

RECEIVED
AUG 21 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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.

APPELLANT'S RECORD ON APPEAL

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

Appellant, Pro Se

OTHER COUNSEL OF RECORD:

Barton J. Vincent, Esq.
S.C. Dep't of Corrections
4444 Broad River Rd.
P.O. Box 21787
Columbia, SC 29221-1787
(803) 856-8550

INDEX

PAGE

- 1. Step 2 Prison Grievance (Final Decision),.....1
- 2. Step 1 Prison Grievance (No Decision),.....2
- 3. Appellant's Brief (ALC, Docket No. 23-ALJ-04-0572-AP),.....3-10
- 4. Order Dismissing Case For Lack of Appellate Jurisdiction,.....11-20

I, Charles J. Madden, the above Appellant, hereby Certify that the Record On Appeal contains all material proposed to be included by any of the parties, to the best of my knowledge, and not any other material.

July 1, 2024
Fairfax, South Carolina

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

Appellant, Pro Se

RECEIVED

AUG 21 2024

SC Court of Appeals

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only

INMATE NAME: Charles Madden
SCDC NUMBER: 182326
INSTITUTION: HCI
HOUSING UNIT: _____
WORK ASSIGNMENT: _____

Grievance No. ACI-0214-23
Code: General my/lws
Policy _____
Disc. Hear. _____
Class _____
PREA _____
Date Received: _____
IGC Initials: _____
Date Received: 7/28/23
IGA Initials: IGA

RECEIVED
JUL 28 2023
INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

In accordance with SCDC Policy GA-01.12, "Inmate Grievance System," due to the nature of allegations you have raised in your Grievance, it has been forwarded to the Inmate Grievance Branch Central Office and Office of General Counsel for a response. Inmate's signature has been adopted from SCDC 10-5, Step 1 Inmate Grievance Form.

Grievant Signature _____ Date _____

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE REVERSE SIDE FOR RESPONSIBLE OFFICIAL'S DECISION & REASON

Responsible Official Signature [Signature] Date 10-25-23

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Charles Jackson Madden 10/31/23
Grievant Signature Date

[Signature] 10/31/23
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review. No additional pages will be permitted.
3. Submit this completed form with your copy of the Step 1 form by placing in the Grievance Box within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

Madden, Charles 182326, ACI-0214-23

In your grievance, you are requesting adjustments to your inmate pay pursuant to Torrence v. South Carolina Department of Corrections (2021). The South Carolina Court of Appeals' opinion in Torrence was filed on June 30, 2021. You submitted your Request to Staff Member regarding this matter on July 22, 2023, approximately two years and two months after the Court of Appeals issued its opinion. Accordingly, your grievance is untimely under SCDC Policy ADM-15.13, section 12.1. This policy states as follows:

12. PROBLEMS WITH PAY:

12.1 Inmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error. The inmate should maintain a record of the ARTSM 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 additional pay owed for the previous two (2) pay periods only.

SCDC Policy ADM-15.13 (12.1) (Issue Date June 3, 2014).

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within 30 days of receipt.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: <u>Charles Jackson Madden</u> SCDC NUMBER: <u>#182326</u> INSTITUTION: <u>Allendale (Ac I)</u> HOUSING UNIT: <u>F-3-B-54</u> WORK ASSIGNMENT: <u>yard Worker</u>	OFFICE USE ONLY Grievance No. <u>ACI-1214-23</u> Code: General <u>MY/WS</u> Policy _____ Disc. Hear. _____ Class. _____ PREA _____ Date Received <u>7/25/23</u> IGC Initials <u>IG</u>
---	--

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

Author: {c063742
 Request # ²³03184375
 CCI Inst CCI Inst RI/
 PII welder 1992 - 1993 - 1994 Broad River Time card
 PII welder 1995 Broad River Broad River
 PIP shipping and Receiving clerk 1996 + 1998 magla Gloves Time card
 PIP Machine operator Kershaw Inst 1998 - 2002 magla Gloves Time card
 PIP machine operator & packing stockings knee highs 2002 - 2009
 PIP sewing machine 2013 Kershaw
 PIP R&M Designs 2013 Kershaw
 This is the PII's that have worked in since I've been doing time.

