STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge
Docket No. 18-ALJ-15-0003-AP

Appellate Case No. 2018-000183

Charlton Davis, #231377, Appellant

v.

South Carolina Department of Probation,
Parole and Pardon Services, Respondent.

APPELLANT'S FINAL BRIEF

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

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TABLE OF CONTENTS

Table of authorities ii

Statement of issues on appeal iii

Statement of the case 1

Arguments:

1. The Parole Board abrogated Appellant's 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." 2

2. The Appellant's notice of appeal is deemed filed for purposes of 30 day time frame period governing the appeal when it is delivered to and received by the Administrative Law Court Clerk. 2

3. The Parole Officials provided an audio CD to the Appellant of his parole hearing for record on appeal distorted and inaudible. 3

4. The ALC judge was incorrect in determining that the Appellant did not file his notice of appeal with the court in a timely fashion. 3

5. The Appellant's $100.00 filing fee should be reimbursed to him after this appeal process has been adjudicated on the merits. 4

Conclusion 4

Certificate of Counsel 5

Designation of Matter 6

Certificate of Service 7

TABLE OF AUTHORITIES

CASES

Al- Shabazz v. State, 527 S.E.2d 742 (2000)	4
Guerin v. N.Y. State Div. of Parole, 276 A.D.2d, 714 N.Y.S.2d 770 (2005)	2
Houston v. Lack, 487 U.S. 266 (1988)	2-3
Moosman v. Joseph P. Blitz, Inc., 358 F.2d 686 (2d. Cir. 1966)	3
Southern Ry. Co. v. Crosby, 201 F.2d 878 (4th Cir. 1953)	3
Walman v. Travis, 18 A.D.3d at 307-308, 794 N.Y.S.2d 381 (2005)	2

RULES

SCALC, Rule 59	4
SCRCP, Rule 16(c)(3)(5)(6)(7)(e)	3
SCRCP, 36(b)	3

STATEMENT OF ISSUES ON APPEAL

1. Did the Parole Board abrogated Appellant's 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?"

2. Did the Appellant's notice of appeal deemed filed for purposes of 30 day time frame period governing the appeal when it is delivered to and received by the Administrative Law Court Clerk?

3. Did the Parole Officials provide an audio CD to the Appellant of his parole hearing for the record on appeal distorted and inaudible?

4. Did the ALC judge was incorrect in determining that the Appellant did not file his notice of appeal with the court in a timely fashion?

5. Does the Appellant's $100.00 filing fees should be reimbursed to him after this appeal has been adjudicated on the merits?

STATEMENT OF THE CASE

The Appellant appeared before Circuit Court Judge Markley Dennis, Jr. on February 1, 1996, in which Judge Dennis sentenced the Appellant to a 40 year term of incarceration for the offense of burglary 1st degree; 25 year period of incarceration for armed robbery; and 15 year period of incarceration for assault with intent to commit CSC 1st, based on the offenses occuring on June 19, 1994.

The Appellant was obligated to serve 1/3 of his sentence before he became eligible for parole. He initially became eligible for parole on July 28, 2004; however, the Appellant waived this scheduled parole hearing. Afterwards, the parole officials rescinded his parole eligibility status arbitrary or capriciously until it realized that they (SCDPPPS) rescinded Davis parole eligibility upon unlawful procedure and by error of law, thereby reinstated Appellant's parole eligibility status, in which Davis appeared before the Board on June 22, 2011, 8 years after his initial parole hearing date.

Upon conclusion of the hearing the Board denied Appellant release on parole. He has since appeared before the Board an additional 3 times each resulting a denial of parole. The Appellant's most recent parole hearing occurred on 11/15/2017. At the conclusion of this hearing the Board denied parole due to: 1) nature and seriousness of current offense; 2) indication of violence in this or previous offense; 3) use of deadly weapon in this or other previous offense; 4) criminal record indicates poor community adjustment; 5) failure to successfully complete a community supervision program; and 6) vote count unanimous to reject.

Upon being notified as to his denial of parole on November 29, 2017, (2nd notice) Davis submitted a notice of appeal to be file on December 27, 2017, before the Administrative Law Court (ALC). Within his appeal Davis alleges that the Parole Board members abrogated his 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?" Whereby, the Board unlawful procedure denied him parole and argues that the denial of parole did not followed the parameters proscribed facts of the offense date nor circumstances applied by the Board, because SCDC parole history screen shows that Davis parole decision was on 9/9/17, in which PAROLE DENIED, 2 months prior to the November 2017 hearing.

However, ALC Judge Robinson Order of Dismissal (Sua Sponte) dated January 29, 2017, dismissed Appellant's appeal because she finds that Davis did not file his Notice of Appeal with the ALC in a timely fashsion, and she failed to invoke the jurisdiction of the ALC.

The Appellant put the Notice of Appeal with the Certificate of Service into the inmate institutional mailbox on the 27th of December, 2017. Davis has no control when prison officials pick the mail up from the box, nor did he have any control regarding the institution holiday schedule, or lock-down (post 34 and 35) due to shortage of security staff, etc, or when the mail was delivered to the ALC. The Appellant's brief supporting these issues follows.

ARGUMENTS

1. The Parole Board Did Abrogate Appellant's 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?"

Board members must consider statutory factors in making discretionary parole decision, e.g. institutional disciplinary record, involvement in institutional programs, and plans upon release, in addition to circumstances surrounding criminal offense giving rise to incarceration, not to abused its discretion by concluding impermissible factor(s) of nature of crime alone such as to preclude release on parole. (ROA Parole Hearing CD dated 11/15/17).

