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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charlton Davis, 231377,

Docket No. 18-ALJ-15-0003-AP

Appellant.

vs.

ORDER OF DISMISSAL
(Sua Sponte)

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed January 8, 2018 by Charlton Davis (Appellant), an inmate incarcerated with the South Carolina Department of Corrections.

ALC Rule 59 sets forth, in relevant part, that:

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.* (emphasis added).

SCALC Rule 59.

Furthermore, ALC Rule 4B sets forth, in relevant part, that the date of filing is the date of delivery or the date of mailing. SCALC Rule 4B.

Based upon a fundamental rule of appellate practice, it is well established that a court does not have the authority to extend the time for taking an appeal from a decision of an administrative agency. *See, e.g., Sadico of Greenville, Inc. v. Greenville County Bd. of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000) *citing Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985); *See also Burnett v. S.C. State Highway Dep't*, 252 S.C. 568, 167 S.E.2d 571 (1969). Furthermore, pursuant to *Al-Shabazz v. State*, the ALC sits in an appellate capacity when reviewing final decisions of the Department regarding inmate matters, and in order to perfect an appeal, “[t]he inmate must file and serve a notice of appeal upon specified parties within thirty days of receipt of written notice of [the] Department’s final decision.” 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000).

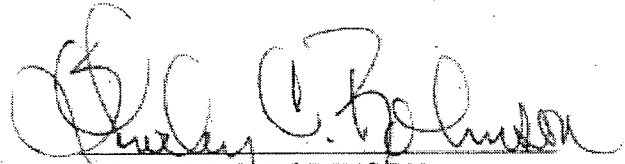
In this matter, Appellant received notice of the South Carolina Department of Probation, Parole and Pardon Services (Department) final decision concerning the denial of parole on

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November 29, 2017. Appellant served the Notice of Appeal upon the Department on December 27, 2017. However, Appellant did not file his Notice of Appeal with the Court until January 8, 2018, evidenced by the postage stamp bearing the date of mailing as January 8, 2018.¹ While Appellant timely served the Department, his filing with the Court is outside the thirty (30) day timeframe established by *Al-Shabazz* and reiterated in SCALC Rule 59. Therefore, this Court finds that the Appellant did not file his Notice of Appeal with the Court in a timely fashion, and thus, failed to properly invoke the jurisdiction of the ALC. While this Court recognizes the harsh result of this decision, it is constrained by the rules and legal precedent in this State. See *McClain v. Ingram*, 314 S.C. 359, 444 S.E.2d 512 (1994). Accordingly, this matter must be dismissed.

THEREFORE, IT IS HEREBY ORDERED that this appeal is **DISMISSED**.
AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

January ^{27th} 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE
I hereby certify that the undersigned has served this order in the above entitled case by depositing the same by depositing the same in the United States mail postage paid or the appropriate Mail Service addressed to the party (es) of the court to
29 day of January 2018
By _____
JUDGE Law Clerk

¹ A stamp is on the back of the envelope stating it was received in the KerCi Mailroom on January 8, 2018.