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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert William Wazney, #363679)

Appellant,)

vs.)

South Carolina Department of Corrections,)

Respondent.)

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

**ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS**

~~This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed on March 1, 2020, by Robert William Wazney (Appellant), an inmate in the custody of the South Carolina Department of Corrections (Respondent or Department). The Appellant is appealing the Department's return of his Step 2 grievance as unprocessed. The Department returned the Appellant's 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 earn good time credit or because his sentence, sentence related credits or custody status have been erroneously calculated.~~

On May 20, 2020, the Department filed a Motion to Dismiss for the Appellant's 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 Department's Final Decision on February 20, 2020, therefore the date for perfecting an appeal from the Department's decision was March 23, 2020.² The Appellant filed his Notice of Appeal with the court on March 1, 2020, however according to

¹ As of the date of this Order, the Appellant has not responded to the Department's motion.

² Thirty (30) days from February 20, 2020 is March 21, 2020, however, as that is a Saturday, pursuant to ALC Rule 52, the time for filing is extended to the following Monday, March 23, 2020.

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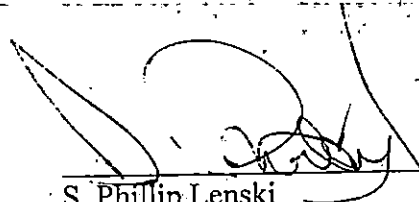
ADMINISTRATIVE LAW COURT

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 Department's motion, this court concludes that this matter must be dismissed.

IT IS THEREFORE ORDERED that the Department's Motion to Dismiss is **GRANTED** and this appeal is hereby **DISMISSED**.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

June 4, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I do hereby certify that the undersigned has this date
complied with the order in the above entitled action upon all
parties to this cause by depositing a copy heretofore,
by First Class United States Mail, postage paid, or in the interagency
mail service addressed to the party(ies) or their attorney(s).

By ipn Day of June 2020
Administrative Law Clerk