Charles Jackson Madden
 Grievant Signature Date
7-24-23

ACTION REQUESTED: To Be paid prevailing wages for the time I worked in PIP-2 see above.

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

Due to the nature of your appeal, it has been forwarded to the Step 2 level of appeal process. Please refer to the attached Prevailing Wage Memo provided by SCDC Office of General Counsel/Inmate Grievance Branch for additional information regarding your appeal.

Shayla Chisholm 7/26/23
 IGC Signature Date

WARDEN'S DECISION AND REASON:

Warden Signature

Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

Grievant Signature

Date

IGC Signature

Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

State of South Carolina
In the Administrative Law Court
Docket Number: 23-ALJ-04-0572-AP

Appeal of Final Decision

Department of Corrections

Charles Jackson Madden[#] 182326... Appellant

V.S.

S.C. Department of Correction... Respondant

Appellant's Initial Brief

Charles Jackson MADDEN

Allendale Correctional

F-3-B-54

1057 Revolutionary Trail

Fairfax, S.C. 29827

Appellant prose

TABLE OF CONTENTS

TABLE OF Authorities page 3

Statement OF ISSUES page 4

Statement OF Case page 5

Arguements ISSUE 1 S.C.D.C Cannot Deny Appellants
Grievance ACI-0214-23 under policy ADM 15.13
Section 12.1 The 15 day Filing rule page 6.

Arguement ISSUE 2: While participating in the
prison industries program (PIP) Appellant was not
paid prevailing wages page 7

Conclusion page 10

Certificate of service 10

TABLE OF AUTHORITIES page 3

CASES:

Thomas J. Torrence VS. SCDC (2021) page 3

STATUTES:

SCST § 24-3-430:

Inmate labor in private industry authorized;
Requirements and Conditions page 3

SCST § 24-3-315:

Determinations prerequisite to selecting
prison industry project page 3

STATEMENT OF ISSUES

ISSUE 1: SCDC cannot deny Appellants
Grievance # ACI-0-23 under policy ADM 15.13
section 12.1, The 15 day filing rule page 3

ISSUE 2: While participating in the prison
industries program (PIP), Appellant was not
paid the prevailing wage page 3

ARGUMENTS

Issue 1: SCDC cannot deny Appellants grievance # ACI-0214-23 under policy ADM 15.13, Section 12.1, The 15 day filing rule.

According to the case of Thomas J. Torrence vs SCDC (2022), a precedent has already been established since the Administrative LAW Court, Through the Honorable Deborah Brooks Durdan, has already found the doctrine of Equitable Tolling applied to Torrence's grievance. This finding had a backing also in the Court of Appeals, by the Honorable HUFF, as it was affirmed in the Holdings of said case.

"Inmates grievance involved Department policy and procedures, rather than an isolated incident, and thus, The 15 day filing rule did not apply."

Therefore SCDC cannot deny Appellants grievance # ACI-0214-23 by policy ADM 15.13 section 12.1, which speaks of an one time event as in the wrong pay amount on one pay period instead of an ongoing infraction of policy and procedures.

Issue 2: While participating in the prison industries program (PIP), Appellant was not paid the prevailing wage.

The Appellant participated in the following PFI programs:

- 1) Welder, 1992-1995 prefab plant at Broad River
- 2) shipping clerk, 1996-1998 Mada Gloves at Broad River

Issue 2 cont.

- 3) Machine Operator, 1998-2002, Magla Gloves at Kershaw
- 4) Sewing machine operator and shipping clerk, 2002-2005
refurbished stockings and Knee Higgs, at Lee
- 5) Scrapper, 2013, R+M Designs at Kershaw

During this time of service Appellant's average pay was approximately \$1.00 per hour even including an average of 60 to 65 hours a week with no overtime pay.

In the current language (Feb-15-24) of SCST § 24-3-430(D) it states: "No inmate participating in the program may earn less than the prevailing wage for work of a similar nature in the private sector."

If the rewording of this statute passes as of (Feb-15-24), the statute SCST § 24-3-430(D) will state: "No inmate participating in the program may earn less than an hourly rate equal to the Federal minimum wage for work of similar nature in the private sector."

