

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL from the Administrative Law
Court. Deborah B. Durdani, Administrative
Law Judge

Appellate Case No: 2017-000992

RECEIVED

JUL 21 2017

SC Court of Appeals

LEXIE JAMES TURNER #249878

Appellant

v.

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

Respondent

RECORD ON APPEAL

LEXIE JAMES TURNER #249878
Goodman Corr. Inst. 5-B-46B
4556 Broad River Rd.
Columbia, S.C. 29210
Appellant

Tommy Evans, Jr Esquire
Assistant General Counsel
P.O. Box 50666
Columbia, S.C. 29250
Respondent
Attorney

INDEX

INDEX	i
Transcript of Trial, February 26-27, 2013 p.281-282	1
Appellants Exhibits 1,2,3	2
Order of Dismissal April 18, 2017	3
final decision of SCDppps November 18, 2015	4
Certificate of Appellant	5

1 (Jury Note marked as Court's Exhibit No. 7 for
2 identification)

3 THE COURT: All right. Is the State ready to
4 proceed with the sentencing?

5 MR. EPTING: The State is ready, Your Honor.

6 THE COURT: All right. Defense?

7 MS. INZERILLO: Yes, Your Honor.

8 THE COURT: All right. Very good.

9 MR. EPTING: May it please the court?

10 THE COURT: Yes, sir, please.

11 MR. EPTING: Your Honor, for the record I have
12 obtained certified copies of Mr. Turner's prior two drug
13 offenses. One was pled to possession of crack cocaine with
14 intent to distribute within proximity of a park.

15 His other plea appears to have been pled -- well,
16 he pled as a possession of cocaine.

17 They were pled on the same date, but it's clear
18 from the indictment they were from two separate factual
19 incidents. Those would be his two prior enhancing drug
20 offenses.

21 THE COURT: All right.

22 MR. EPTING: I can have these marked as Court's
23 Exhibits, if Your Honor.

24 THE COURT: Yes, sir, that would be fine. We'll
25 do that.

1 And defense counsel -- you have shown those to
2 defense counsel?

3 MR. EPTING: I have shown and provided them prior
4 to this trial date today, Your Honor.

5 THE COURT: All right, very good.

6 (Sentencing Sheet marked as Court's Exhibit No. 8
7 for identification)

8 (Sentencing Sheet marked as Court's Exhibit No. 9
9 for identification)

10 MR. EPTING: Your Honor, aside from the prior PWID
11 within a park conviction and possession of crack conviction,
12 he does have numerous other criminal convictions, which I
13 would let the court know of at the appropriate time.

14 THE COURT: Why don't you just go ahead and do
15 that now.

16 MR. EPTING: Very well, Your Honor.

17 In 1998 he was convicted of possession of crack,
18 first offense, as well as PWID crack within proximity of a
19 school, park, or playground. Those indictments are before
20 Your Honor.

21 He was also convicted in 2007 of unlawful carrying
22 of a pistol.

23 In 2009 he was convicted of burglary second,
24 violent, as well as a conspiracy to commit a burglary, for
25 which he received a prison sentence of five years.

1. Exhibit

South Carolina Department of Probation, Parole and Pardon Services Criteria For Parole Consideration

SC Board of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, SC 29250

Inmate Name <i>Lexie Turner</i>	SCDC # <i>249878</i>
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Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community; *none*
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision; *4 years old*
4. The inmate's attitude toward his/her family, the victim, and authority in general; *negative*
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself; *good*
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place; *good*
7. The inmate's physical, mental and emotional health; *good*
8. The inmate's understanding of the cause of his/her past criminal conduct; *yes*
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems; *yes*
10. The adequacy of the inmate's overall parole plan. This includes inmates' living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment; *good*
11. The willingness of the community into which the inmate will be released to receive the inmate; *good*
12. The willingness of the inmate's family to allow him/her to return to the family circle; *good*
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole; *?*
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate; *none*
15. Other factors considered relevant in a particular case by the Board. *?*

EXAMINED

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature <i>Lexie Turner</i>	Date <i>10/10/14</i>	Witness <i>[Signature]</i>	Date <i>10/10/14</i>
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2. Exhibit

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

December 12, 2014

Mr. Lexie Turner #00249878
Manning Correctional Institution
502 Beckman Dr.
P.O. Box 3173
Columbia, SC 29203

RE: NOTICE OF HEARING

Hearing Date: Wednesday, January 21, 2015 Arrival Time: 7:45 AM
Location: Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

Dear Mr. Turner:

This is to inform you that your parole hearing is scheduled for the above date. Your hearing will be held at the above location. Family members or supporters should report at the above noted time. Your hearing will be by way of videoconference, which means that the Board will review your case on a television monitor.

