

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Administrative Law Court
Shirley C. Robinson, Administrative Law Judge
Case No. 18-ALJ-15-0003-AP

Appellate Case No. 2018-000183

Charlton Davis, 231377

Appellant

v.

South Carolina of Probation, Parole
and Pardon Services,

Respondent

RECORD ON APPEAL

RECEIVED
MAY 01 2018
SC Court of Appeals

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

ATTORNEY FOR RESPONDENT

Charlton Davis, 231377
HC117/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charlton Davis, 231377,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No. 18-ALJ-15-0003-AP

ORDER OF DISMISSAL
(*Sua Sponte*)

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed January 8, 2018 by Charlton Davis (Appellant), an inmate incarcerated with the South Carolina Department of Corrections.

ALC 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. (emphasis added).

SCALC Rule 59.

Furthermore, ALC Rule 4B sets forth, in relevant part, that the date of filing is the date of delivery or the date of mailing. SCALC Rule 4B.

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) *citing Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985); *See also Burnett v. S.C. State Highway Dep't*, 252 S.C. 568, 167 S.E.2d 571 (1969). Furthermore, pursuant to *Al-Shabazz v. State*, the ALC sits in an appellate capacity when reviewing final decisions of the Department regarding inmate 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.” 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000).

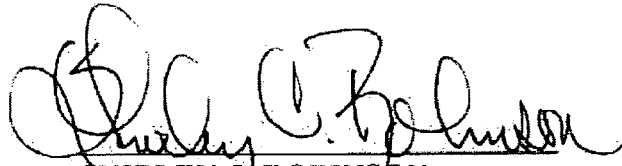
In this matter, Appellant received notice of the South Carolina Department of Probation, Parole and Pardon Services (Department) final decision concerning the denial of parole on

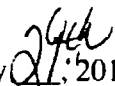
FILED

JAN 29 2018

November 29, 2017. Appellant served the Notice of Appeal upon the Department on December 27, 2017. However, Appellant did not file his Notice of Appeal with the Court until January 8, 2018, evidenced by the postage stamp bearing the date of mailing as January 8, 2018.¹ While Appellant timely served the Department, his filing with the Court is outside the thirty (30) day timeframe established by *Al-Shabazz* and reiterated in SCALC Rule 59. Therefore, this Court finds that the Appellant did not file his Notice of Appeal with the Court in a timely fashion, 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.

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


SHIRLEY C. ROBINSON
Administrative Law Judge


January 21, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has caused to be served this order in the above entitled cause at the place and time stated by depositing a copy hereof, in the United States mail, postage paid, or in the Intergovernmental Mail Service addressed to the parties, or their attorneys.
On 29 day of January 2018
By [Signature]
JUDICIAL LAW CLERK

¹ A stamp is on the back of the envelope stating it was received in the KerCi Mailroom on January 8, 2018.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

CHARLTON DAVIS # 231377

Appellant.

vs.

NOTICE OF APPEAL

South Carolina Department of Probation,
Parole and Pardon Services.

DOCKET NO. ALC-15 -AP

Respondent.

Notice is hereby given that CHARLTON DAVIS # 231377 does

hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated 11-16-17 and received on 11-29-17, a copy of which is

attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

THE PAROLE BOARD MEMBERS ABROGATED MY PAROLE ELIGIBILITY STATUS WHEN THE CHAIRMAN OR SECRETARY FOR THE BOARD STATED, "IN 1993 WHO DO YOU THINK YOU WERE OUT THERE RUNNING AROUND RAPEING WOMEN?" AS A RESULT, THE BOARD ARBITRARY AND CAPRICIOUSLY DEPRIVED ME OF A STATE-CREATED LIBERTY INTEREST AND TRIGGERED DUE PROCESS REQUIREMENTS BASED ON AN ERROR AND INACCURACY

CHARLTON DAVIS #
Appellant's Name # 231377/HC117

Charlton Davis
Signed

4848 GOLDMINE HWY.
Mailing Address

12-27-17
Dated

KERSHAW, S.C. 29067
City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, CHARLTON DAVIS (or name), on the 27 day of DECEMBER, 20 17, in KERSHAW (City),

South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: TOMMY EVANS, JR. SCDPPPS

Address: P.O. Box. 50666

City, State, Zip Code: COLUMBIA, S.C. 29250

Print your name CHARLTON DAVIS
(See reverse side for instructions)

