

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No. 2018-000183
Unpublished Opinion No. 2020-UP-077

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APR 20 2020

SC Court of Appeals

CHARLTON DAVIS, #231377.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

RETURN TO PETITION FOR REHEARING EN BANC

Now comes the Respondent South Carolina Department of Probation, Parole and Pardon Services, by and through its counsel Matthew C. Buchanan, with this Return to the Appellant's Petition for Rehearing En Banc pursuant to SCACR 219(a)(2).

Rule 219(a) states that rehearings en banc are not favored and shall only be held when (1) it is needed to create uniformity of the Court's decisions, or (2) "when the proceeding involves a question of exceptional importance." Id.

The Respondent submits that the Petitioner's request is not of "exceptional importance." The Petitioner is appealing the Administrative Law Court's dismissal of his case because it was not timely filed. The Petitioner's parole hearing was held on November 29, 2017. His Notice of

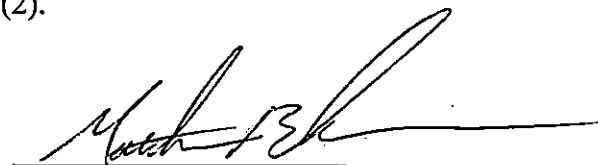
Appeal was timely served on the Department (Respondent) on December 27, 2017, but he did not file his Notice of Appeal with the court until January 8, 2018. The ALC correctly determined that the Petitioner filed his notice outside the thirty-day timeframe required in SCALC Rule 59. Consequently, the ALC did not have jurisdiction to hear the Petitioner's case.

Furthermore, this Court properly affirmed the ALC's dismissal in its opinion filed March 18, 2020. In the unpublished opinion, this Court determined that per SCALC Rule 59, SCALC Rule 53, and SCALC Rule 62, the ALC was within its authority and upheld the dismissal.

The Petitioner's reliance on the prison mailroom rule in Houston v. Lack, 487 U.S. 266 (1988) is misplaced where here, the Petitioner managed to timely file his notice of appeal on the Department, but the notice to the court was deficient because the postage stamp bore the date of mailing as January 8, 2018.

As this Court held, SCALC Rule 62 gives the ALC discretion to determine if a document is timely filed. The ALC exercised that discretion, which was upheld.

For the foregoing reasons, the Respondent respectfully submits that this is not a question of "exceptional importance" as required by SCACR 219(a)(2).



Matthew C. Buchanan
General Counsel

April 17, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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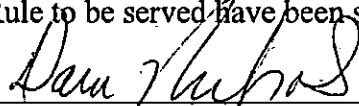
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES.....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within
Return to Petition for Rehearing, dated April 17, 2020, on Appellant this 17th day of April, 2020,
by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Charlton Davis, #231377
Kershaw Correctional Institution-HCI17
4848 Goldmine Highway
Kershaw, S.C. 29067

I further certify that all parties required by Rule to be served have been served.



Dawn K. Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

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

HENRY McMASTER
Governor



JERRY B. ADGER
Director

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April 17, 2020

The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

Re: Charlton Davis v. SCDPPPS
18-000183

Dear Ms. Kitchings:

Please find enclosed the original and six (6) copies of the Return to Petition for Rehearing in the above referenced matter, along with proof of service.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew G. Buchanan".

Matthew G. Buchanan
General Counsel

MCB:dn

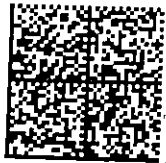
Enclosures

cc: Charlton Davis, #231377

State of South Carolina

Department of Probation, Parole, and Pardon Services

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The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
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SC Court of Appeals

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