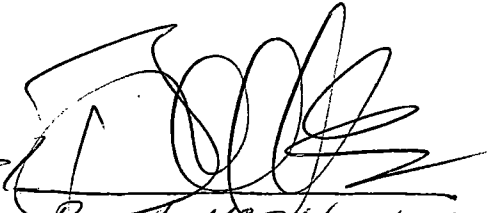
Proof of Mailing
Appellate Case # 2017-001181

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly-addressed-stamped-envelope in the US Mail this 13th day of June 2017; such matter being: McFadden's (2) Oppositions To Respondent's Motion To Dismiss Appeal Or, Alternatively, To Summarily Affirm Pursuant To Rule 220 (c), SCACR - Received 06/09/2017;

1) Melissa J. Arnold, Staff Attorney, S.C. Dept. of Corrections, P.O. Box 21787, Columbia, S.C. 29221; and

2) Hon. Jenny Abbott Kitchings Clerk, South Carolina Court of Appeals, P.O. Box 11629, Columbia, S.C. 29211

Sworn And Subscribed Before Me
This 13 day of June 2017
Cheryl R. Ford
Notary Public For South Carolina
My commission expires Jan 27, 2025


Bernard McFadden, 194635
Appellant, pro se

Bernard McFadden, 199135
Kershaw CI/OA37
4848 Goldmine Hwy
Kershaw S.C. 29067

06/13/2017

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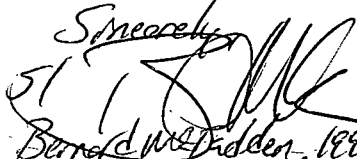
Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 1629, Columbia
South Carolina 29261

RE: McFadden vs. SCOC, Appellate Case # 2017-00181

Dear Clerk:

Enclosed, please find McFadden's (2) Oppositions to Respondent's Motion to Dismiss Appeal. Or, Alternatively, To Summarily Affirm Pursuant to Rule 220(c), SCACR - Received 06/09/2017 for filing in your office.

Thanking you in advance for your attention concerning this matter.

Sincerely,
51 
Bernard McFadden, 199135

* Deposit for mailing also documented on SCOC Form 10-14 dated 06/13/2017.

Bernard McFadden, 199135
Wershaw CI/OA37
4848 Goldmine Hwy.
Wershaw, S.C. 29067

McFadden 199135
LEGAL

RECEIVED

JUN 16 2017

SC Court of Appeals

Hon. Jenny Abbott Ketchings, Clerk
South Carolina Court of Appeals,
P.O. Box 11629, Columbia, S.C.
29211