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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Administrative Law Court
The Honorable Robert L. Reibold
Administrative Law Judge

Docket No. 24-ALJ-04-0774-IJ

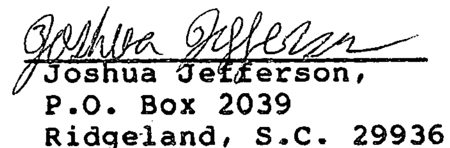
Joshua Jefferson, #330934..................................Appellant,

v.

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

NOTICE OF APPEAL

I Joshua Jefferson, #330934 appeals the order of dismissal from the Administrative Law Judge Robert L. Reibold, on the ground that the issue raised is capable of repetition, but generally will evade review, the appellate court can take jurisdiction. Sloan v. Greenville Cnty, 380 S.C. at 535, 670 S.E.2d at 667.



Joshua Jefferson,
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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Joshua Jefferson, #330934, Appellant, v. South Carolina Department of Corrections, Respondent.	Docket No. 24-ALJ-04-0774-IJ **ORDER OF DISMISSAL**

STATEMENT OF THE CASE

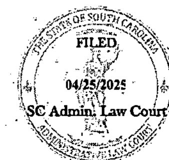
This matter is pending before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to an appeal filed by Joshua Jefferson ("Appellant"), an inmate in the custody of the South Carolina Department of Corrections ("Respondent" or the "Department"), challenging the Department on its response to an inquiry about his sentence calculation.

Appellant submitted a Step 1 Grievance on November 26, 2024. The response from the Department's Inmate Grievance Coordinator on December 6, 2024 provides:

> This grievance has been reviewed/processed and is being returned to you because according to the Inmate Grievance System policy dated September 1, 2023, your issue is out of SCDC control. It is at the discretion of your sentencing judge to give you credit. You must contact the clerk of court in the county that you were sentenced.

Above that response, the Step 1 form lists three options for "ACTION TAKEN BY IGC" and they are: processed, unprocessed and other. The "other" box is checked. As provided by Appellant, the Step 1 Grievance form is one page and does not contain a second page or a Warden's decision. Additionally, the record before the Court does not contain a Request to Staff Member from Appellant or Step 2 Grievance decision from the Department. Appellant filed a Notice of Appeal on December 13, 2024.[1] This case was assigned to the undersigned on December 19, 2024. The Department filed the Record on Appeal on February 25, 2025.

[1] Inexplicably, Appellant's Notice of Appeal indicates it is appealing a November 8, 2024 decision of the Department that he received on November 18, 2024 and is itself dated November 18, 2024. Obviously, all of these dates predate the date of his Step 1 Grievance.



On April 4, 2025, the Department filed a Motion to Dismiss urging the Court to dismiss this appeal pursuant to SCALC Rules 60 and 62 based on perceived deficiencies with Appellant's brief. On April 18, 2025, Appellant filed a brief.[2] As of the date of this Order, the Court has not received a response from Appellant to the Department's motion.

DISCUSSION

The Department argues that the appeal should be dismissed because Appellant failed to timely file a brief with the Court that satisfies the requirements of SCALC Rule 60. Appellant has not responded to that charge. However, before reaching the substance of the Department's motion, the Court is confronted with a threshold issue of whether it has jurisdiction if Appellant failed to exhaust his administrative remedies.[3]

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*, a case involving a California prison grievance system:

> 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

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[2] The Department states in its motion that Appellant "filed an untitled document on December 31, 2024." As reflected herein, no such document was filed with the Court on that date even if Appellant served something upon the Department at that time.

