

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold, Administrative Law Judge

RECEIVED  
MAY 09 2024  
SC Court of Appeals

Appellate Case No. 2024-000560

Charles Madden, #182326,.....Appellant,

v.

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

**MOTION TO REMAND**

Charles Madden, the above Appellant, respectfully moves this Honorable Court to Remand this case to the Administrative Law Court ("ALC") on the ground that the ALC erred as a matter of law in dismissing his Appeal from a Final Decision of the South Carolina Department of Corrections based on: (1) a determination that the ALC lacked subject matter jurisdiction; and (2) Appellant's purported failure to exhaust administrative as a cause for the lack of jurisdiction where the alleged failure to exhaust is separate and distinct from the ALC's jurisdiction.

The question of subject matter jurisdiction is a question of law for the court. Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). An appellant court "may reverse the decision of the ALC where it is in violation of a statutory provision or is affected by other error of law." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env'tl. Control, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014).

Appellant submits that the ALC erred in dismissing his appeal from the decision of the South Carolina Department of Corrections based on an erroneous conclusion that the ALC lacked jurisdiction due to Appellant's purported failure to exhaust administrative remedies.

The alleged failure of Appellant to exhaust administrative remedies is not jurisdictional.

"[T]he doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trs., 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012) (quoting Ward v. State, 343 S.C. 14, 17 n.5, 538 S.E.2d 245, 46 n.5 (2000)). "[T]he failure to exhaust administrative remedies goes to the prematurity of the case, not subject matter jurisdiction." Id. (quoting Ward, 343 S.C. at 17 n.5, 538 S.E.2d at 246 n.5).

As this Honorable Court is well aware, the ALC's jurisdiction to hear this appeal is derived in part, from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

In Al-Shabazz, the Court held: "[A]n inmate may seek review of Department's final decision in an administrative matter under the APA. Placing review of these cases within the ambit of the APA will ensure that an inmate receives due process, which consists of notice, a hearing and judicial review. It also will provide an orderly and consistent framework for resolving such matters." Id. at 369, 527 S.E.2d at 750. Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 333, 605 S.E.2d 506, 509 (2004) ("[T]he ALC has jurisdiction over all properly perfected appeals that do not implicate an inmate's state-created liberty or property interest").

In Allen v. S.C. Dep't of Corr., 439 S.C. 164, 170, 886 S.E.2d 671, 674 (2023), the South Carolina Supreme Court said: "However, subsequent cases continue to recite the "subject matter jurisdiction" language, and the ALC frequently-as it did in this case-dismisses inmate appeals for lack of subject matter jurisdiction when the inmate fails to show the claim implicates a state-created liberty interest sufficient to trigger procedural due process guarantees. Id. 439 S.C. at 170, 886 at 674. ("We now clarify-again-that the ALC has subject matter jurisdiction over inmate grievance appeals that have been properly filed. See Slezak, 361 S.C. at 331, 605 S.E.2d at 507 ("We now clarify that the AL[C] has subject matter jurisdiction to hear appeals from the final decision of [SCDC] in ... [an] administrative matter."))". Id., Allen, 439 S.C. at 170, 886 S.E.2d at 674.

Thus, there is no question whatsoever that the ALC has subject matter and appellate jurisdiction over this matter.

Respectfully, the ALC's decision is a result of Respondent's acts of deception. Respondent SCDC continues to use its Policy, ADM-15.13(12.1) to convince Courts that Prisoners have failed to exhaust their administrative remedies by failing to utilize this so called Policy/Procedure, when among other things, this Policy **does not apply** to "prevailing wages."

The ALC in this case, found Respondent's assertion that Appellant did not use this policy was "undisputed." It was "undisputed" because it **does not apply** and operated to "confuse" Appellant, who not seeking **"ADJUSTMENTS to HIS INMATE PAY,"** whereas he still receives his "INMATE PAY" of \$18.25, bi-weekly, and is not complaining about his **"INMATE PAY."** Appellant sought help from Inmate Law Clerks to explain this, but could not obtain any help until after he filed his Initial Brief.