If this new wording of SCST 24-3-430(D) is voted in and made retroactive then even at this level the Appellant is owed minimum wage instead of the average \$1.00 per hour the Appellant was paid.

~~Also~~ In the language of SCST § 24-3-315 it states: "The Department of Corrections shall ensure that inmates participating in ANY prison industries program pursuant to the Justice Assistance Act of 1984 is on a voluntary basis. The director

~~Issue 1~~
Issue 2 cont.

Must determine prior to using inmate labor in a prison industry project that it will not displace employed workers, that the locality does not have a surplus of available labor for the skills, crafts or trades that would utilize inmate labor, AND that the rates of pay and other conditions of employment are NOT less than those paid and provided for work of similar nature in the locality in which the work was performed."

✓ In understanding of the language of SCSTS 24-3-315 one could reasonably come to the conclusion that this statute is including ~~any~~ ANY inmate participating in ANY prison industry program and compensation for participation in said prison industry program shall NOT be less than the labor in the neighboring locale would receive.

o eagle

Charles Jackson
Madden
182326

1) PIP prefab plant Broad River
1994-1996 welder. ~~1100~~

2) PIP Magla Gloves Broad River
1996-1998 shipping + receiving clerk

3) PIP Magla Gloves Kershaw
1998-2002 machine operator

4) PIP stockings + knee-highs Lee
2002-2005 sewing machine operator + shipping

5) PIP R+M Designs Kershaw
2013 ? scraper.

ACT-0214-23

7-25-23

assigned
~~12-1-23~~
12-1-23

Judge
Reibold

Case
23C0572

Conclusion

The Appellant respectfully ask that the ALC would find in his favor and to be compensated ~~in~~ properly for the participation of the multiple pif.s through^{out} his incarceration.

Signed Charles Jackson

6

RECEIVED

APR 08 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles Madden, #182326,)
)
 Appellant,)
)
 v.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 23-ALJ-04-0572-AP

ORDER DISMISSING APPEAL

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Charles Madden (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or the Department). In the present appeal, Appellant asserts that the Department is not paying him a prevailing wage under section 24-3-430(D) of the South Carolina Code (2007) and he is seeking to be paid the prevailing wages for his work as a welder, shipping and receiving, machine operator, sewing machine operator, and scraper in the prison industries program. For the reasons discussed herein, the Court dismisses the appeal for lack of appellate jurisdiction based upon Appellant's failure to exhaust his administrative remedies.

PROCEDURAL HISTORY

The Step 1 grievance was submitted on July 24, 2023 asking for prevailing wage from 1992 to 2013, which was automatically forwarded to a step 2 grievance by the warden. The responsible official denied the Step 2 Grievance on October 25, 2023, explaining that Appellant's grievance was untimely under SCDC Policy ADM-15.13, section 12.1, which governs problems with inmate pay.

This appeal followed on November 17, 2023. It was assigned to the undersigned on December 1, 2023. The Department sought, on February 12, 2024, an extension of time in which to file the Record on Appeal. While the extension was denied, the filing of the motion itself resulted in a change to the timeline for service of the Record on Appeal. As of the date of this Order, the record is not yet due. Appellant filed a motion to supplement the record on February

FILED
03/07/2024
SC Admin. Law Court

20, 2024, which the Court declines to rule on and instead addresses the lack of appellate jurisdiction. Appellant filed his initial brief on February 20, 2024, prior to the date on which the Record on Appeal was due. Appellant's brief designates two issues on appeal:

- 1) SCDC cannot deny Appellants Grievance #ACI-0214023 under policy ADM 15.13 section 12.1, the 15 day filing rule.
- 2) While participating in the prison industries program (pip), Appellant was not paid the prevailing wage?

FACTUAL BACKGROUND

Appellant is incarcerated in the custody of the Department. He asserts that he worked in the Prison Industries Program from 1992 through 2013. Appellant stated he was paid \$1.00 dollar per hour for a steady 60 to 65 hours a week.

