

STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal from the Administrative Law Court
Shirley C. Robinson, Administrative Law Judge
Case No. 18-ALJ-15-0003-AP

Appellate Case No. 2018-000183

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MAY 15 2018
SC Court of Appeals

Charlton Davis, 231377

Appellant

v.

S.C. Department of Probation, Parole
and Pardon Services,

Respondent

FINAL REPLY BRIEF OF APPELLANT

Charlton Davis, 231377
HC117/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

REPLY

The Appellant incorporates verbatim herein his Initial Brief contents.

The Appellant argues that the ALC was incorrect in dismissing his appeal under United States Supreme Court case *Houston v. Lack*, 487 U.S. 266 (1988). As Respondent states in its initial brief that in *Lack*, the Supreme Court decided that under the appellate rule requiring habeas corpus appeals to be filed within 30 days, a pro se prisoner notice of appeal was filed at the moment of delivery to the prison authorities for forwarding to the district court. *Lack* at 266.

Here in this case the Appellant such as *Lack* filed his notice of appeal at the moment of delivery to the prison officials here at the Kershaw facility for forwarding to the ALC on the 27th of December, 2017, despite statewide institutional lock down, institutional lock down, no access to the law library, and more importantly the Kershaw institutional date stamped indicating forwarding to the ALC on the 27th of December.

The ALC rule requires that the notice of appeal must be filed with the ALC and a copy served on each party within 30 days from the receipt of the final decision. The Appellant filed his notice of appeal with prison officials on the 27th of December, at the time of delivery for forwarding to the ALC by the 29th of December, 2017. The ALC rules 59 and 62, SCRALC are not govern by statute that requires the filing of a paper document. SEE: *Gary v. State*, 557 S.E.2d 662 (2001), in which the State Supreme Court ruled that when the statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer.

The ALC stated that they did not receive the notice of appeal until January 8, 2018, 39 days after the Appellant received the order of denial, which was on the 29th of November. Respondent argues that this is well beyond the time limit imposed under the "rules" not "statute"; therefore, the ALC was incorrect in dismissing this appeal under unlawful procedure and error of law, specifically, without considering the inclement weather during that time, along with statewide and institutional lock down by SCDC agency. The 27th of December was a regular mailing date, not a holiday, yet, circumstances beyond Appellant's control regarding the date ALC received his notice of appeal.

The Appellant asserts that under penalty of perjury that this court must accept what he states is true as substantial evidence in considering the record as a whole that the ALC reached an arbitrary decision in order to dismiss his appeal because of an error of law and unlawful procedure under *Lack*. *Houston v. Lack*, 487 U.S. 266 (1988) is the controlling authority in this matter, in which the Appellant contends.

The Appellant served and filed his notice of appeal on the 27th of December, as prescribed by Rules 59 and 62, SCRALC, within the "statutory time limits." The institutional filed stamped should show that Appellant's notice of appeal was served and filed on the 27th., regardless whether Appellant has served 23 or 223 years, it is beyond his control when prison officials pick up mail, inclement weather, lock down status, and shortage of security staff.


The Appellant asserts that the ALC employed unlawful procedure when the Appellant's Certificate of Service shows that he served and filed his notice of appeal on the 27th, well within the 30 days as required by Rules 59 and 62 SCRALC, i.e. 2 days before expiration, and the 4 day mailing allotment time. It's the Appellant's belief under ALC general provisions, service by mail, 5 days shall be added to the prescribed period. Rule 3, SCRALC. ALSO SEE: Rule 4, Filing SCRALC (C)(2), by depositing the document in the U.S. Mail, properly addressed to the Division, with sufficient first class postage attached.

This court is aware of the major problems regarding the department of corrections and inmates mailing situation since the shortage of security staff and lock downs which the Appellant contends, and asserts that he did comply with the rules of procedures for appeals, and he complied with the time limits provided by such.

The Respondent along with the ALC have deprived the Appellant due process for redress under constitutional and statutory authorities, along with the U.S. Court ruling in Lack.

Conclusion

Based on the foregoing reasons the Appellant respectfully requests that the ALC final decision be reverse and remand for a hearing that may require kershaw prison mail official to produce the record log of the date the notice of appeal was stamped filed received for mailing.

s/ 
Charlton Davis, 231377
HC117/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

April 30, 2018

pro se

NOTE: Appellant received Respondent's Initial Brief on the 6th of April, 2018, in which the mail room received on the 5th. (Copy of envelope nclosed).

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Appellant

v.

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Respondent

CERTIFICATE OF COUNSEL

The undersigned certifies that Final Reply Brief of Appellant: complies with
Rule 208(a)(3), SCACR.

s/

Charlton Davis

Charlton Davis, 231377
HC117/KER.CI
4848 Goldmine Hwy.
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CERTIFICATE OF SERVICE

I, Charlton Davis, 231377, the Appellant, certify that I have served the Final Reply Brief of Appellant, dated April 30, 2018, and Certificate of Counsel, dated April 30, 2018, along with SCDPPPS envelope stamped received Apr 05 2018 KER CI Mailroom, on Respondent this 30th day of April, 2018 by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to: Tommy Evans, Jr.

SCDPPPS
P.O. Box 50666
Columbia, SC 29250

s/ 

Charlton Davis, 231377
HC117/KER CI
4848 Goldmine Hwy.
Kershaw, SC 29067

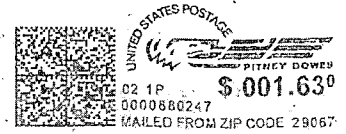
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CHARLTON DAVIS 231317
HC 117 KERSHAW, CORR. INST
4848 GOLDMINE HWY
KERSHAW, S.C.

29067



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