

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Richard Coleman, 186795,

) Docket No.: 17-ALJ-15-0030-AP
)
)

Appellant,

vs.

) ORDER GRANTING
) RESPONDENT'S MOTION

South Carolina Department of Probation,
Parole & Pardon Services,

RECEIVED

FEB 28 2018

Respondent.

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Richard Coleman (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On January 11, 2017, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) denied him parole. Appellant received the notice of denial on January 19, 2017. On September 26, 2017, Appellant filed a Notice of Appeal with the ALC seeking judicial review of the Board's decision. On October 23, 2017, Appellant filed Appellant's Brief.¹ On December 6, 2017, the Record on Appeal was filed. On January 22, 2018, the Department filed Respondent's Brief. In its brief, the Department requested that this matter be dismissed because Appellant failed to file his notice of appeal within the time allotted pursuant to the rules of the ALC.

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, pursuant to *Al-Shabazz v. State*, the ALC sits in an appellate capacity when reviewing final decisions of the Department regarding inmate matters, and 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

¹ The Court notes that Appellant filed a First and Second Amended Appellant's Brief on November 20, 2017 and December 4, 2017, respectively.

FILED

FEB 16 2018

SC ADMIN. LAW COURT

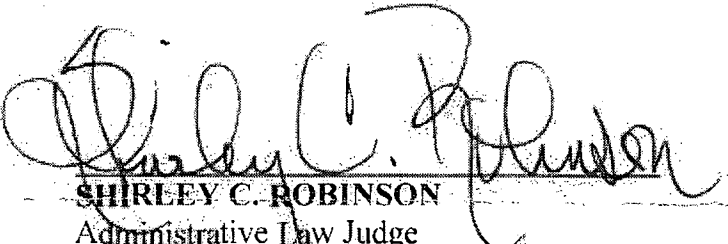
notice of [the] Department's final decision." 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000). Where it concerns a notice of appeal, dismissal for failure to meet timeliness deadlines is not discretionary and the court does not have authority to extend the time for taking an appeal from a decision of an administrative agency. See *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985) ("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.")).

In this matter, Appellant received notice of the Board's final decision on January 19, 2017, however, Appellant did not file his Notice of Appeal until September 26, 2017. Appellant's filing is clearly 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.

Based upon the foregoing,

IT IS HEREBY ORDERED that the Department's motion is **GRANTED** and this appeal is **DISMISSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

February 16, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Emergency Mail Service addressed to the party(ies) or their attorney(s).
This 16 day of February, 2018
By: [Signature]
Judicial Law Clerk