

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

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SEP 29 2020  
SC Court of Appeals

Marshall Fields, #131768, )  
)  
Appellant, )  
)  
vs. )  
)  
South Carolina Department of Probation, )  
Parole and Pardon Services, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. 20-ALJ-15-0026-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Marshall Fields (Appellant) from a decision of the South Carolina Department of Probation, Parole and Pardon Services (Department) denying him parole.

By letter dated December 12, 2018, the Parole Board notified Appellant that it had denied his request for parole due to the nature and seriousness of the current offense, failure to successfully complete a community supervision program, institutional record is unfavorable, and a criminal record that indicates poor community adjustment.

Appellant filed a Notice of Appeal on May 21, 2020. The Notice of Assignment was filed and served May 29, 2020. On August 4, 2020, the Department filed a Motion to Dismiss (Motion) the appeal because Appellant failed to timely file his Notice of Appeal. Appellant filed a Response to the Motion on August 12, 2020, asserting that his notice of rejection was not the final decision of the Board because it was not a unanimous decision which is required by section 24-21-30(A) of the South Carolina Code of Laws (2007). On August 19, 2020, the Department filed a Reply arguing Appellant's reliance on that statute is misplaced because his burglary convictions are violent offenses and, therefore, he is not qualified under section 24-21-30 to appear before three-personal panel and a unanimous decision was not required to deny him parole. Thus, the notice of rejection dated December 12, 2018, was the final decision of the Board.

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. South Carolina Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003). Consequently, the ALC enacted the Special Appeals section of the Rules of Procedure for the

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Administrative Law Court (SCALC Rules) to apply to appeals filed pursuant to *Al-Shabazz v. State*. See SCALC Rule 51 (“The Rules in this section shall apply exclusively in matters heard on appeal from final decisions pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000)”).

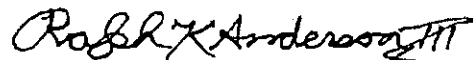
SCALC Rule 59 sets forth that “[t]he notice of appeal from the final decision to be heard by the Administrative Law Court shall be filed with the Court and a copy served on each party, including the agency, within thirty (30) days of receipt of the decision from which the appeal is taken.” SCALC Rule 62 also provides: “Upon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal . . . for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section . . . .” Timely service of the notice of appeal is a jurisdictional requirement. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). Moreover, the South Carolina Supreme Court has set forth that a court must dismiss an appeal where the appellant fails to file an appeal or serve a party with the notice of appeal in a timely manner. See *Southbridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E. 2d 535 (1987) (applying appellate court rules and dismissing case for failure to serve a notice of intent to appeal in a timely manner); *Mears v. Mears*, 287 S.C. 168, 337 S.E. 2d 206 (1985) (applying appellate court rules and finding lack of jurisdiction for failure to serve a notice of intent to appeal in a timely manner). Additionally, it is well-established that because the requirement of service of the notice of appeal is jurisdictional, an appellate body may not extend the time to appeal. See *Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775 (“The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”); see also *Burnette v. S.C. State Highway Dep’t*, 252 S.C. 568, 167 S.E. 2d 571 (1969) (holding that a court does not have the authority to extend the time for filing an appeal, or for serving notice of appeal, from a decision of an administrative agency).

In this case, Appellant was notified that his request for parole was denied on December 12, 2018. Appellant asserts that § 24-21-30(A) applies to him, however, this assertion is misplaced. Section 24-21-30(A) states that “an inmate who appears before a three-member panel and does not receive a unanimous decision shall have their matter referred to the full Board to decide the case based on a majority of the membership.” However, because Appellant’s offense, first-degree

burglary, is classified as a violent offense under section 16-1-60 of the South Carolina Code (2015 & Supp. 2019), § 24-21-30(B) requires that he go before the “full board.” Because Appellant is not qualified under § 24-21-30 to appear before a three-member panel and since he appeared before the full Board in December 2018, a unanimous decision was not required to deny him parole. The Notice of Rejection dated December 12, 2018, is therefore the final decision of the Board and, pursuant to SCALC Rule 59, he had thirty days from the date of the final decision to file and serve his Notice of Appeal. However, Appellant did not file his Notice of Appeal until May 21, 2020, fifteen months after the Parole Board decision. This delay far exceeds the thirty (30) days given to Appellant to appeal. Consequently, Appellant’s appeal is dismissed. *See Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775; *Southbridge Props., Inc.*, 292 S.C. at 198, 355 S.E. 2d at 535. For good cause,

**IT IS THEREFORE ORDERED** that Appellant’s appeal is **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

September 1, 2020  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



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Stephanie Perez  
Judicial Law Clerk

September 1, 2020  
Columbia, South Carolina