[3] Although the jurisdictional question was not raised by either party, the Court is obligated to address it regardless. *See Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 223, 634 S.E.2d 59, 60 (Ct.App.2006) ("The appellate court must always take notice of the lack of subject matter jurisdiction."); *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002) (discussing the court's obligation to evaluate jurisdiction to "ensure the 'orderly administration of justice.'") (*quoting State v. Castleman*, 219 S.C. 136, 139, 64 S.E.2d 250, 252 (1951). An appellate court has inherent authority and a duty to determine if it has jurisdiction to hear and determine a case. *See Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 380, 762 S.E.2d 44, 47 (Ct. App. 2014) (stating the appealability of an order can be raised at any time); 4 C.J.S. Appeal and Error § 84 (Dec 2024 Update) ("An appellate court has the duty to determine the question of its and the lower court's jurisdiction on its own motion, and dismiss an appeal if jurisdiction is lacking, even when the parties do not raise the issue.").

> 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).

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.

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).

Like the federal agency discussed in *Avocados Plus*, 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. 2024). "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.

Our courts have reached this exact conclusion. 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)). Our Supreme Court has ruled that:

> [t]here are two types of exhaustion of remedies: judicially imposed and statutorily mandated. The general rule is that while there are several exceptions that may be applied to the judicially-imposed exhaustion requirement; those that apply to a statutory requirement are few. *When the exhaustion of remedies is statutorily mandated . . . legislative intent prevails.*

Ward v. State, 343 S.C. 14, 18-19, 538 S.E.2d 245, 247 (2000) (emphasis added).

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. 2024). 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. 2024). 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. 2024) (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]

Turning now to the matter before the Court, Appellant initiated his Grievance by submitting a Step 1 Grievance. The Department reviewed and returned it because the "issue is out

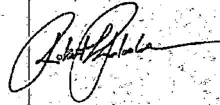
[4] The Court is aware of that section 1-23-380 provides that a "preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy," However, this part of section 1-23-380 applies, by its terms, only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

of SCDC control" and no Warden decision was rendered.[5] The Inmate Grievance System policy, GA-01.12, explains in section 8 that certain issues are "non-grievable" and those include "[a]ny issue outside of the control of the Department: 8.4.1 State and federal court decisions; ... 8.4.4 Any other matters outside the control of the SCDC." In the context of the Department's grievance system, the substance of the Department's response indicates it was not processed.[6] Section 13.3 of the policy then provides that "[u]nprocessed (reviewed but returned) grievances may only be appealed by utilizing SCDC Form 19-11, 'Inmate Request to Staff Member,'(RTSM) to the Agency Inmate Grievance Coordinator within ten (10) days of the grievance being returned to the inmate." Consequently, the Appellant was obligated to submit an RTSM to appeal the unprocessed response of the Department to comply with the Department policy and properly exhaust administrative remedies. In failing to do so, Appellant failed to exhaust his administrative remedies and deprived this Court of jurisdiction over this appeal.

ORDER

IT IS THEREFORE ORDERED that this appeal is **DISMISSED** for lack of jurisdiction.

AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

April 25, 2025
Columbia, South Carolina

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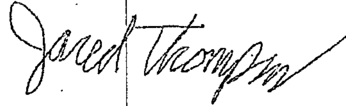
[5] The Court acknowledges that the response on the Step 1 states it was "reviewed /processed" but immediately then states "and is being returned." Even if that statement is taken to convert the response to a "processed" response, the Appellant would have been obligated to appeal to the Step 2 stage. There is no indication in the record before the Court that Appellant sought or obtained a Step 2 decision consistent with the requirements of the Department's grievance policy, GA-01.12 (Sept. 1, 2023) – section 13, and, if Appellant were permitted to have filed a Step 2 grievance, his failure to do so would also have constituted a failure to exhaust administrative remedies.

[6] Although the "other" box is checked on the form, such designation does not reflect the subsequent narrative response from the Department returning the grievance, which the Court considers controlling. Section 19 of the Department's disciplinary policy contains definitions of "Other" and "Unprocessed Grievances." The later is defined as "a grievance that has been reviewed by Inmate Grievance Department staff but did not qualify pursuant to SCDC Policy GA-01.12 Inmate Grievance System to receive a Wardens Decision (decision), and consequently returned to the grievant."

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Jared Thompson
Judicial Law Clerk

April 25, 2025
Columbia, South Carolina