Appellant asserts that consideration of impermissible factor(s) were arbitrary or capricious when the Board impermissibly considered that he was "...out there running around rapeing women," which seriously prejudiced him from a fair and impartial hearing. The Appellant is serving a sentence for the offense that warrant a sentence of 15 years that the court imposed, and any other factor considered regarding the circumstances "In 1993 who do you think you were out there running around rapeing women" is impermissible prejudicial factor. SEE: Guerin v. New York State Div. of Parole, 276 A.D.2d, 714 N.Y.S.2d 770 (2005). Also SEE: Wallman v. Travis, 18 A.D.3d at 307-308, 794 N.Y.S.2d 381 (2005).

In fact, the record shows that the Appellant's offense occurred on June 19, 1994, and not in 1993, and there were no multiple victims, but only one. Appellant was not nor never "in 1993 out there running around rapeing women."

2. The Appellant's Notice of Appeal Was Deemed Filed For Purposes Of 30 Day Time Frame Period Governing The Appeal When It Is Delivered To And Received By The Administrative Law Court Clerk.

The ALC made error of law when it failed to consider the unique conditions of incarceration. The Appellant asserts that the 30 day date for filing or governing notice of appeal should be tolled if the circumstances warrant. Additionally, he contends that an evidentiary hearing is required because circumstances prevented him from making a timely filing that were beyond his control and unavoidable despite of due diligence when delay was due to the processing of documents or mail by prison authorities on December 27, 2017.

SEE: Houston v. Lack, 487 U.S. 266 (1988), prison mailbox rule as enunciated by the U.S. Supreme Court in Houston. Appellant further contends that the ALC failed to check prison record of outgoing legal mail on December 27, 2017, before arbitrary or capriciously making its order of dismissal. Houston is a rule of equal treatment. It seeks to ensure that imprisoned litigants are not disadvantaged by delays which other litigants might overcome. Houston sets forth a bright line rule that filing occurs when Appellant delivers his pleading to prison authorities for forwarding to the court clerk.

ARGUMENTS

3. The Parole Officials Did Provide An Audio CD To The Appellant Of His Parole Hearing For The Record On Appeal Distorted And Inaudible.

The Appellant requested and paid $17.50 for a copy of his parole proceedings that was held on 11/15/17, in which he required to be part of the record and include into the record on appeal. Appellant asserts that upon listening to the CD he found it to be distorted with backgroumd noise, volume low, missing excerpts, along with being inaudible. Appellant contends that the Board member chairman or secretary stated, "In 1993 who do you think you were out there running around rapeing women?"

Furthermore, Appellant contends that the omissions in the CD recording seriously prejudice him because the exclusions within the CD may leave it with no assurance that his issue regarding prejudicial factor by the Board may not stand, nor his claim of a fair or impartial parole hearing.

Appellant asserts that the Board was deliberately indifferent to his offense(s). As such, the Appellant request to stipulate to admit video of his 11/15/17 parole hearing into evidence, or to be included into the record on appeal for the court, pursuant to SCRCP, Rule 36(b), and Rule 16(c)(3)(5)(6)(7)(e). The video should be lucid and articulate in regards the Davis parole hearing, and show the hostile and flippant demeanor of the Board members, along with Appellant's inability to counter the question asked by the Board of his criminal record and "...who do you think you were out there running around rapeing women?" The Appellant states that the video is more reliable than the CD. Also the stipulation will entitle the Respondent a judgment in its favor if the error is harmless. SEE: Southern Ry. Co. v. Crosby, 201 F.2d 878 (4th Cir. 1953). Also, Moosman v. Joseph P. Blitz, Inc., 358 F.2d 686 (2d Cir. 1966).

4. The ALC Judge Was Incorrect In Determining That The Appellant Did Not File His Notice of Appeal With The Court In A Timely Fashion.

The Appellant incorporate verbatim argument two (2) in support his facts that the ALC judge incorrectly determine that he did not file his notice of appeal with the ALC in a timely manner. Houston v. Lack, 487 U.S. 266 (1988), enunciated the prison mailbox rule to ensure that imprisoned litigants are not disadvantaged by delays. Davis contends that ALC judge arbitrary or capriciously just refused to invoke jurisdiction of the ALC without providing an evidentiary hearing to determine whether or not the delay were circumstances beyond his control and unadvoidable despite of due diligence. Furthermore, Respondent submitted its record on appeal dated January 30, 2018, one (1) day after the ALC order of dismissal dated 1/29/18.

The ALC judge seriously prejudiced Davis, in which he asserts prevented him appellate review without paying a $100.00 filing fee.

ARGUMENTS

5. The Appellant's $100.00 Filing Fee Should Be Reimbursed To Him After This Appeal Has Been Adjudicated On The Merits.

Appellant asserts that some of the ALC judges such as Shirley C. Robinson refuses to invoke jurisdiction for state prisoners as established by Al-Shabazz v. State, 527 S.E.2d 742 (2000), because dismissing or denying the notice of appeal provide the court and state agencies, i.e. SCDC and SCDPPPS a way out from further litigation whereby many inmates do not have the financial resources to pay a $100.00 filing fee, and as a result, have to abandon any issues or litigation that may very well be rule in their favor.

The ALC bias in regards to this matter is very clear when a simple evidentiary hearing can determine the circumstances pertaining SCALC Rule 59, filing with the court 30 day time frame, and other circumstances that prevent inmates being in compliance with ALC rules when circumstances are beyond their control and unadvoidable despite of due diligence. The practice is unfair and disadvantage to inmate litigants, such as is it is here with this Appellant.

CONCLUSION

The Appellant therefore request that this court grant his appeal on the merits and remand the matter for a new parole hearing within 30 days upon adjudication.

s/ Charlton Davis

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April 30, 2018

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CERTIFICATE OF COUNSEL

The undersigned certifies this this ~~Initial~~ Final Brief complies with Rule 211, SCACR.

s/ Charlton Davis

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