

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

Case No. 2018-001293

**RECEIVED**  
NOV 20 2018  
SC Court of Appeals

Jakarta Deshon Young, #276572, ..... Respondent,

v.

South Carolina Department of Corrections, ..... Appellant.

**RETURN IN OPPOSITION TO MOTION FOR REMAND**

The Court should deny Appellant’s Motion for Remand and the Administrative Law Judge’s (“ALJ”) *sua sponte* request to remand. Remand at this juncture would be procedurally improper. Therefore, the Court should deny the motion and permit the matter to proceed with briefing on the merits.

**Background**

This matter arises from a special appeal of a decision of the South Carolina Department of Corrections (“Appellant”) to the Administrative Law Court (“ALC”) pursuant to *Al-Shabbaz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). The question presented to the ALC was whether the Appellant erred in calculating Respondent’s sentence by finding that he is not eligible for parole, work release, or supervised furlough. On June 22, 2018, the ALJ entered an Order reversing and remanding Appellant’s decision, concluding that Respondent is eligible. Appellant appealed to this Court pursuant to S.C. Code § 1-23-610, which governs appeals of a final order from the ALC.

Appellant filed its Notice of Appeal on July 11, 2018. On July 30, 2018, the ALJ sent a letter to the Court stating that he granted Appellant’s motion for supersedeas. The ALJ further explained, however, that he “discovered an error of law” in his Order on the merits, and requested that this Court remand the case to him for “corrective action” for the “sake of judicial economy.” Appellant’s Motion for Remand followed, asserting that remand is proper in light of the ALJ’s request.

### Argument

Appellant did not file a motion to reconsider the ALJ’s final order on the merits. Therefore, upon the filing of the Notice of Appeal, this Court obtained exclusive jurisdiction over the appeal and the ALJ was divested of jurisdiction over the Order appealed. Rule 205, SCACR; *Jackson v. Speed*, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997).

Remand to correct an error of law by the lower court judge prior to briefing and consideration of the merits by this Court is not a recognized procedure under the applicable South Carolina rules of court. This is the case whether the lower court judge requests remand *sua sponte* or if it is requested on motion by a party.

The Administrative Law Court Rules contemplate that the ALJ may correct clerical errors in an Order—not errors of law—with leave from the appellate court. Rule 67 states:

**Clerical Mistakes.** Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the administrative law judge at any time of his own initiative or on the motion of any party and after such notice, if any, as the administrative law judge orders. During the pendency of an appeal from the decision of an administrative law judge, leave to correct the mistake must be obtained from the appellate court.

SCALC Rule 67 (emphasis added); *see also* Rule 60(a), SCRCP (setting forth an analogous provision for clerical errors by the circuit court). As this Court has explained, “[g]enerally, a

clerical error is defined as a mistake in writing or copying,” and is a “mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function.” *Dion v. Ravenel, Eiserhardt Assocs.*, 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994) (emphasis added); *see also* Black’s Law Dictionary 249 (3d. Pocket Ed. 2006) (noting that a clerical error is an “error resulting from a minor mistake or inadvertence . . . and not from judicial reasoning or determination” (emphasis added)). Moreover, the “clerical mistake” rule does not permit the trial court to “change the scope of the judgment.” *Dion*, 316 S.C. at 230, 449 S.E.2d at 253-54; *see also Ex parte S.C. Dep’t of Revenue*, 350 S.C. 404, 408, 566 S.E.2d 196, 198 (Ct. App. 2002) (same).

Here, the ALJ has plainly acknowledged that he believes that he made an error of law—not merely a clerical mistake—in his final order. An error of law is the most quintessential of mistakes arising out of judicial reasoning or determination. Moreover, correction of this purported error would necessarily alter the scope of the judgment. If the Legislature or Supreme Court intended for the Rules to permit correction of such errors by the ALJ while the Order is on appeal, they would have provided as much. Therefore, remand is not proper here.

This is a logical result. The very heart of an appeal of a ruling on the merits is whether the lower court was correct in its holding. In fact, the standard of review in this matter is “governed by item (d) of section 1–23–610(B), which allows this court to reverse the ALC’s decision if it is affected by an error of law.” *Gatewood v. S.C. Dep’t of Corr.*, 416 S.C. 304, 313, 785 S.E.2d 600, 605 (Ct. App. 2016) (emphasis added). Therefore, the proper forum for determining whether the ALJ committed an error of law, and remedying any error, is this Court after hearing from the parties in their respective briefs.

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Permitting the ALJ to unilaterally correct a supposed error of law prior to hearing from Respondent on the merits would be fundamentally unfair and result in a deprivation of due process. Because the Department did not file a motion to reconsider and appealed to this Court, the matter is properly before the Court for consideration of the merits of the ALJ's decision. Therefore, remand would be improper.

**Conclusion**

In light of the foregoing, Respondent respectfully requests the Court deny Appellant's Motion for Remand.

Respectfully submitted,

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November 20, 2018

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PROOF OF SERVICE

I certify that I have served the *Return in Opposition to Motion for Remand* on Appellant by depositing a copy of it in the United States Mail, postage prepaid, on November 20, 2018, addressed to **Kensey Barrett, Staff Attorney, Office of General Counsel, S.C. Department of Corrections, P. O. Box 21787, Columbia, SC 29221**, on November 20, 2018.

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**Hand Delivered**

The Honorable Jenny A. Kitchings  
Clerk of Court, SC Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: Jakarta Young, #276572 v. South Carolina Department of Corrections  
Appellate Case No.  
NMR&S File No. 033999.02078

Dear Ms. Kitchings:

Enclosed are the originals and eight copies each of 1) *Return in Opposition to Motion for Remand* and 2) *Return to Motion to Hold in Abeyance* in the above-referenced matter. We would appreciate it if you would file the originals and return to us a stamped copy of each Return via our firm's courier.

By copy of this letter to opposing counsel, we are hereby serving them with copies of the above referenced pleadings.

Very truly yours,

A handwritten signature in cursive script that reads 'Blake T. Williams'.

Blake T. Williams

BTW:kdm  
Enclosures  
cc: Kensey Barrett, Esquire