JURISDICTION

The Court's jurisdiction to hear inmate appeals is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). *See also* S.C. Code Ann. § 1-23-600(D) (Supp. 2023); *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 170, 886 S.E.2d 671, 674 (2023)("[T]he ALC has subject matter jurisdiction over inmate grievance appeals that have been properly filed."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004) ("[T]he [ALC] has jurisdiction over all inmate grievance appeals that have been properly filed . . .").

In *Al-Shabazz*, the Court held that the ALC's jurisdiction in inmate appeals is generally limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. 338 S.C. at 369, 527 S.E.2d at 750. However, the South Carolina Supreme Court subsequently clarified that the ALC has the authority to review the Department's failure to pay the prevailing wage. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 423-25, 602 S.E.2d 56, 57-58 (2004) (stating the ALC was authorized to review the Department's failure to pay the prevailing wage); *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 419, 602 S.E.2d 51, 55 (stating inmates could seek remedy for unfair pay by filing an inmate grievance.).

Moreover, as discussed in detail below, the Court's jurisdiction is further limited by the requirements of S.C. Code Ann. § 1-23-380.

DISCUSSION

The Department denied Appellant's grievance as untimely pursuant to SCDC Policy ADM -15.13. Policy ADM 15.13 is globally entitled "Inmate Pay." It requires each warden to designate at least one Inmate Payroll Office for a correctional facility. SCDC Policy ADM 15.13 section 5. The office is responsible for entering inmate pay data into the Inmate Pay System. *Id.*

Policy 15.13 also establishes a system and procedure to handle problems with inmate pay. This policy is located in Policy ADM 15.13 section 12. This section is entitled "Problems With Pay." SCDC Policy ADM 15.13 section 12 reads:

12. Problems with Inmate Pay:

12.1 Inmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error. The inmate should maintain a record of the ARTSM 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 additional pay owed for the previous two (2) pay periods only.

Id. at section 12.1. As this language indicates, the policy is phrased in mandatory terms. Inmates "must" (1) report "any" problems in their pay; (2) to their institution's inmate pay designee; (3) using the Automated Request to Staff Member (ARTSM);¹ and (4) within 15 days of the payroll date error. *Id.*

"The *inmate pay designee* will then review the case and determine whether *any additional pay is owed.*" *Id.* (emphasis added). If, after review, additional pay is owed, the "inmate pay designee will make the appropriate entry to deposit the additional pay into the inmate's pay

¹ Inmates access the ARTSM system using a computer kiosk housed in the correctional facility.

account.” *Id.* at section 12.2. Pay rate corrections may also be made. *Id.* The inmate pay designee is the person designated by the policy to “respond to inmate pay problems as prescribed in [section 12].” *Id.*

Nothing in Appellant’s submissions to the Department suggests an attempt to utilize the problems with pay system established by Policy ADM 15.13 section 12.1.² None of Appellant’s submissions to the Department reference ADM 15.13 or any of its provisions. Inmate pay complaints are commenced using the ARTSM, the automated kiosk, but Appellant initiated his wage complaint using the standard internal grievance system. Decisions on pay complaints, including whether additional pay is owed, are made by the inmate pay designee. Decisions on inmate grievances are made by different personnel.

Appellant does not appear to dispute that he failed to follow Policy ADM 15.13, Section 12.1. Appellant does argue that under *Torrence v. S.C. Dep't of Corr.*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021) the "inmate grievance involved Department policy and procedures, rather than an isolated incident, and the 15 day filing rule did not apply." Appellant’s argument improperly conflates the 15-day time limit for filing a wage complaint under ADM 15.13 with the 15-day time limit for filing an inmate grievance discussed in *Torrence*. *Torrence* concluded that section 13.9 of the inmate grievance policy then in place provided an exception to the 15-day time-limit for filing a grievance concerning policies and procedures. *Torrence*, however, did not address ADM 15.13 in any manner. Additionally, the exception set forth in section 13.9 of the policy discussed in *Torrence* applies, by its terms, only to “grievances” submitted under the inmate grievance policy. ADM 15.13 is not part of the Department’s inmate grievance policy.

