

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

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Appeal from the Administrative Law Court  
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge  
Court Case No. 17-ALJ-15-0006-AP

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Appellate Case No. 2017-001701

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MARQUIS EDWARDS, #328235.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE  
AND PARDON SERVICES,.....RESPONDENT

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**RESPONDENT'S FINAL BRIEF**

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**ATTORNEY FOR RESPONDENT**

**TABLE OF CONTENTS**

Table of authorities.....ii

Statement of issue on appeal.....iii

Statement of the case.....1

Arguments

    1. The lower court did not err in the dismissal of the Appellant’s appeal due to the fact it was not filed within the time limitations pursuant to the rules.....2

Conclusion.....5

**TABLE OF AUTHORITIES**

**CASES**

*Al-Shabazz v. State*, 338 S.C. 334, 527 S.E.2d 724 (2000).....2,3

*Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004).....5

*Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 481, 661 S.E.2d 106 (2008).....2,3

**RULES**

Rule 8(a) SCRALC.....4

Rule 59 SCRALC.....3

Rule 62 SCRALC.....4

**STATEMENT OF ISSUE ON APPEAL**

1. **Did the Court err in dismissing the Appellant's appeal due to the fact he failed to file his notice of appeal within the time allotted pursuant to the rules of the Administrative Law Court?**
  
2. **Does the Respondent have the responsibility to inform the Appellant of the time limitations regarding the filing of the notice of appeal?**

## STATEMENT OF THE CASE

On August 27, 2013, the Appellant was found in possession a quantity of cocaine, he was then arrested and charged with possession with intent to distribute. Upon further investigation the authorities discovered that the Appellant was previously convicted of at least two prior drug offenses. Due to these prior drug convictions this offense was later upgraded to possession within intent to distribute cocaine third offense. (R.p.7-p.23).

On April 6, 2015, the Appellant appeared before the Honorable DeAndrea Benjamin for PWID cocaine 3<sup>rd</sup>, and two counts of distribution of cocaine within a proximity of a school. Upon the conclusion of this appearance the Court sentenced the Appellant to a ten year period of incarceration for each offense. The Court also ordered that each of these sentences are to be served concurrently. (R.p.7-p.17).

At the time the Appellant committed this offense South Carolina law did not allow an individual serving a third drug offense parole eligibility. In 2010, the General Assembly passed the Omnibus Crime Reduction and Sentencing Reform Act. This act allowed individuals serving a sentence for a first, second, and in some instances third drug offense parole eligibility. Due to the passing of this law the Respondent decided to conduct an investigation to determine if the Appellant was in fact eligible for parole. During this investigation it was discovered that on April 29, 2008, the Appellant was convicted of trafficking cocaine. On September 20, 2016, General Counsel for the Respondent, Mr. Matthew Buchanan, informed the Appellant that due to this prior drug conviction he is currently not eligible for parole. (R.p.6).

On March 20, 2017, the Appellant filed a notice of appeal before the Administrative Law Court (ALC). Within this appeal the Appellant alleged that his denial of parole eligibility goes against the Omnibus Crime Reduction Act of 2010. (R.p.5). The Appellant requested the ALC to

award parole eligibility. The Respondent argued that the Appellant failed to file his notice of appeal within the time limitations pursuant to the rules so this appeal should be subject to dismissal.

On August 7, 2017, the Honorable Ralph King Anderson, III issued an order granting the Respondent's motion to dismiss. (R.p.1-p.3). The lower Court ordered this dismissal due to the fact the Appellant did fail to file his notice of appeal within the time limits found in the rules of the ALC. Once the Appellant received the lower Court's order he filed a notice of appeal before this Court. Within this appeal the Appellant alleges that the ALC erred in dismissing his appeal. He argues that he never received the Respondent motion to dismiss; therefore, the decision of the ALC should be reversed.

The Respondent will argue that the Appellant had received the request for dismissal as it was argued in the Respondent brief filed before the ALC. The Respondent will further argue that if the Court determines that a filing was made untimely they have the ability to dismiss the appeal upon their own motion, so there is no need for a motion to dismiss. The Respondent's initial brief supporting these defenses follows.

