

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Milton G. Kimpson, *Administrative Law Judge*

Lower Case No. 19-ALJ-04-0306-AP

Appellate Case No. 2019-001566

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DEC 04 2019

SC Court of Appeals

Jack Kuykendall, # 355988,.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

**MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, TO SUMMARILY
AFFIRM PURSUANT TO RULE 220(C), SCACR**

COMES NOW, Respondent, South Carolina Department of Corrections (SCDC or Department) and, pursuant to Rule 240, SCACR, moves this Honorable Court for an order dismissing this appeal or, in the alternative, summarily affirming the decision below pursuant to Rule 220(c).

This is an appeal from the Administrative Law Court's (ALC) dismissal of an inmate appeal of a disciplinary conviction for failure to serve Respondent with a Notice of Appeal. The issue currently before this Court is whether the ALC properly dismissed Appellant's appeal for failure to comply with SCALC Rule 54 and 59. SCALC rule 54 provides, in pertinent part, that "[a]ny document, pleading, motion . . . shall be served upon all parties to the proceeding. Service shall be made upon counsel if the party is represented" SCALC Rule 59 provides that the

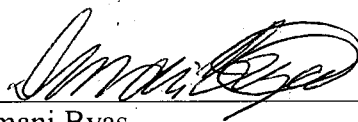
Notice of Appeal shall be filed with the Court and a copy on each party within thirty days of receipt of the final agency decision.

Appellant received the final agency on May 17, 2019 and had until June 17, 2019 to file and serve a Notice of Appeal on Respondent. *See* Exhibit A. However, the Certificate of Service attached to Appellant's Notice of Appeal sent to the ALC was blank. *See* Exhibit B. Service of the notice of appeal is a jurisdictional requirement and cannot be waived. *State v. Devore*, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016); *see also State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (“[T]he failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction....”). Furthermore, this appeal was dismissed in the ALC because Appellant failed to properly file and serve his Notice of Appeal. *See* Exhibit B.

Therefore, the Department respectfully requests this Court dismiss this appeal, or, in the alternative, dispense with further briefing and summarily affirm Judge Kimpson's August 6, 2019 order below dismissing the appeal.

Additionally, Respondent requests that all deadlines be held in abeyance until this motion is resolved.

Respectfully submitted,



Imani Byas
Staff Attorney
S.C. Department of Corrections
P.O. Box 21787
Columbia, South Carolina 29221
(803) 896-8508

Counsel for Respondent

Columbia, South Carolina
December 2, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Milton G. Kimpson, *Administrative Law Judge*

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Jack Kuykendall, # 355988,.....Appellant,

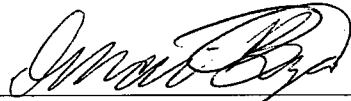
v.

South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on this day I have served a copy of the foregoing **MOTION TO DISMISS APPEAL OR, ALTERNATIVELY, TO SUMMARILY AFFIRM PURSUANT TO RULE 220(C), SCACR** upon Appellant by depositing a copy of same in the United States Mail, addressed to:

Jack Kuykendall
Evans Correctional Institution
610 Highway 9 West
Dorm-Rm-Bunk: 2A-0196-A
Bennettsville, SC 29512


Imani Byas
Staff Attorney
S.C. Department of Corrections
P.O. Box 21787
Columbia, South Carolina 29221
(803) 896-8508

December 2, 2019

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Due: 3-30-19

Office Use Only

INMATE NAME: Jack Kuykendall
SCDC NUMBER: 355988
INSTITUTION: Trenton
HOUSING UNIT: 4A-10
WORK ASSIGNMENT: N/A

Grievance No. TRCI-0067-19
Code: General
Policy
Disc. Hear. 902 #08
Class 3-15-19
PREA
Date Received: 3-26-19
IGC Initials: NW3
Date Received:
IGA Initials: RH