² The Court recognizes that, in some cases, an inmate’s grievance itself could be an attempt to invoke SCDC Policy ADM 15.13 section 12.1. In those cases, an inmate whose complaint was otherwise untimely might still have a claim to backpay for the fifteen-day period immediately preceding the filing of the grievance. Here, however, the Court cannot construe Appellant’s filing as an attempt to invoke provisions of the inmate pay policy. As discussed above, Appellant initiated the claim using the standard internal grievance procedure rather than the automated kiosk. Notably, the Court does not construe ADM 15.13 and the inmate grievance system as mutually exclusive alternatives. Department rules and policies are ordinarily construed in the same manner as statutes. *See, e.g., Vector Marketing Corp. v. New Hampshire Dept. of Revenue Admin.*, 942 A.2d 1261, 1263 (N.H. 2008) (“We use the same principles of construction in interpreting administrative rules as we use with statutes”); *Lewis v. Jacksonville Bldg. & Loan Ass'n*, 540 S.W.2d 307, 310 (Tex. 1976); *State ex rel. Staples v. Young*, 418 N.W.2d 333, 336 (Wis. Ct.App.1987). The Court is therefore required to harmonize ADM 15.13 with the internal grievance system if possible. *Hodges v. Rainey*, 341 S.C. 79, 88–89, 533 S.E.2d 578, 583 (2000). ADM 15.13 can be construed so that both are effective. ADM 15.13(12.1) requires that inmates who question their rate of pay must report the issue through the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error. If, after doing so, the Department does not take proper corrective action as outlined in ADM 15.13, then the inmate may resort to the grievance system to address the Department’s violation of ADM 15.13. Both policies may be given effect in this manner. Were the Court to conclude otherwise, ADM 15.13 would simply cease to exist for cases involving the Prevailing Wage Act.

Because ADM 15.13 applies to Appellant's claim, the Court now turns to the effect of Appellant's undisputed noncompliance with ADM 15.13. The Court concludes that Appellant's noncompliance divests the Court of jurisdiction to entertain the appeal. ADM 15.13 provides an administrative remedy for disputes regarding an inmate's rate of pay.³ Appellant did not avail himself of this avenue for relief in a timely manner.

The failure to timely avail oneself of an administrative remedy constitutes a failure to exhaust administrative remedies. As the United States Supreme Court explained in the *Woodford v. Ngo*:

Because exhaustion requirements are designed to deal with parties who do not want to exhaust, administrative law creates an incentive for these parties to do what they would otherwise prefer not to do, namely, to give the agency a fair and full opportunity to adjudicate their claims. Administrative law does this by requiring proper exhaustion of administrative remedies, which "means using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits)." *Pozo*, 286 F.3d, at 1024 (emphasis in original). This Court has described the doctrine as follows: "[A]s a general rule ... courts should not topple over administrative decisions unless the administrative body not only has erred, *but has erred against objection made at the time appropriate under its practice.*" *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37, 73 S.Ct. 67, 97 L.Ed. 54 (1952) (emphasis added in *Woodford*). See also *Sims v. Apfel*, 530 U.S. 103, 108, 120 S.Ct. 2080, 147 L.Ed.2d 80 (2000); *id.*, at 112, 120 S.Ct. 2080 (O'Connor, J., concurring in part and concurring in judgment) ("On this underlying principle of administrative law, the Court is unanimous"); *id.*, at 114–115, 120 S.Ct. 2080 (BREYER, J., dissenting); *Unemployment Compensation Comm'n of Alaska v. Aragon*, 329 U.S. 143, 155, 67 S.Ct. 245, 91 L.Ed. 136 (1946); *Hormel v. Helvering*, 312 U.S. 552, 556–557, 61 S.Ct. 719, 85 L.Ed. 1037 (1941); 2 K. Davis & R. Pierce, *Administrative Law Treatise* § 15:8, pp. 341–344 (3d ed.1994). Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.

Woodford v. Ngo, 548 U.S. 81, 90–92, 126 S. Ct. 2378, 2385–86 (2006).

