

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Bernard Bagley, #175851,

) Docket No. 18-ALJ-15-0037-AP

Appellant,

RECEIVED

JUN 04 2019

v.

South Carolina Department of Probation,  
Parole and Pardon Services,

SC Court of Appeals

ORDER OF DISMISSAL

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)  
Respondent.

This case is before the Administrative Law Court (ALC or court) pursuant to the appeal of Barnard Bagley (Appellant), an individual who is incarcerated with the South Carolina Department of Corrections. The Appellant was convicted of murder and on April 12, 1991, the Appellant was sentenced to a term of incarceration for the rest of his natural life. At the time the Appellant committed the offense of murder, South Carolina law allowed an individual serving a life sentence for murder parole eligibility upon the service of twenty (20) years. The Appellant made initial appearance before the Parole Board on September 8, 2010 and was denied parole. Since his initial denial, the Appellant has appeared before the Parole Board three additional times, each resulting in a denial of parole.

After the most recent denial of parole, the Appellant contact the Department of Probation, Parole, and Pardon Services (Department) requesting clemency or a pardon. On November 7, 2018, the Department informed the Appellant that because he was parole eligible, he cannot be considered for a pardon and that statutorily the Parole Board can only offer a recommendation to the Governor to commute a sentence of death to life and because the Appellant is currently serving a sentence that will not result in the death penalty, his sentence cannot be commuted. On December 6, 2018, the Appellant filed a Notice of Appeal with the court alleging that the Department's decision to permanently deny him consideration for a pardon is arbitrary and capricious and deprives him of a protected liberty interest. After review of the parties' briefs, the court can find no basis upon which to assert jurisdiction in this case and therefore concludes that dismissal is appropriate.<sup>1</sup>

<sup>1</sup> The court notes that its dismissal is based upon a procedural deficiency in the appeal and that the court makes no

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SC ADMIN. LAW COURT

**STANDARD OF REVIEW**

The court's jurisdiction to review this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals), *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process), and ALC Rules 51 and 59(C).

Rule 51, ALC Rules, entitled "Applicability" provides:

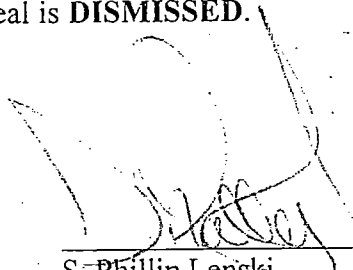
The Rules in this section shall apply exclusively in matters heard on appeal from final decisions pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000).

The Notice of Appeal does not contain a copy of any final decision from the Department which is the subject of the appeal as required by ALC Rule 59(C). By failing to obtain a final decision from the Department, the Appellant has not exhausted his administrative remedies and has thus, failed to meet the requirements of the Administrative Procedures Act for review by this court: "A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1." S.C. Code Ann. § 1-23-380 (Supp. 2017). In sum, this court has no jurisdiction to hear the underlying merits of the case.

This matter is not properly before this court and therefore,

**IT HEREBY ORDERED** that this appeal is **DISMISSED**.

**AND IT IS SO ORDERED.**



S. Phillip Lenski  
Administrative Law Judge

April 30, 2019  
Columbia, South Carolina

finding on the issue of its subject matter jurisdiction over this type of case.

This is to certify that the undersigned has this date served the order in the above entitled action on all parties to this cause by depositing a copy hereto, by the United States Mail, postage paid, or in the intermediary Mail Service addressed to the party(ies) or their attorney(s).

File 30th day of April 2019

Administrative Law Clerk