

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Charlton Davis, 231377

Appellant,

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MAR 30 2020

SC Court of Appeals

v.

South Carolina Department
of Probation, Parole and
Pardon Services,

Respondent.

Appeal From The Administrative Law Court
Shirley C. Robinson, Administrative Law Judge
Appellate Case No. 2018-000183

Unpublished Opinion No. 2020-UP-077
Submitted February 1, 2020-Filed March 18, 2020

MOTION FOR REHEARING EN BANC

The Appellant comes now requesting for a rehearing en banc in accordance Rule 219(a)(2)(b), SCACR [sic], based upon this Court affirmed decision dated March 18, 2020, in which he received on March 25, 2020.

The three justices erroneously affirmed the ALC's dismissal of Appellant's appeal and deprived him his right to meaningful access to the judicial process in violation of the State Constitution's due process. In addition, the department of corrections (SCDC) violated his right to access to the courts by failing to deliver his notice of appeal to the ALC in a timely manner. As such, the appeal is in error.

The Appellant argued that he timely delivered his notice of appeal to his institution's mailbox but that to the extent mailroom official did not process it timely, and any delinquency should be excused under *Houston v. Lack*, 487 U.S. 266 (1988), i.e. prison mailbox rule, date of delivery to prison mailroom, applies for pro se inmate filing appeal from dismissal of habeas corpus petition under Federal Rules of Appellate Court Procedure. SEE ALSO *Mose v. State*, 803 S.E.2d 718 (2017), South Carolina Supreme Court applies "prison mailbox rule" to equitably toll post-conviction relief act statute of limitations for pro se inmate.

SCALC Rule 62, entitled dismissal of appeal, but when the ALC abused its discretion based on the Appellant's representation, and failed to accept his notice of appeal it arbitrarily or capriciously deprived Appellant his right to meaningful access to the judicial process in violation of Article 1, §22, S.C. Constitution. SEE ALSO SCALC Rule 53(A).

Rule 53(A), SCALC, provides in relevant part as follows: Filing Defined. "...; or (2) depositing the document in the U.S. Mail or in the mail room at the appellant's correctional institution, properly addressed to the Court, with sufficient first class postage attached." "A document, pleading or motion or other paper is deemed filed with the Court by" the foregoing.

CONCLUSION

WHEREFORE, the Appellant respectfully request the following relief: (1) that his motion for rehearing en banc be granted; (2) ~~that~~ the case be reversed and remand to the ALC to redress all three (3) of his issues, and remand to SCDPPTS for a new hearing based on its findings of misconduct by a member of the parole board.

s/ *Charlton Davis*
Charlton Davis, 231377
KER.CI/H0117
4848 Goldmine Hwy.
Kershaw, SC 29067

March 25, 2020

NOTE: SEE Memorandum of Law ~~Cites~~ in Support:

Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 687 S.E.2d 29, 32 (2009)

Martin v. Department of Corrections, 190 A.3d 237 (2018 ME 103)

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CERTIFICATE OF SERVICE

I certify that I have served the Motion for Rehearing En Banc on the Respondent,
by depositing a copy of it in the U.S. Mail, postage prepaid, March 25, 2020,
addressed as follow: SCDPPPS
Tommy Evans, Jr., Esquire
P.O. Box 207
Columbia, SC 29202
SC Administrative Law Court
Shirley C. Robinson, ALJ
Edgar A. Brown Bldg.
1205 Pendleton St., Ste. 224
Columbia, SC 29201

s/ *Charlton Davis*

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March 25, 2020

Charlton Davis # 231377

Ken. CI / HC 117

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COLUMBIA SC 290

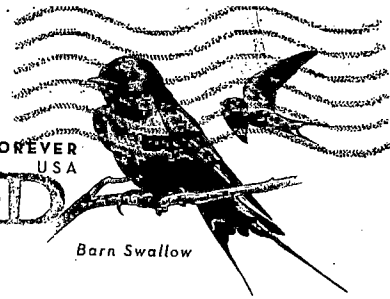
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SC Court of Appeals



To: S.C. Court of Appeals.

Jenny Abbott, Kitching. (Clerk)

P.O. Box, 11629

Columbia. S.C.