³ SCDC Policy ADM 15.13 section 12.1 expressly provides that no back pay will be given if the inmate's notification is untimely. In contrast, section 12.1 does not specify what penalty will be imposed upon an inmate's request to adjust his pay rate to the correct amount for future pay periods if the inmate's request is untimely. The Court concludes, however, that section 12.1's requirement that inmates must report problems in their pay to their institution's inmate pay designee within 15 days of the payroll date error applies equally to all payroll complaints. An inmate whose complaint is untimely is therefore entitled to no relief. Of course, any bar would apply solely to the pay period about which an inmate has complained. Complaints associated with future pay periods, including requests to adjust the pay rate for future pay, would not be affected by the untimeliness of a complaint about a prior pay period.

The facts of *Woodford* are similar to the facts of this case. *Woodford* involved a California inmate. Although the time frames differ slightly, the inmate grievance process in California is similar to that contained in SCDC Policy GA. 01.12(13.2). To initiate an inmate grievance in California, an inmate must fill out a simple form. *Id.* at 85-86. Then, as explained on the form itself, the prisoner “must first informally seek relief through discussion with the appropriate staff member.” *Id.* The staff member fills in part C of the form under the heading “Staff Response” and then returns the form to the inmate. *Id.* If the prisoner is dissatisfied with the result of the informal review, the inmate may pursue a formal review process which involves a written complaint on a specified form. *Id.* The inmate then must submit the form, together with a few other documents, to the appeals coordinator within fifteen working days of the action taken. *Id.* If the prisoner receives an adverse determination at this first level the inmate may proceed to the second level of review conducted by the warden by completing section F of the form and submitting the form within fifteen working days of the prior decision. *Id.* In *Woodford*, the United States Supreme Court held that an inmate failed to exhaust administrative remedies because the inmate filed his formal grievance well after the applicable fifteen working day deadline. *Id.* at 102.

Woodford was decided under the federal Prison Litigation Reform Act but the South Carolina Supreme Court took a similar position in *Brown v. James*, a case involving a school board’s authority to terminate a teacher under the Teacher Employment and Dismissal Act, S.C. Code Ann. § 59-24-420 (2004). *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010). The court in *Brown* stated that “[i]n order to fully exhaust [the teacher’s] administrative remedies, [the teacher] was required to request a hearing before the Board *within the time frame* prescribed by the Employment and Dismissal Act.” *Id.* 389 S.C. at 51, 697 S.E.2d at 609 (emphasis added). While the court in *Brown* concluded that the teacher’s circuit court action was not barred by exhaustion of administrative remedies, *Brown* is notable for its stance on compliance with applicable deadlines as part and parcel of exhaustion of administrative remedies. It is undisputed that Appellant did not timely avail himself of possible redress under ADM 15.13. The Court therefore concludes that Appellant failed to exhaust his administrative remedies.

The South Carolina Court of Appeals held that subject matter jurisdiction is distinct from the doctrine of exhaustion of administrative remedies. *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 100, 674 S.E.2d 524, 538-20 (Ct. App. 2009). As the Court of Appeals explained, “subject matter jurisdiction is the power of a court to hear and determine a class of cases.” *Id.*, 382 S.C. at

100, 674 S.E.2d at 528 (quoting *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93-94, 668 S.E.2d 795, 796 (2008)). In contrast, the failure to exhaust administrative remedies goes to whether a suit is premature. *Id.*, 382 S.C. at 100, 674 S.E.2d at 529. The *Capital City* court described the doctrine of exhaustion of administrative remedies as a rule of policy and convenience rather than a rule of jurisdiction. *Id.*

Exhaustion of administrative remedies in Circuit Court is of course not generally jurisdictional. This case, however, is pending before the Administrative Law Court, which alters the analysis. Our Supreme Court has emphasized that in administrative matters, statutory provisions control. In *Bone v. U.S Food Serv.*, the South Carolina Supreme Court stated:

[t]oday we reiterate that appeals in administrative agency matters are handled differently than appeals in other cases. The South Carolina General Assembly enacted the APA's mechanisms for review to provide uniform procedures after the exhaustion of administrative remedies; the APA's provisions are controlling in these agency matters and supersede any conflicting provisions.

399 S.C. 566, 585, 733 S.E.2d 200, 210 (2012) (*adhered to on reh'g*, 404 S.C. 67, 744 S.E.2d 552 (2013)).

This principle affects the application of exhaustion of administrative remedies in administrative matters. As the United States Court of Appeals for the District of Columbia has explained in addressing exhaustion of administrative remedies under federal administrative law:

the word "exhaustion" now describes two distinct legal concepts. The first is a judicially created doctrine requiring parties who seek to challenge agency action to exhaust available administrative remedies before bringing their case to court. We will call this doctrine "non-jurisdictional exhaustion." . . .