MAY 09 2019

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): I never left the premises, My line supervisor knew my whereabouts so I was never unaccounted for and I was seen in car by Randy Davenport because I was following the orders of the first supervisor on scene. Then on form 19-29A Sgt Robnett has my version of incident at 056196 that's incorrect. ALSO according to the DHO officer and the SCDC 1969 form the offense date was Dec 12, 2018. The Policy states they have 24 hrs to do an incident report unless there is an investigation, and there was no investigation so the 19-29A form was done Dec 18, 2018 that's past 24 hrs so the 1929A form is invalid. Thanks

Grievant Signature [Signature] Date 3-25-19

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of the Class II Escape (902), case #8 on March 15, 2019, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated February 2, 2015, and the sanctions imposed, which included the loss of -100- days accrued good time, were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing. You were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Responsible Official Signature Wayne Corbett Date 4-25-19

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature [Signature] Date 5/17/19

IGC Signature [Signature] Date 5/17/19

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jack Waylon Kuykendall, #355988,)	Docket No. 19-ALJ-04-0306-AP
)	
Appellant,)	
vs.)	
)	ORDER OF DISMISSAL
South Carolina Department of Corrections,)	
)	
Respondent.)	
_____)	

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Appellant) above named, who is incarcerated with the South Carolina Department of Corrections (Department or SCDC). Appellant appeals the denial of his Step 2 Grievance; regarding his conviction for violating SCDC Policy OP-22.14, Offense 902, Class II Escape. Appellant was sanctioned with a loss of 100 days of accrued good time credits.

On July 22, 2017, the Department filed a Motion to Dismiss, in which it states that the Appellant has not served it with a copy of the Notice of Appeal and that the appeal should be dismissed for failure to comply with the rules of the Court.

A review of the Court's file shows that Appellant has failed to properly serve his Notice of Appeal that is before the ALC. Attached to Appellant's Notice of Appeal is a Certificate of Service which is blank. According to the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), an "inmate must file and serve a notice of appeal upon specified parties within thirty days of receipt of written notice of Department's final decision." Id. at 377, 527 S.E.2d at 754. SCALC Rule 59 further provides that "[t]he 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."

Appellant failed to timely provide proof of service that the Notice of Appeal has been served on SCDC. Appellant received a copy of his Step 2 Grievance on May 17, 2019 and had until June 17, 2019 to properly file and serve a copy of his Notice of Appeal. However, as of the

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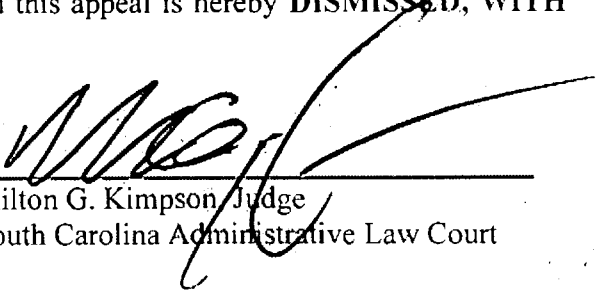
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SC ADMIN. LAW COURT

date of this order, the Court's file contains no record that Appellant has properly done so.

The failure to serve the Notice of Appeal on the Department within the appropriate time frame deprives the Court of its jurisdiction to hear Appellant's appeal. Therefore, for the foregoing reasons the decision appealed from is affirmed and this appeal is hereby **DISMISSED, WITH PREJUDICE.**

August 6, 2019
Columbia, SC


Milton G. Kimpson, Judge
South Carolina Administrative Law Court

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

This 6 day of August, 2019

By: 
Judicial Law Clerk



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

December 2, 2019

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

RE: Jack Kuykendall, #355988, v. South Carolina Department of Corrections
Appellate Case No. 2019-001566

Dear Ms. Kitchings:

Find enclosed an original and seven copies of the **Respondent's Motion to Dismiss** in the above captioned appeal, along with **Proof of Service**. Please file one (1) original and six (6) copies of the motion and return one (1) clocked-in copy to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Imani Diane Byas, SC Bar #103715
Staff Attorney
South Carolina Department of Corrections

cc: Jack Kuykendall, #355988
Evans Correctional Institution
610 Highway 9 West
Dorm-Rm-Bunk: 2A-0196-A
Bennettsville, SC 29512



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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Office of General Counsel
P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787

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The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

SC Court of Appeals