

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

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

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SC Court of Appeals

JEROME OWENS, # 299108,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

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**FINAL BRIEF OF RESPONDENT**

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**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

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**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. (R.p. 27). On July 20, 2016, SCDC denied the Step 1 grievance because it was determined that Appellant’s sentence had been correctly calculated. (R.p. 28). Thereafter, on July 22, 2016, Appellant filed a Step 2 grievance alleging, again, that his sentence had been incorrectly calculated. (R.p. 29). On August 30, 2016, SCDC denied the Step 2 grievance, and Appellant appealed to the Administrative Law Court. (R.p. 29). On March 8, 2017, Administrative Law H.W. Funderburk, Jr. filed an order dismissing Appellant’s appeal for noncompliance with SCALC Rule 59. (R.p. 3). 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.” (R.p. 3). 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.

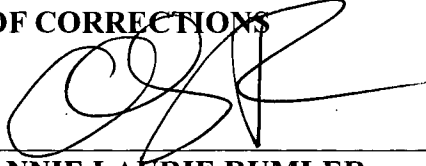
### **CONCLUSION**

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

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Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
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