The second form of exhaustion arises when Congress requires resort to the administrative process as a predicate to judicial review. This "jurisdictional exhaustion" is rooted, not in prudential principles, but in Congress' power to control the jurisdiction of the federal courts. Whether a statute requires exhaustion is purely a question of statutory interpretation.

Avocados Plus Inc. v. Veneman, 370 F.3d 1243, 1247-48 (D.C. Cir. 2004) (internal citations omitted). Our Court of Appeals has noted that the common law doctrine of exhaustion of administrative remedies is commonly and mistakenly conflated with the jurisdiction of an appellate court to entertain an administrative appeal. *Adamson v. Richland Cnty. Sch. Dist. One*,

332 S.C. 121, 125, 503 S.E.2d 752, 754 (Ct. App. 1998) (“[t]he requirement of exhaustion of administrative remedies vis-a-vis a court's authority to hear a case involving an agency, where a plaintiff has not asked the agency for relief, is often confused”). It has drawn a clear distinction between the two exhaustion requirements. In *Vaught v. Waites*, for example, the Court of Appeals discussed the common law doctrine of exhaustion of remedies, but, in doing so, also stated that “[w]e express no opinion whether failure to exhaust administrative remedies is jurisdictional under the Administrative Procedures Act.” 300 S.C. 201, 205 at n. 2, 387 S.E.2d 91, 93 at n. 2 (Ct.App. 1989) (*overruled on other grounds by Paradis v. Charleston County Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021)).

The ALC is a creature of statute and must depend entirely upon constitutional and statutory provisions for its authority and jurisdiction. *See generally* S.C. Code Ann. §§ 1-23-500, *et seq.* (Supp. 2023). “The General Assembly has the authority to limit the subject matter jurisdiction of a court it has created; therefore, it can prescribe the parameters of the ALC's powers.” *Amisub of S.C., Inc. v. S.C. Dep't of Health & Env't Control*, 403 S.C. 576, 585, 743 S.E.2d 786, 791 (2013). It follows that where the Legislature has prescribed requirements which must be satisfied before the ALC may address a matter, those requirements are jurisdictional.

Whether exhaustion of remedies is jurisdictional in the ALC therefore depends upon whether exhaustion of remedies is statutorily mandated. *See S.C. Dep't of Health & Env't Control v. Blocker*, No. 15-ALJ-07-0554-CC, 2016 WL 5867852 at 6 (S.C. Admin L. Ct. Oct. 3, 2016) (stating discretion whether to apply doctrine of exhaustion of remedies disappears when the administrative remedies are prescribed by statute). *See generally Responsible Econ. Dev. v. S.C. Dep't of Health & Env't Control*, 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007) (“[R]egulatory bodies...have only the authority granted them by the legislature.”).

This matter is an appeal from a decision by the Department. The Court has authority to preside over all appeals from final decisions of contested cases from the Department of Corrections. S.C. Code Ann. § 1-23-600(D) (Supp. 2023). Review of such decisions must be conducted in the same manner as prescribed by Section 1-23-380 for judicial review of final agency decisions. S.C. Code Ann. § 1-23-600(E) (Supp. 2023). Section 1-23-380 in turn provides in pertinent part that: “[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1.” S.C. Code Ann. § 1-23-380 (Supp. 2023) (emphasis added).

This statute expressly refers to exhaustion of all administrative remedies as a condition precedent to judicial review. The statute is titled “Judicial review *upon* exhaustion of administrative remedies.” *Id.* (emphasis added). By acknowledging that judicial review is available *upon* exhaustion of administrative remedies, the section’s title confirms the exhaustion of administrative remedies is a statutory condition precedent to judicial review. *See Lindsay v. S. Farm Bureau Cas. Ins. Co.*, 258 S.C. 272, 277, 188 S.E.2d 374, 376 (1972) (“It is ‘proper to consider the title or caption of an act in aid of construction to show the intent of the legislature’”).

