STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Deborah Brooks Durden, Administrative Law Judge
Case No. 17-ALJ-15-0009

Appellate Case No.: 2017-000992

LEXIE JAMES TURNER, #249878.....APPELLANT

v.

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

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULE

CONSTITUTION

STATUTE

STATEMENT OF ISSUE ON APPEAL

1. **Did the Administrative Law Judge err in dismissing this appeal due to the Appellant's failure to file his notice of appeal within the time allotted pursuant to the rules of the Administrative Law Court?**

STATEMENT OF THE CASE

On May 18, 2012, while conducting a narcotics investigation in York County, the York County Multi Drug Enforcement Unit found the Appellant to be in possession of 2.1 grams of crack cocaine. The Appellant was arrested and charged with the offense of possession with intent distribute crack cocaine. During their investigation, the authorities determined the Appellant had two previous drug convictions; therefore, this offense was upgraded to a third offense.

On February 27, 2013, the Appellant appeared before the Honorable Steven H. John for the offense of possession with intent to distribute crack cocaine third offense (PWID crack cocaine 3rd). Upon the conclusion of this appearance the Court sentenced the Appellant to an eleven year period of incarceration. At the time the Appellant committed this offense, South Carolina law did not allow an individual serving a sentence for PWID crack cocaine 3rd 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 it some instances third drug offense, parole eligibility.

Due to the passing of this act, the Respondent looked into the sentence of the Appellant to determine if he is in fact eligible for parole. Upon the conclusion of this investigation it was determined that the Appellant was previously convicted for distribution. This prior drug offense denies him parole eligibility.[1] On November 18, 2015, the Respondent's General Counsel, Mr. Matthew Buchanan, issued a letter to the Appellant informing him that due to his prior drug convictions he is not eligible for parole. (R.p.7). The Appellant admits he received this letter on

[1] Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted. S.C. Code Ann. §44-53-375 (2015).

November 23, 2015; however, he did not file a notice of appeal before the Administrative Law Court (ALC) until March 30, 2017. On April 18, 2017, the Honorable Deborah Brooks Durden, Administrative Law Court Judge, sua sponte issued an order of dismissal. The reasons for the ALC's decision was the fact the Appellant failed to file his notice of appeal within the time allowed pursuant to the rules of the ALC. (R.p.5-p.6).

Upon the lower Court's final decision of dismissal the Appellant decided to file a notice of appeal before the Court of Appeals. Within this appeal the Appellant argues that a failure of the Respondent to give him notice as to his right to appeal violates due process. The Respondent argues that there exist no requirement that the Appellant be notified as to his right to appeal.

ARGUMENTS

1. **The ALC committed no error in dismissing this appeal due to the Appellant's failure to file his notice of appeal within the time allotted.**

It was determined by the Respondent that due to the Appellant's prior drug convictions he is currently not eligible for parole pursuant to the Sentence Reform Act. The South Carolina Supreme Court in *Al-Shabbaz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999), and *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d146 (2002), gave an inmate the right to appeal a denial of parole eligibility to the ALC. There exists no right of the Appellant to be notified of that right.

The Appellant argues that he is being denied due process by not receiving notice of his right to appeal. The due process clause of the U.S. Constitution requires that, no state shall deprive any person of life, liberty, or property, without the due process of law. U.S. Const. Amend. XIV. This notice requirement relates to the removal of a Constitutional right, not a notice of the ability to appeal. The Appellant is allowed to be notified as to his denial of parole eligibility. The Appellant was notified in writing that due to his prior convictions he is not eligible for parole.

There exists a process to make a determination of whether or not he is eligible, and that final decision is appealable pursuant to South Carolina law. The Appellant should have known of his right to appeal, and if he did not, it his responsibility to acquire this information. There exists no duty of the Respondent to provide him notification of his ability to appeal this decision. The ability to be heard and to present evidence to the Court exists; however, the Appellant failed to file the notice of appeal within the time allowed under the rules so he could not have taken advantage of this opportunity. This failure of the Appellant to abide by the rules does not equate to a violation of due process.

Pursuant to the rules of the Administrative Law Court, 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. By the Appellant's own admission he received the letter from Mr. Buchanan on November 23, 2015; therefore, his appeal should have been filed by December 23. The Appellant did not file his notice of appeal until March 30, 2017, almost two years after the initial decision. It was clear that the Appellant filed his notice of appeal well beyond the time limit established under the rules. There exists no relief for a pro se defendant that has failed to file a notice of appeal within the proper time limits due to his lack of knowledge as to his right to appeal. A pro se Appellant must be held accountable as to all of the time limits that apply under the rules. A lack of knowledge is not a defense for a failure to abide to the rules of court. Any party that has failed to abide to the rules should have their case dismissed. This also applies to any pro se Appellant.

This Court can only reverse the decision of the ALC if substantial evidence reveals an error of law. Although the reviewing court shall not substitute its judgment for that of the Administrative

Law Court as to findings of fact, the reviewing court may reverse or modify decisions that are controlled by an error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. *ESA Services, LLC. v. South Carolina Department of Revenue*, 392 S.C. 11, 707 S.E.2d 431 (S.C. App. 2011). It is obvious that the Appellant filed his notice of appeal well beyond the time limits established by the rules of the Administrative Law Court. The ALC has the authority to sua sponte dismiss this case if the Appellant failed to file this appeal within the time limit allotted under the rules. 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 appeals, 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 SCALC (emphasis added).

Substantial evidence was presented revealing that the Appellant failed to file his brief within the time limit pursuant to the rules. If this is done the ALC has the ability to dismiss this appeal. Within a well written order the ALC presented her reasoning for dismissal, including an explanation as to the fact there was a remedy available, but the Appellant failed to file his notice of appeal within the time allotted. Since he failed to take advantage of this, there exists no denial of due process. The above referenced rule states that an Appellant only has thirty days to file a notice of appeal. The Appellant filed his notice of appeal almost two years after the final decision. It is reasonable that the ALC would dismiss this appeal since the Appellant failed to follow the rule of law; therefore, this dismissal is valid and should be affirmed by this Court. In determining whether the decision of the ALC was supported by substantial evidence, the Supreme Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could

reach the same conclusion that the ALC reached. *Barton v. South Carolina Dept. of Probation, Parole and Pardon Services*, 404 S.C. 395, 745 S.E.2d 110 (2013).

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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July 24, 2017

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CERTIFICATE OF COUNSEL

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

July 24, 2017