Sign your name Charlton Davis

1 3

IN MY PAROLE FILE VIOLATING MY 14TH AMENDMENT RIGHT UNDER SCDPPPS CRITERIA 1212, WHEN THE BOARD DENIED ME PAROLE. THE CHAIRMAN STATED, "A COUPLE BOARD MEMBERS WOULD LIKE TO ASK YOU A COUPLE QUESTIONS, THEN YOU CAN ASK US COUPLE QUESTIONS IF YOU WANT TO, AND WE WILL TRY TO ANSWER THEM." I ASKED, "DID YOU RECEIVE MY PAROLE PACKET?" NO ONE ANSWERED THAT QUESTION FOR ME, AND STARTED LOOKING AROUND THE TABLE FOR IT, BUT DID NOT HAVE IT, THEN THE CHAIRMAN OR SECRETARY STATED, "IN 1993 WHO DO YOU THINK YOU WERE OUT THERE RUNNING AROUND RAPEING WOMEN?" I HAD NO CRIMES IN 1993! MY CRIMES HAPPEN ON JUNE 19, 1994. IN ADDITION, MY PAROLE HEARING HISTORY SCREEN DATED 9-26-17 SHOWS THAT MY PAROLE WAS DENIED ON 9-9-17 TWO MONTHS PRIOR TO THE PAROLE HEARING DATE 11-15-17. NOW MY PAROLE HEARING HISTORY SCREEN PAROLE DENIED 11-15-19 TWO YEARS PRIOR TO MY NEXT PAROLE DATE IN 2019 (PAROLE HISTORY SCREEN DATE 12-27-17) WITHOUT UNDERTAKING THE REQUIRED CRITERIA, THE BOARD'S DETERMINATION NOT TO RELEASE ME ON PAROLE WAS ARBITRARY.

ATTACHED ARE THE PAROLE HISTORY SCREENS.

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PARI420E

SCDC OFFENDER MANAGEMENT SYSTEM
PAROLE SCREENING PROGRAMS
INMATE PAROLE HISTORY SCREEN

12/27/17
0050462

SCDC ID > 231377

CURR LOC: KERSHAW

DAVIS, CHARLTON -

OFFENDER CAT: ADULT-STRAIGHT SENTEN

MULT VIOLENT OFF IND : N

DNA STATUS...: COMPLETED

SEXUAL PREDATOR...: PENDING

INITIAL	HEARING	INTERVIEW COMPL.	NEXT HEAR	DECISION
- 09/09/17	11/15/17		11/15/19	PAROLE DENIED
- 07/10/15	09/09/15		09/09/17	PAROLE DENIED
- 06/22/13	07/10/13		07/10/15	PAROLE DENIED
- 07/26/08	06/22/11		06/22/13	PAROLE DENIED
- 07/28/06	07/26/06		07/26/08	INMATE REFUSED
- 07/12/04	07/28/04		07/28/06	INMATE REFUSED

PAROLE SCREENING HISTORY DISPLAY...

PFKEYS: 3:ADDRÉV 4:MODREV ENTER:DISREV

5

PARI420D

SCDC OFFENDER MANAGEMENT SYSTEM

09/26/17

PAROLE SCREENING PROGRAMS

C050462

INMATE PAROLE HISTORY SCREEN

SCDC ID > 231377

CURR LOC: KERSHAW

DAVIS, CHARLTON -

OFFENDER CAT: ADULT-STRAIGHT SENTEN

MULT VIOLENT OFF IND : N

DNA STATUS.: COMPLETED

SEXUAL PREDATOR.: PENDING

INITIAL	HEARING	INTERVIEW COMPL.	NEXT HEAR	DECISION
07/10/15	09/09/15		09/09/17	PAROLE DENIED
06/22/13	07/10/13		07/10/15	PAROLE DENIED
07/26/08	06/22/11		06/22/13	PAROLE DENIED
07/28/06	07/26/06		07/26/08	INMATE REFUSED
07/12/04	07/28/04		07/28/06	INMATE REFUSED

PAROLE SCREENING HISTORY DISPLAY...

PFKEYS: 3:ADDREV 4:MODREV ENTER:DISREV

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

HENRY McMASTER
Governor



JERRY B. ADGER
Director

November 16, 2017

Mr. Charlton Davis #00231377
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

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

RE: NOTICE OF REJECTION

Dear Mr. Davis:

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); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

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

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Criminal Record Indicates Poor Community Adjustment
Failure To Successfully Complete A Community Supervision Program
Vote Count: Unanimous To Reject

Sincerely,

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

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

11/15/2017

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

11/17/17
 SC Board of Probation, Parole and Pardon Services
 P.O. Box 50666
 Columbia, SC 29250

Inmate Name Charlton Davis	SCDC# 231377
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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 a expectancy of release; nor does it bind the Parole Board in any way to 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. The 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 errors 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 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;
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. The inmate's attitude toward his/her family, the victim, and authority in general;
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;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place'
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
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;
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;
11. The willingness of the Community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow his/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmates; parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate
15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.
16. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in on 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 intimate under review.

In some cases, the Board may decide that 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 on or more stated conditions. Should the inmate fail to complete any one of these conditions or 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 Charlton Davis	Date 7-31-17	Witness Sheryl Bell	Date 07/31/17
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WITNESSES

Vinson CTD

Dr. J. H. Brown

ARREST WARRANT NO. 2232240

ACTION OF GRAND JURY

TRUE BILL

Karina Getz
Member of Grand Jury

VERDICT

DOCKET NO. 94-GS-40-21159

The State of South Carolina,

RICHLAND

County of _____

COURT OF GENERAL SESSIONS

#00 SEPTEMBER TERM 1994

THE STATE

vs.

