

ADMINISTRATIVE LAW COURT

Marquis Edwards, #328235, )  
)  
Appellant, )  
)  
vs. )  
)  
South Carolina Department of Probation, )  
Parole and Pardon Services, )  
)  
Respondent. )

Docket No. 17-ALJ-15-0006-AP

ORDER

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AUG 14 2017

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) appeal filed by Marquis Edwards (Appellant) from a decision of the South Carolina Department of Probation, Parole and Pardon Services (Department) denying him parole eligibility.

By letter dated September 20, 2016, General Counsel for the Department informed Appellant that he was ineligible for parole because he had three drug convictions including for trafficking in cocaine.

Appellant filed a notice of appeal on March 27, 2017.<sup>1</sup> The Notice of Appeal was filed and served March 29, 2017. The Department filed the Record on Appeal on May 17, 2017. Appellant filed his Initial Brief on April 7, 2017 and another brief on May 27, 2017. On May 30, 2017, the Department filed a Motion to Dismiss (Motion) the appeal because Appellant failed to timely file his notice of appeal. On July 24, 2017, Appellant filed a response in a document entitled "Objections." In that response, Appellant claimed that when the Department mailed its decision, it sent a form notice of appeal that was "out of date" and "did not stipulate on that [he] had to file in 30 days." He also claimed that "[n]o instructions was [sic] given to show [him] how to file the appeal in procedures [sic]."

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146

<sup>1</sup> The Department erroneously stated in its Brief (which the Court will consider to be a Motion to Dismiss) that Appellant filed his notice of appeal on March 20, 2017. However, the error does not affect the disposition of this appeal.

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Accordingly, the ALC enacted the Special Appeals section of the Rules of Procedure for the Administrative Law Court (SCALC Rules) to apply to appeals filed pursuant to *Al-Shabazz v. State*. See SCALC Rule 8.

As an initial matter, the Court finds Appellant's claim that the Department's notice of appeal form did not provide him adequate instructions on how to appeal to be insufficient to excuse the tardiness of his filing of the notice of appeal. Even had the form not provided Appellant with notice that he had to file within thirty (30) days, it was Appellant's responsibility to comply with the timeframes to file his notice of appeal. Appellant obviously understood this well enough to later enquire of a "jailhouse lawyer" as to filing with the Court. Moreover, Appellant could have requested a copy of our Court's rules from Department staff. Those rules not only provide the timeframe to file the notice of appeal, but also provide that: "A party proceeding without legal representation shall remain fully responsible for compliance with these Rules and the Administrative Procedures Act." ALC Rule 8 (A).

SCALC Rule 59 sets forth that "[t]he notice of appeal from the final decision to be reviewed 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." In this case, Appellant filed his notice of appeal more than thirty (30) days after he received notice that the Parole Board would not reconsider its revocation of his parole.

The South Carolina Supreme Court has set forth that a court must dismiss an appeal if the appellant fails to file an appeal or serve a party with the notice of appeal in a timely manner. See *Southbridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E. 2d 535 (1987) (applying appellate court rules and dismissing case for failure to serve a notice of intent to appeal in a timely manner); *Mears v. Mears*, 287 S.C. 168, 337 S.E. 2d 206 (1985) (applying appellate court rules and finding lack of jurisdiction for failure to serve a notice of intent to appeal in a timely manner). Additionally, it is well-established that because the requirement of service of the notice of appeal is jurisdictional, an appellate body may not extend the time to appeal. See *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."); see also *Burnette v. S.C. Highway Dep't*, 252 S.C. 568, 167 S.E. 2d 571 (1969) (holding that a court does not have

authority to extend the time for filing an appeal, or for serving notice of appeal, from a decision of an administrative agency).

In this case, Appellant was notified that his request for parole was denied on September 20, 2016. Appellant did not file his notice of appeal until March 27, 2017, nearly six (6) months after the Department's decision and thus far exceeding the thirty (30) days given to Appellant to appeal. Moreover, the Court is incredulous as to Appellant's excuses for not filing his notice of appeal in a timely manner. The fact that he waited six (6) months to file his notice of appeal is simply inexcusable. Consequently, Appellant's appeal is dismissed. For good cause,

**IT IS THEREFORE ORDERED** that the Department's Motion is **GRANTED**, and Appellant's appeal is **DISMISSED WITH PREJUDICE**.

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**AND IT IS SO ORDERED.**



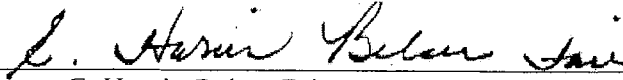
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Ralph King Anderson, III  
Chief Administrative Law Judge

August 7, 2017  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order u parties to this cause by depositing a copy hereof in the United States mail, postage paid Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) their attorney(s).



E. Harvin Belser Fair  
Judicial Law Clerk

August 7, 2017  
Columbia, South Carolina

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