

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lee Lisenby, Jr., #200273,

Petitioner,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0606-AP

Grievance No. KRCI 0369-12

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public (809 SCDC Policy OP-22.14, Inmate Disciplinary System) was affirmed. Inmate appeals on the grounds that his conviction was the result of due process violations. Inmate was sanctioned with the loss of sixty days of good time, so a liberty interest is implicated in this disciplinary matter.

In the above-captioned matter, the Appellant failed to file the notice of appeal with this Court within thirty (30) days of his notice of the Department's final decision in this matter, and as a result, the Court does not have jurisdiction over the Appellant's appeal.

Based upon a fundamental rule of appellate practice, it is well established that a court does not have the authority to extend the time for taking an appeal from a decision of an administrative agency. See, e.g., Sadico of Greenville, Inc. v. Greenville County Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000); Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985); Burnett v. S.C. State Highway Dept., 252 S.C. 568, 167 S.E.2d 571 (1969). Further, pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), the ALC sits in an appellate capacity when reviewing final decisions of the Department regarding inmate grievance matters, and in order to perfect an appeal, "[t]he inmate must file and serve a notice of appeal upon specified parties within thirty days of receipt of written notice of [the] Department's final decision." Id. at 377, 527 S.E.2d at 754. (emphasis added). ALC Rule 59 sets forth, in relevant part, that:

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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.

ALC Rule 59 (emphasis added). In this matter, the Appellant received notice of the Department's final decision concerning his disciplinary conviction on May 22, 2012, but did not file his notice of appeal with the Court until July 16, 2012. The Appellant was given notice of the Department's decision as well as the opportunity to pursue "judicial or quasi-judicial" review of that decision before becoming bound by the terms of such a decision. S.C. Const. art. I, § 22. ("No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; . . . and he shall have in all such instances the right to judicial review."). *Id.* By his own inaction, the Appellant simply failed to take advantage of his right to judicial review in this matter. Zaman v. S.C. State Bd. of Medical Exam'rs, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("One cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it."). Therefore, this Court finds that the Appellant did not file his notice of appeal in a timely fashion with the Court, and thus failed to properly invoke the jurisdiction of the ALC. While this Court recognizes the harsh result of this decision, it is constrained by the rules and legal precedent in this state. See McClain v. Ingram, 314 S.C. 359, 444 S.E.2d 512 (1994). Accordingly, this matter must be dismissed. Therefore,

IT IS HEREBY ORDERED that this appeal is **DISMISSED, WITH PREJUDICE.**
AND IT IS SO ORDERED.

April 12, 2013
Columbia, South Carolina


Deborah Brooks Durden
Administrative Law Judge

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 12th day of April 2013
By: R. E. [Signature]
Judicial Law Clerk