CHARLTON DAVIS

Indictment for Burglary

(Dwelling)

IN THE FIRST DEGREE

S.C. CODE SEC. 16-11-311
CLASS EXEMPT FELONY

St. Reynolds/Campbell
Rep. Hall/Burris/Hettler
Rip Harper

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FORM 1 (12-87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT FOR BURGLARY
(DWELLING)
IN THE FIRST DEGREE

At a Court of General Sessions, convened on September 13, 1994,
the Grand Jurors of Richland County present upon their oath:

COUNT ONE — BURGLARY IN THE FIRST DEGREE
(DWELLING)

That CHARLTON DAVIS
did in Richland County on or about June 19, 1994,
willfully and unlawfully enter the dwelling of Bonnie Kennedy
without consent and with the intent to commit a crime therein and the defendant
entered the residence during the hours of darkness

COUNT TWO — BURGLARY IN THE SECOND DEGREE
(DWELLING)

That _____
did in _____ County on or about _____
willfully and unlawfully enter the dwelling of _____
without consent and with the intent to commit a crime therein.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Richard A. Hargrave
SOLICITOR

DOCKET NO. 94-GS-40-21160

The State of South Carolina,

County of RICHLAND

WITNESSES

Witness CPD

Det. G. H. Brown

COURT OF GENERAL SESSIONS

#00 SEPTEMBER TERM 1994

THE STATE

vs.

CHARLTON DAVIS

ARREST WARRANT NO. E252241

ACTION OF GRAND JURY

TRUE BILL

Barbara Jeter
Foreperson of Grand Jury

VERDICT

**Indictment for Armed
Robbery and Robbery**

S.C. CODE SEC. 16-11-330(A)
CLASS A FELONY

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT FOR ARMED ROBBERY

~~XXXXXXXXXXXX~~

At a Court of General Sessions, convened on September 14, 1994
the Grand Jurors of Richland County present upon their oath:

COUNT ONE — ARMED ROBBERY

That CHARLTON DAVIS did in
Richland County on or about June 19, 1994 while armed with a deadly
weapon, to wit: a knife
feloniously take from the person or presence of Bonnie Kennedy by means of
force or intimidation goods or monies of Bonnie Kennedy such goods or monies being
described as follows: \$200.00 in cash

with intent to deprive the owner permanently of such property.

COUNT TWO — ROBBERY

That _____ did in _____
County on or about _____ feloniously take from the
person or presence of _____ by means of
force or intimidation goods or monies of _____
such goods or monies being described as follows: _____

with intent to deprive the owner permanently of such property.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR



WITNESSES

Visson CPD

Det. J. L. Brown

ARREST WARRANT NO. 225224

ACTION OF GRAND JURY

TRUE BILL

[Signature]
[Illegible text]

VERDICT

DOCKET NO. 44-GS-40-21161

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

00 SEPTEMBER TERM 1994

THE STATE

vs.

CHARLTON DAVIS

Indictment for

ASSAULT WITH INTENT TO COMMIT CRIMINAL
SEXUAL CONDUCT IN THE FIRST DEGREE

S.C. CODE SEC. 16-3-656
CLASS A FELONY

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08/12/2005 (12/87)

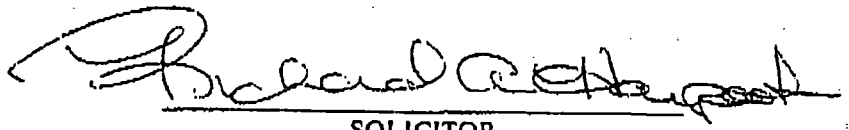
STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT FOR
ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT
IN THE FIRST DEGREE

At a Court of General Sessions, convened on September 14, 1994
the Grand Jurors of Richland County present upon their oath:

That CHARLTON DAVIS did in Richland County on or about June 19, 1994, wilfully,
unlawfully and feloniously assault one Bonnie Kennedy with the intent to
commit a sexual battery upon her: such assault having been committed with
aggravated force, to wit: defendant entered residence unlawfully at night;
presented a knife and fondled victim and tried to force her into having
sexual intercourse.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.



SOLICITOR

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Administration Law Court
Shirley C. Robinson, Administrative Law Judge
Case No. 18-ALJ-15-0003-AP

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MAY 01 2018

SC Court of Appeals

Appellate Case No. 2018-000183

Charlton Davis, 231377

Appellant

v.

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

Respondent

CERTIFICATE OF COUNSEL

Appellant certify that the Record on Appeal contains all material proposed to be included by the parties and not any other material, Rule 210(g), SCACR.

s/ *Charlton Davis*

Charlton Davis, 231377
HC117/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

April 27, 2018