### **ARGUMENTS**

**1. The lower Court did not err in the dismissal of the Appellant's appeal due to the fact it was not filed within the time limitations pursuant to the Rules.**

The ALC's jurisdiction to review a final decision of the Department is derived from the decisions of the South Carolina Supreme Court in *Al-Shabbaz v. State*, 338 S.C. 334, 527 S.E.2d 724 (2000); and *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 481, 661 S.E.2d 106 (2008). In *Al-Shabbaz*, the South Carolina Supreme Court created a new avenue by which an inmate could seek review of a final decision of a state agency of a "non-collateral" matter related to a conviction and sentence. The Court held that inmates could appeal those final agency decisions to the ALC, and ultimately the Court of Appeals pursuant to the Administrative

Procedures Act. *Al-Shabbaz*, at 376. In *Al-Shabbaz*, the Court recognized that “these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment imposed; and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status.” *Id.*, at 369.

The Court noted that the appealable final decision in *Furtick* arises in the latter manner, where an inmate alleges that the Department erroneously determined he was not eligible for parole. The review by the ALC under the procedures set forth in *Al-Shabbaz* is necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. *Furtick*, at 149. In *Furtick*, the Court determined that the permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process. *Id.* These two South Carolina Supreme Court decisions gives the ALC jurisdiction over this cause of action. Therefore, each party is responsible to abide by the rules of the ALC including a timely filing of a notice of appeal. The Appellant failed to make a timely filing so this case was properly dismissed.

The Appellant filed a notice of appeal alleging that he was unlawfully denied parole eligibility. The notice of denial was delivered on September 20, 2016. He admitted receiving this notice on September 23, 2016. The notice of appeal was not filed until March 27, 2017, some six months after the decision was made. This notice of appeal was filed well beyond the time limitations imposed under the rules. 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. Rule 59 SCRALC. The Appellant received the decision and failed to file his notice of appeal within the time allotted pursuant to the rules. The ALC was proper in dismissing this appeal. The Appellant argued that he never received the Respondent’s motion to dismiss. There was never a

motion to dismiss filed by the Respondent. The request for a dismissal was made within the brief filed by the Respondent. This appeal was not filed timely so this defense was raised by the Respondent. The Respondent argued that since the Appellant failed to file his notice of appeal within the time limits imposed under the rules, the appeal required dismissal. The ALC correctly acknowledged this argument and proceeded to dismiss this appeal.

Even if there is not a formal motion to dismiss the ALC was well within their right to dismiss this appeal on their own motion. This is due to the Appellant's failure to timely file his notice of appeal. Upon motion of any party, or **on its own motion**, an Administrative Law Judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeal, including the failure to comply with any of the time limits provided by this section (V), or for the failure to provide a factual basis for each expressly and specifically asserted constitutional violation as prescribed by Rule 59(B). Rule 62 SCRALC: (emphasis added)

The Appellant also argues that he was never informed by the Respondent that he only had thirty (30) days to file a notice of appeal. There exist no law nor Court decision that makes it mandatory for the Respondent to inform an Appellant of the time limitations to file an appeal. Once the Appellant decides to represent himself he has the identical responsibilities as any other legal counsel. He must be responsible to have knowledge of any of the time limitations imposed under the rules. A party proceeding without legal representation shall remain fully responsible for compliance with these rules and the Administrative Procedures Act. Rule 8(a)SCRALC.

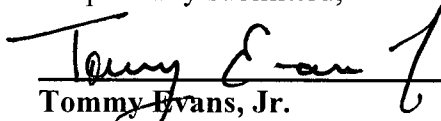
The ALC was correct in the dismissal of the Appellant's appeal since he failed to file it within the time limitations imposed under the rules. The requirement of service of the notice of appeal is jurisdictional, if a party misses the deadline, the appellate court lacks jurisdiction to

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. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 774 (2004). This case should be affirmed by this Court due to the fact the ALC made no errors in the dismissal of the Appellant’s appeal.

**CONCLUSION**

Based on the foregoing reasons the Respondent respectfully requests the final decision of the Administrative Law Court be affirmed.

Respectfully submitted,

  
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October 6, 2017

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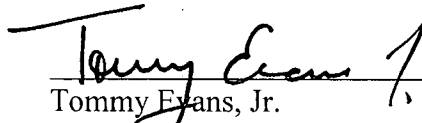
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***CERTIFICATE OF COUNSEL***

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The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.

  
Tommy Evans, Jr.  
Assistant General Counsel

October 6, 2017