You can have a total of three (3) visitors or family members appear with you and you may retain an attorney at your own expense. It is your responsibility to notify visitors or family members of the date and time they will need to be at your hearing. Also, you must notify your attorney if he or she has not requested in writing such notifications from this agency.

Please find enclosed parole hearing information sheet. It may be necessary to provide your family members or visitors a copy.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Ray Patton, Jr.", written in a cursive style.

Larry Ray Patton, Jr.
Director of Parole Board Support Services

3. Exhibit

Department of

NIKKI R. HALEY
Governor

January 22, 2015

Mr. Lexie Turner #00249878
Manning Correctional Institution
502 Beckman Dr.
P.O. Box 3173
Columbia, SC 29203

RE: NOTICE OF REJECTION

Dear Mr. Turner:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Prior Criminal Record Indicates Poor Community Adjustment
Failure To Successfully Complete A Community Supervision Program

Sincerely,



Larry Ray Patton, Jr.
Director of Parole Board Support Services

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Lexie James Turner, #249878,

Appellant,

vs.

South Carolina Department of Probation
Parole and Pardon Services,

Respondent.

Docket No. 17-ALJ-15-0009-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant above named, who is incarcerated with the South Carolina Department of Corrections. On November 18, 2015, the South Carolina Department of Probation, Parole and Pardon Services notified Appellant that he was ineligible for parole. On March 30, 2017, Appellant filed a notice of appeal with the ALC, and the appeal was assigned to me on April 4, 2017.

In the above-captioned matter, the Appellant failed to file the notice of appeal with the ALC within thirty (30) days of his notice of the Department's final decision in this matter, and as a result, the Court does not have jurisdiction over the Appellant's appeal.

Based upon a fundamental rule of appellate practice, it is well established that a court does not have the authority to extend the time for taking an appeal from a decision of an administrative agency. See, e.g., Sadico of Greenville, Inc. v. Greenville County Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000); Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985); Burnett v. S.C. State Highway Dept., 252 S.C. 568, 167 S.E.2d 571 (1969). Further, pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), the ALC sits in an appellate capacity when reviewing final decisions of the Department regarding inmate grievance matters, and in order 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 notice of [the] Department's final decision." Id. at 377, 527 S.E.2d at 754. (emphasis added). SCALC 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.

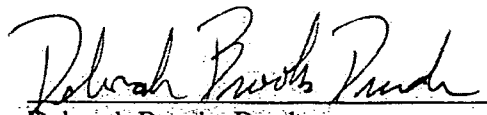
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SC ADMIN. LAW COURT

SCALC Rule 59 (emphasis added). In this matter, the Appellant received notice of the Department's final decision concerning his parole eligibility on November 23, 2015, but did not file his notice of appeal with the Court until March 30, 2017. The Appellant was given notice of the Department's decision as well as the opportunity to pursue review of that decision before becoming bound by the terms of the decision. S.C. Const. art. I, § 22. ("No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; . . . and he shall have in all such instances the right to judicial review."). By his own inaction, the Appellant simply failed to take advantage of his right to judicial review in this matter. Zaman v. S.C. State Bd. of Medical Exam'rs, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("One cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it."). Therefore, this Court finds that the Appellant did not file his notice of appeal in a timely fashion with the Court, and thus failed to properly invoke the jurisdiction of the ALC. While this Court recognizes the harsh result of this decision, it is constrained by the rules and legal precedent in this State. See McClain v. Ingram, 314 S.C. 359, 444 S.E.2d 512 (1994). Accordingly, this matter must be dismissed.

IT IS HEREBY ORDERED that this appeal is **DISMISSED, WITH PREJUDICE.**
AND IT IS SO ORDERED.


Deborah Brooks Durden
Administrative Law Judge

April 18, 2017
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 hereto, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 18th day of April 2017
By: R. E. W.
Judicial Law Clerk

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

November 18, 2015

Lexie James Turner, #249878
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335-9308

Dear Mr. Turner:

On February 27, 2013, you pled to Possession with Intent to Distribute Crack Cocaine, third offense, in Indictment Number 12-GS-46-02872. Pursuant to South Carolina law, a person convicted of this offense with two or more aggregate violations of the law relating to drugs is not eligible for parole.

A review of your prior record reveals prior drug convictions for Distribution. Due to this conviction, your current offense is ineligible for parole pursuant to South Carolina law. Therefore, you will not be considered for parole on this offense.

Sincerely

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan", written over a horizontal line.

Matthew C. Buchanan
General Counsel

MCB:dn

CERTIFICATE OF Appellant

Appellant hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 19th, 2017

151 LEXIE JAMES TURNER #249878

LEXIE JAMES TURNER #249878
Goodman Corr. Inst. 5-B-46B
4556 Broad River Rd.
Columbia, S.C. 29210

Appellant

RECEIVED

JUL 21 2017

SC Court of Appeals