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SC Court of Appeals

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

ROBERT WILLIAM WAZNEY)
Appellant,

Docket No. 20-ALJ-04-0136-AP

vs.)

ORDER GRANTING
RESPONDENTS MOTION TO

S.C. Dept. of Corrections,)

DISMISS

Respondent,)

This matter is before the South Carolina Administrative Law Court pursuant to the Notice of Appeal filed on 3/1/20, by Robert William Wazney (Appellant), an inmate in the custody of the S.C. Dept. of Corrections (Respondent or Department). The Appellant is appealing the Departments return of his Step 2 grievance as unprocessed. the Department returned the Appellants grievance because inmates cannot file a grievance about a pending grievance. the Appellant is requesting the Department address in the issues in his Step 1 grievance, specifically his need for more library time due to pending court deadlines. the appellant is not appealing a disciplinary hearing conviction for which he lost good time credit or failed to get good time credit or because his sentence, sentence, sentence related credits or custody status have been erroneously calculated.

On 5/20/20, the Department filed a Motion to Dismiss for the Appellants failure to serve his notice of appeal on the department [1]. In support of its motion, the Department cited ALC Rules 54, 59, and 62, which provide that an appeal must be filed and served upon the parties to the case within thirty (30) days from the date of the written notice of the final decision of the Department. The appellant received the Departments Final Decision on 2/20/20. therefore the date for perfecting an appeal from the Departments decision was 3/23/20 [2]. The Appellant file his notice of appeal with the court on 3/1/20, however according to

[stamp "FILED Jun 04, 2020 ALC"]

[1] As of the date of this Order, the appellant has not responded to the Departments motion.

[2] Thirty days from 2/20/20 is 3/21/20, however, as that is a Saturday, pursuant to ALC Rule 52, the time for filing is extended to the following Monday, 3/23/20.

ALJ 4-18-6

the notarized affidavit submitted with the Department's motion, the Appellant failed to serve his Notice of Appeal on the Department.

Timely filing and service of a notice of appeal is a jurisdictional requirement and this court does not have the authority to extend or expand the time for filing such appeal. See *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985); *State v. Brown*, 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001). Therefore, because the Appellant failed to timely serve his Notice of Appeal on the Department, this court does not have jurisdiction to hear it. Pursuant to the departments motion, this court concludes that this matter must be dismissed.

IT IS THEREFORE ORDERED that the Departments Motion to Dismiss is GRANTED and this appeal is hereby DISMISSED.
AND IT IS SO ORDERED.

[signature of S. Phillip Lenski]
Administrative law Judge

June 4, 2020
Columbia, South Carolina

{Stamp "certificate of service": 6/6/2020 signed by law clerk (Illegible)}

STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

Appeal from Administrative Law Court
Judge S.P. Lenski

App. Case No. 2020-000910
20-ALJ-04-0136-AP
Grievance No: LEECI-0091-20

ROBERT WILLIAM WAZNEY, Appellant,

v.

S.C. Dept. of Corr., Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the forgoing MOTION TO PROCEED WITHOUT PAYMENT OF COSTS AND FEES and AFFIDAVIT AND FINANCIAL STATEMENT IN SUPPORT OF MOTION TO PROCEED WITHOUT PAYMENT OF COSTS AND FEES and Order(s) under appeal were served upon all parties to this action by placing copy of the same in the U.S. Mail, postage paid, and addressed to the following addresses on this day:

Clerk, S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

Salley W. Elliott
PO Box 21787
Columbia, SC 29221-1787

November 2, 2020.

/s/

ROBERT WILLIAM WAZNEY
990 Wisacky Highway
Bishopville, SC 29010
Appellant, pro se (forced)

ROBERT WILLIAM WAZNEY
F32214 363679
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

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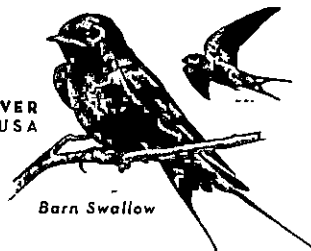
SC Court of Appeals

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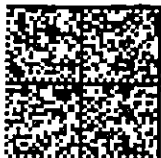
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