

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JAN 18 2022

SC Court of Appeals

Appeal from the Administrative Law Court
The Honorable Shirley C. Robinson, Administrative Law Judge
Docket Number 2021-ALJ-15-0013-AP

Appellant Case No.: 2021-000726

CALVIN BRYANT, #189164.....APPELLANT

v.

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

BRIEF OF RESPONDENT

**Jessica E. Kinard
Legal Counsel**

**South Carolina Department of Probation,
Parole and Pardon Services
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(803) 734-9220**

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Appellant's Statement of Issue on Appeal

Did the South Carolina Department of Probation, Parole and Pardon Services improperly deny Appellant parole based on an incorrect interpretation of the statute setting forth the number of votes required by the parole board?

Respondent's Statement of Issue on Appeal

Does this court have the ability to consider this case when the issues are not preserved for review and the Administrative Law Court correctly dismissed Appellant's appeal due to his failure to file within the required time constraints?

STATEMENT OF THE CASE

On August 27, 1991, Appellant shot the victim in the abdomen, resulting in his death. Witnesses to the shooting positively identified the subject in a photographic line-up. He was sentenced to life imprisonment on June 24, 1992 by the Honorable Costa Pleicones (then in his position as a circuit court judge). Appellant was initially eligible for parole on October 18, 2011. Since that time, Appellant has had five parole hearings with the most recent review taking place on September 16, 2020. Following Appellant's appearance, the Board unanimously rejected his request for parole citing the nature and seriousness of the offense and use of a deadly weapon in this or a previous offense.

However, it is Appellant's parole board appearance on January 18, 2012 that he contests now, arguing that he should have been released after that hearing but SCDPPPS misinterpreted statutory law. He alleges that a SCDPPPS employee informed him that he received four out of six votes in favor of parole, but Respondent insisted that a potential parolee must receive five votes in favor of parole, even when fewer than the typical seven Parole Board members are participating.

Appellant filed a notice of appeal before the Administrative Law Court (ALC) on June 1, 2021 – nine and one-half years after the alleged improper denial of parole. He cited Rose v. SCDPPPS, 429 S.C. 136, 838 S.E.2d 505 (2020) and Barton v. SCDPPPS, 404 S.C. 385, 745 S.E.2d 110 (2013) in support of his arguments. The Honorable Shirley C. Robinson dismissed the action before Respondent could file a response, ruling that the appeal was improperly filed as it was severely out of time, not being filed within the thirty-day window allowed by SCALC Rule 59 and reiterated by Al-Shabazz v. State, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000).

Appellant now appeals Judge Robinson's decision, though he does not address Judge Robinson's decision and, instead, reiterates his arguments about the improper application of

statutory law by Respondent at the January 2012 parole hearing. In response, Respondent will argue that the ALC correctly dismissed his appeal when it determined that the same was filed out of time. This brief follows.

STANDARD OF REVIEW

In criminal cases the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. When reviewing a parole case, the ALC sits in an appellate capacity. Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2004). Under the appellate standard of the Administrative Procedures Act, the ALC's review is limited to the record, absent irregularities in the procedure of the agency. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5).

In an appeal from an ALC decision, the Administrative Procedures Act provides the standard of review. S.C. Code Ann. §1-23-610(B). This Court may only reverse the decision of the ALC if that decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Id. “The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact.” Id. In determining whether the ALC's decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached. Hill v. S.C. Dep't of Health and Envtl. Control, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

ARGUMENT

I. The Administrative Law Court's dismissal of Appellant's appeal was proper and the merits of this action cannot be considered.

In his appeal to this court, Appellant wholly ignores the findings of the Administrative Law Court and, instead, makes the same argument he made to that court. Procedurally, this is inappropriate as these issues clearly were not preserved for review because the merits of the case were not reached.

“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.” Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct.App.2006). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). It is “axiomatic that an issue cannot be raised for the first time on appeal.” Id. Imposing such a requirement on the appellant “is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.” I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). In this instance, the Administrative Law Court is the trial court, as it is the court of first impression. Therefore, because the issues Appellant raises to this court were not ruled upon by the trial court, they cannot be considered here.

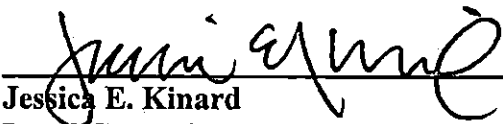
Regardless, the Administrative Law Court was clearly within the bounds of the law in dismissing this matter as untimely. SCALC Rule 59 describes the method of filing an appeal to the court, specifically stating, "The notice of appeal from the final decision to be heard by the Administrative Law Court 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." The routine parole denial Appellant challenges was dated January 18, 2012, but his appeal was not filed until June 1, 2020. Certainly, 9.5 years is far beyond the thirty-day window provided by rule. As noted in the order of dismissal, the Administrative Law Court does not have the authority to extend the appeal filing or service deadline. See, e.g., Sadisco of Greenville, Inc. v. Greenville County Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (1000); See also Elam v. S.C. Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, (2004). The Respondent submits that the ALC was correct when it determined this appeal cannot be heard due to well-established time constraints.

CONCLUSION

Appellant's claim that the vote he received in January of 2012 should have been enough to grant him parole cannot be considered because it is not preserved for review by this court. It is clear from the order of dismissal from the Administrative Law Court that it does not have jurisdiction to hear a case so far removed in time from the decision that is being appealed. The ALC did not err when it dismissed his appeal as being out of time.

Based on the above reasons, Respondent respectfully requests the Administrative Law Court's ruling be affirmed and Appellant's appeal be dismissed.

Respectfully submitted,



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January 11, 2022

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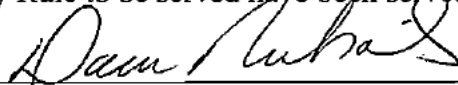
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within
Initial Brief and Designation of Matter on Appellant this 12th day of January, 2022, by depositing
a copy of the same in the United States mail, postage prepaid, addressed to:

Calvin Bryant, #189164
McCormick Correctional Institution
386 Redemption Way
McCormick, S.C. 29899

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



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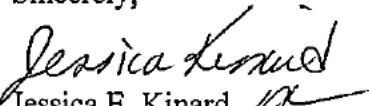
The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: Calvin Bryant v. SCDPPPS
21-000726

Dear Ms. Kitchings:

Please find enclosed Respondent's Initial Brief and Designation of Matter along with the Certificate of Service in the above referenced matter.

Sincerely,


Jessica E. Kinard
Legal Counsel

JEK:dn

Enclosures

cc: Calvin Bryant, #189164

Department of Probation, Parole, and Pardon Services

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