

**STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

James Thomas Gentry, #261188,)
)
 Appellant,)
)
 v.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No.: 23-ALJ-04-0534-AP
[Grievance No.: LIWC 108-23]

Hon. Ralph K. Anderson, III

**RESPONDENT'S MOTION TO
DISMISS**

RECEIVED

APR 23 2024

SC Court of Appeals

STATEMENT OF THE CASE

This case is before the Administrative Law Court (“ALC”) pursuant to the appeal of James Thomas Gentry, (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). On June 27, 2023, Appellant filed a Step One Grievance seeking to be paid pursuant to the prevailing wage statute, (*i.e.*, S.C. Code Ann. § 24-3-430 (D)) for labor allegedly performed while working in the Prison Industries Enhancement Certification Program (“PIECP” or “PIE”) while at Livesay Correctional Institution. The Appellant’s Step One Grievance was elevated to the Step Two level. On October 25, 2023, the Step Two Grievance was denied. This appeal followed. Respondent now moves to dismiss this appeal as Appellant failed to timely exhaust his administrative remedies.

JURISDICTION

The ALC’s jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC’s decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Recently the South Carolina Supreme Court clarified the Administrative Law Court’s jurisdiction as:

[t]hat the ALC has subject matter jurisdiction over inmate grievance appeals that have been properly filed. (*internal citations omitted*) . . . [h]owever, the ALC is not required to hold a hearing in every matter and may summarily dismiss an inmates grievance if does not implicate a state-created liberty or property interest sufficient to trigger procedural due process guarantees. The ALC may not grant an inmate relief from an erroneous administrative decision by SCDC, however, unless the inmate demonstrates the error deprived him of due process... (*internal citations omitted*)

Allen vs. S.C. Dep't of Corr., 439 S.C. 164, 170-71, 886 S.E.2d 671, 674 (2023).

“The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property.” *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750 (*quoting Board of Regents of State Colleges. v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705 (1972)). SCDC interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC “may summarily dismiss those appeals that do not implicate an inmate’s *state created* liberty or property interest”) (*emphasis added*).

Further, the state law from which the ALC’s jurisdiction to review agency decisions is derived generally requires that those agency decisions be final. S.C. Code Ann. §1-23-380; *Brown v. James*, 389 S.C. 41, 697 S.E.2d 604, 608 (Ct. App. 2010) (“The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act.” quoting 2 Am. Jur. 2d *Administrative Law* § 595 (1962)).

ARGUMENT

APPELLANT FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES AND THEREFORE THIS CASE SHOULD BE DISMISSED.

This case should be dismissed because Appellant failed to timely exhaust his administrative remedies. Section 12.1 of SCDC Policy ADM 15.13 Inmate Pay states that:

Inmates must report any problems in their pay to their institutions inmate pay designee utilizing the Automated Request to Staff Member (ARSTM) within 15 days of the payroll date error. The inmate should maintain a record of the ARSTM reference number. The inmate pay designee will review the case and determine whether any additional pay is owed. Payroll corrections will be limited to the following:

- If the Inmate fails to notify the agency in writing and within 15 days, no back pay will be given.
- The pay rate will be adjusted to the proper rate amount for future payrolls in accordance with these procedures.
- The inmate may receive any additional pay owed for the previous two (2) pay periods only.

SCDC Policy ADM 15.13, Inmate Pay, section 12.1.

Here, Appellant failed to exhaust his administrative because did not file a ARSTM within 15 days of the payroll error. Appellant worked for Private Industries via the Department until August 1, 2022. *See Step One Grievance*. It took until June 27, 2023, for Appellant to finally contact the agency, via his Step One Grievance.

South Carolina Code section 1-23-380 requires the “exhaust[ion of] all administrative remedies available within the agency” and a “final decision in a contested case” as prerequisites to ALC review. The South Carolina Supreme Court has interpreted this language in S.C. Code Ann. § 1-23-380 as meaning that “[j]udicial review is appropriate where there is an appeal from a final agency order . . .” and “relief is not generally available where one has not exhausted administrative remedies.” See *Garris v. Governing Bd. of South Carolina Reinsurance Facility*, 319 SC 388, 390, 461 S.E.2d 819, 821 (1995). Here, Appellant failed to timely exhaust SCDC’s administrative remedies to obtain a final agency decision, thus, he is not entitled to the requested relief or this Court’s review of the matters raised.

Therefore, because Appellant did not exhaust his administrative remedies, this Court lacks jurisdiction over and should dismiss this appeal.

CONCLUSION

WHEREFORE, SCDC respectfully requests this case be dismissed.

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



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March 29, 2024
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