Policy ADM-15.13(12.1) was issued, by Respondent's own admission, on June 3, 2014. Appellant participated in the Prisons' PIP Program from 1992 through 2013. Thus, the policy as not promulgated until after Appellant no longer worked in PIP and in any event, there is nothing in ADM-15.13(12.1) that purports to put anyone on Notice that resort to that Policy is a must, for anything other than an "Inmate Pay" issue, and not a "Prevailing Wage" issue. Appellant merely seeks to find a court that is willing to Order SCDC to comply with the law as it pertains to the payment of the "Prevailing Wage."

Appellant respectfully moves this Honorable Court to REMAND this case to the ALC in light of the South Carolina Supreme Court's holding in Allen v. S.C. Dep't of Corr., 439 S.C. 164, 170, 886 S.E.2d 671, 674 (2023) and to further clarify, for the sake of judicial economy, that the ALC has jurisdiction over these matters when an appeal is properly filed, and, since his appeal was properly filed, the ALC has "appellate jurisdiction."

Appellant also respectfully requests that should this Court decline to Remand, that it hold this case in abeyance and issue other orders extending the time line for any further filings in this matter, until after this Court rules on Appellant's MOTION TO PROCEED IN FORMA PAUPERIS.

For the reasons stated, Appellant respectfully requests that this Honorable Court Grant the relief requested and any such other and further relief that this Court deems fair and just.

Respectfully Submitted,

April 26, 2024  
Fairfax, South Carolina

Charles Madden  
Charles Madden, #182326  
Allendale Corr., Inst., F3 B54  
1057 Revolutionary Trail  
Fairfax, SC 29827

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold, Administrative Law Judge

Appellate Case No. 2024-000560

Charles Madden, #182326,.....Appellant,

v.

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

**CERTIFICATE OF SERVICE**

I, Charles Madden, herein CERTIFY under penalty of perjury that I have on this date, served a MOTION TO REMAND and a CERTIFICATE OF SERVICE in the above captioned case, upon the Respondent, by hand delivering same to the Allendale Correctional Institution Mail Room Clerk, for deposit into the United States Mail, First Class Postage prepaid, addressed to:

S.C. Department of Corrections  
Attn: Barton J. Vincent, Esq.  
Office of General Counsel  
P.O. Box 21787  
Columbia, SC 29221-1787

April 30, 2024  
Fairfax, South Carolina

*Charles Madden*  
Charles Madden, #182326  
Allendale C.I., F3 B-54  
1057 Revolutionary Trail  
Fairfax, SC 29827

Charles Madden, #182326  
Allendale Corr., Inst., F3 B-54  
1057 Revolutionary Trail  
Fairfax, SC 29827

April 30, 2024

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Hon. Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: Charles Madden v. S.C. Dep't of Corrections  
Appellate Case No. 024-000560  
ALC Case No. 23-ALJ-04-0572-AP  
MOTION TO REMAND and,  
CERTIFICATE OF SERVICE

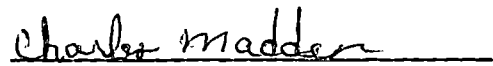
Dear Ms. Kitchings:

Enclosed for filing in the above referenced matter, please find a MOTION FOR REMAND and Proof of Service of this Motion upon General Counsel for the SCDC.

Also enclosed, please find a copy of each of the above documents that I ask you to please file stamp and return to me for my records, if you would please. I have enclosed a self addressed, postage prepaid envelope for your convenience.

As always, I thank you in advance for your assistance in this matter.

Sincerely & Respectfully,

  
Charles Madden

cc: Barton J. Vincent, Esq.  
FILE

Charles Madden, #182326  
Hendale Corr. Inst., F3 B 54  
57. Revolutionary Trail  
Ir fax, SC 29827



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SC Court of Appeals

S.C. Court of Appeals  
Honorable Jerry Abbott Kitchens, Clerk  
P.O. Box 11629  
Columbia, SC 29211

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