

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

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Administrative Law Court Docket No. 12-ALJ-04-0059-AP

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Billy Lee Lisenby, Jr., # 200273,.....Petitioner,

v.

South Carolina Department of Corrections.....Respondent.

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**RETURN TO PETITION FOR A WRIT OF CERTIORARI**

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**RECEIVED**

MAY 01 2013

**S.C. SUPREME COURT**

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QUESTION PRESENTED

Did the Court of Appeals correctly dismiss this appeal due to petitioner's failure to serve and file an initial brief and designation of matter?

## STATEMENT OF THE CASE

On January 5, 2011, petitioner, an inmate incarcerated in the Department of Corrections (SCDC), was convicted of an inmate disciplinary offense for refusing or failing to obey orders. Petitioner lost thirty days of accrued good time credit as a result of the disciplinary conviction. (Administrative Law Court Order Affirming Decision, filed May 14, 2012). Petitioner challenged his disciplinary conviction through the inmate grievance process, and SCDC issued a final agency decision upholding the disciplinary conviction.

Petitioner filed a Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). By way of an order filed May 14, 2012, the ALC affirmed the final agency decision, finding it was supported by substantial evidence and was not arbitrary, capricious, or affected by any personal bias or prejudice. (Administrative Law Court Order Affirming Decision, filed May 14, 2012).

On June 15, 2012, petitioner filed a Notice of Appeal, challenging the ALC's decision in the Court of Appeals. Petitioner also moved to proceed *in forma pauperis*. The Court of Appeals granted the motion to proceed *in forma pauperis* on December 3, 2012. Petitioner did not submit an initial brief and designation of matter, and on December 17, 2012 the Court of Appeal dismissed the appeal due to petitioner's failure to serve and file an initial brief and designation of matter. The Court of Appeals subsequently denied petitioner's petition for rehearing.

Petitioner has now filed this petition for a writ of certiorari. For the reasons discussed below, SCDC respectfully requests the petition be denied.

## ARGUMENT

THE COURT OF APPEALS CORRECTLY DISMISSED THIS APPEAL DUE TO PETITIONER'S FAILURE TO SERVE AND FILE AN INITIAL BRIEF AND DESIGNATION OF MATTER.

The Court of Appeals properly dismissed the appeal due to petitioner's failure to serve and file an initial brief and designation of matter.

If no transcript is ordered, an appellant shall serve one copy of his brief on all parties to the appeal and file with the clerk of the appellate court one copy of the brief with proof of service within thirty (30) days after serving the notice of appeal. See Rule 208(a)(1), SCACR. Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260. See Rule 208(a)(4), SCACR; Roberts v. LaConey, 375 S.C. 97, 100, 650 S.E.2d 474, 475 (2007).

Whenever it appears that an appellant has failed to comply with the requirements of the Appellate Court Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. Rule 260(a), SCACR.

In the case at hand, petitioner filed his Notice of Appeal in the Court of Appeals on June 15, 2012. Approximately six months later, petitioner had not submitted an initial brief and designation of matter, and the Court of Appeals dismissed the appeal on December 17, 2012. Petitioner argues that the Court of Appeals should not have dismissed the appeal because he did not receive notification whether his motion to

proceed *in forma pauperis* had been granted. However, the time frame for filing an initial brief in a case where no transcript is ordered is thirty days from filing of the Notice of Appeal. A pending request to proceed *in forma pauperis* does not change this deadline.

Because the Court of Appeals properly dismissed the appeal due to petitioner's failure to file and serve an initial brief and designation of matter to be included in the record, SCDC respectfully asks that the petition for a writ of certiorari be denied.

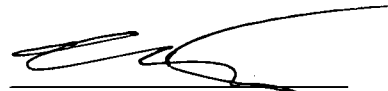
### CONCLUSION

WHEREFORE, for all the reasons stated above, SCDC respectfully requests the petition for a writ of certiorari be denied.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS

Attorney for Respondent



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Columbia, SC  
April 29, 2013

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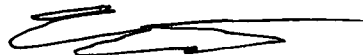
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**CERTIFICATE OF SERVICE**

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I hereby certify that I have served petitioner a copy of the Return to the Petition for a Writ of Certiorari by depositing a copy of same in the United States Mail, postage prepaid, on April 29, 2013, addressed to petitioner as follows:

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