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SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Montavis K. Gaines, #323168,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 18-ALJ-04-0341-AP

Grievance No. TCI 0203-18

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC) pursuant to the Notice of Appeal filed July 9, 2018 by Montavis K. Gaines (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC). On October 29, 2018, the Department filed a motion to dismiss this case on the grounds that Appellant has failed to file a brief in support of his appeal. The motion was accompanied by an affidavit. Pursuant to SCALC Rule 60(A), Appellant was required to file an appellate brief in the above-captioned matter with this Court and to serve all parties with the same "within ninety (90) days after the date of assignment." SCALC Rule 60(A). This case was assigned on July 19, 2018. Appellant filed his appellate brief<sup>1</sup> with this Court on August 13, 2018. Appellant did not sign or date the Certificate of Service showing that he served the Department with the brief. On November 2, 2018, Appellant filed a motion for default judgment for Respondent's failure to answer or otherwise plead and opposition to the motion. In his motion, Appellant argues that Respondent did not file its brief timely. ALC Rule 59 states, "If the agency files a motion to dismiss the appeal prior to filing the record, such a motion shall stay the time for the agency to prepare the transcript and file the record pending resolution of the motion. The time for filing briefs shall likewise be stayed by the filing of a motion to dismiss."

SCALC Rule 62 provides that "[u]pon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal for failure to comply with any of the rules of procedure for appeals." SCALC Rule 62. In this case, Appellant failed to serve Respondent with an appellate brief as required by the rules. It is therefore,

FILED

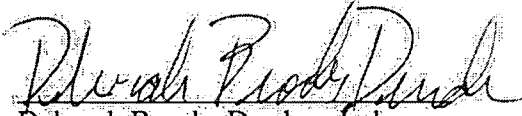
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SC ADMIN. LAW COURT

<sup>1</sup> Appellant's brief is captioned "Objections to the Final Decision of SCDC's."

**ORDERED** that Respondent's Motion to Dismiss is **GRANTED** and this appeal is **DISMISSED, WITH PREJUDICE.**

**IT IS SO ORDERED.**

  
Deborah Brooks-Durden, Judge  
S.C. Administrative Law Court

November 15, 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 herof in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 15<sup>th</sup> day of November 2018  
By: R. E. Cole  
Judicial Law Clerk