The South Carolina Supreme Court construes section 1-23-380 in this fashion. Discussing section 1-23-380, our Supreme Court has stated that “the statute also provides that the appealing party *must* exhaust their administrative remedies *before* resorting to judicial review.” *Nucor Steel v. S.C. Pub. Serv. Comm’n*, 312 S.C. 79, 83–84, 439 S.E.2d 270, 272 (1994) (emphasis added). Or, as Justice Hearn explained:

Exhausting one's administrative remedies is a threshold requirement to obtaining review in the courts. Thus, prior to appealing to the circuit court or the court of appeals, the appellant must have already exhausted his administrative remedies and obtained a final decision from the agency. This is the effect of sections 1–23–380 and 1–23–610.

Bone, 399 S.C. at 585, 733 S.E.2d at 210 (emphasis added) (Hearn J., dissenting); *see also Wright v. S.C. Dep't of Soc. Servs.*, No. 2008-UP-316, 2008 WL 9843964, at *1 (S.C. Ct. App. June 25, 2008) (“[a]fter an aggrieved party ‘has exhausted all administrative remedies available’ within the Department, he may seek judicial review of the decision”).

The Court therefore concludes that section 1-23-380 imposes a mandatory statutory requirement that all administrative remedies be exhausted before judicial review is available.⁴ Accordingly, exhaustion of administrative remedies is jurisdictional in appeals at the Administrative Law Court.

Because Appellant failed to exhaust his administrative remedies, and this failure deprives the Court of jurisdiction, dismissal is appropriate.⁵ The Court recognizes that, if Appellant is

⁴ The Court is aware of that section 1-23-380 provides that a “preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.” However, this part of section 1-23-380 applies, by its terms, only to intermediate or interlocutory appeals.

⁵ Some courts view the failure to exhaust administrative remedies in administrative cases as depriving an appellate court of subject matter jurisdiction. *See e.g., Silverton Mountain Guides LLC v. U.S. Forest Serv.*, No. 3:22-CV-00048-JMK, 2023 WL 6148122, at *8 (D. Alaska Sept. 20, 2023); *Abrons Fam. Prac. & Urgent Care, PA v. N. Carolina Dep't of Health & Hum. Servs.*, 810 S.E.2d 224, 228 (N.C. 2018). Issues relating to subject matter jurisdiction

correct,⁶ the outcome of this order may be considered harsh. Unfortunately, the Court simply lacks the authority to address Appellant's claims.

ORDER

IT IS THEREFORE ORDERED that this appeal is hereby **DISMISSED**.
AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

March 7, 2024
Columbia, South Carolina

may be raised at any time and should be taken notice of by the court on its own motion. *Ness v. Eckerd Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002). However, even if the failure to exhaust administrative remedies is viewed as merely depriving the Court of appellate jurisdiction, the jurisdictional issue is still one which should be raised by the Court on its own motion. *See e.g., Gateway Assocs. Ltd. P'ship v. Techna Corp.*, 966 F.2d 1452 (Table) (1992 WL 112287) (6th Cir. 1992) (“[i]t is therefore ORDERED that the plaintiff's appeal and the defendant's cross-appeal are dismissed *sua sponte* for lack of appellate jurisdiction.”); *Dieffenbach v. Att'y Gen. of Vermont*, 604 F.2d 187, 199 (2d Cir. 1979) (“[w]e see no apparent reason for treating lack of appellate jurisdiction in any different manner [than subject matter jurisdiction], and the court may, on its own motion, dismiss the appeal”); *Hamze v. Hall*, 211 So.3d 47, 47 (Fla. Dist. Ct. App. 2016) (the “cause is *sua sponte* dismissed for lack of appellate jurisdiction.”); *Com. ex rel. Ransom Twp. v. Mascheska*, 239 A.2d 386, 387 (Pa. 1968) (“[a]lthough this case was argued on its merits and neither party has objected to an assumption of jurisdiction by this Court, our lack of direct appellate jurisdiction can, and should, be raised *sua sponte*”).

⁶ The Court makes no determination one way or another regarding the propriety of the actions of the Department below. This order does not reach the merits of the case.