STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Alonzo Brinkley, #271143, Appellant, vs. South Carolina Department of Corrections, Respondent.	)	Docket No. 16-ALJ-04-0055-AP **ORDER OF DISMISSAL**

This matter is before the South Carolina Administrative Law Court (Court or ALC) on a motion filed by Respondent South Carolina Department of Corrections (Department or SCDC) to dismiss an appeal filed by Alonzo Brinkley (Appellant), an inmate incarcerated in SCDC.

On August 7, 2015, Appellant filed a Step 1 Grievance disputing the amount of good-time credit lost as a result of disciplinary convictions for a number of offenses:

- October 26, 2009: (834) False Statement to Harm Another Person – 30-day loss of good time;
- February 23, 2010: (807) Striking An Employee Without a Weapon – 15-day loss of good time;
- May 24, 2010: (853) The Unauthorized Use of an Inmate's PIN – 6 day-loss of good time;
- July 21, 2010: (817) Possession of Contraband – 9-day loss of good time;
- March 30, 2011: (825) Refusing or Failing to Obey Orders; and
- June 2, 2014: (903) The Use or Possession of Narcotics Including Marijuana or Any Unauthorized Drug or Inhalant – 60-day loss of good time.

On September 23, 2015, after the Warden denied the grievance, Appellant filed a Step 2 Grievance, which was also denied. Appellant filed this appeal on January 20, 2016. The Notice of Assignment was filed February 11, 2016. The Record on Appeal was filed April 20, 2016. Appellant filed his brief on May 10, 2016.

On May 31, the Department filed "Respondent's Motion to Dismiss and Alternat[ely] Respondent's Brief," arguing that Appellant failed to exhaust his administrative remedies with

respect to convictions for which he lost good-time credit.[1] Appellant filed a "Return to Respondent's Motion to Dismiss" on June 10, 2016.

DISCUSSION

The Department argues that Appellant's appeal should be dismissed based upon his failure to exhaust administrative remedies. Specifically, the Department argues that the appeal should be dismissed, because the disciplinary convictions over which Appellant challenges the amount of good-time credit lost (except for the October 14, 2015 conviction on one of the counts of Offense (825) discussed in FN 1, *supra*) have already been finally decided, disposed of, or Appellant never appealed them,[2] and because the final violation is still under review in the Department's grievance process. In response, Appellant argues that he exhausted his administrative remedies by filing Step 1 and 2 Grievances and Appeals in each of the prior decisions regarding his past disciplinary convictions, and that his only "avenue of redress" is through the ALC. Appellant also maintains that the Department erred in the amount of good time taken away for these past disciplinary convictions, and in its non-uniform application of taking good time for disciplinary convictions.

Law-of-the-Case Doctrine

As an initial matter, the Court notes that the Department errs in couching its argument in terms of "exhaustion of administrative remedies" with respect to those convictions that Appellant appealed beyond the Department. Rather, concerning those convictions, Appellant is attempting to relitigate matters that have been finally decided or disposed, which implicates the law-of-the-case doctrine.[3] "[A]n unappealed ruling, right or wrong, is the law of the case." *Atl. Coast Builders & Contractors, LLC v. Lewis,* 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012); *Nucor Corp. v. S. Carolina Dep't of Employment & Workforce*, 410 S.C. 507, 514, 765 S.E.2d 558, 561 (2014). Also, according to the law-of-the-case doctrine, "a party is precluded from relitigating, after an

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[1] The Department, in the alternative, also argued in defense of the amount of good-time credit that it deducted following Appellant's convictions. However, based on the Court's decision to dismiss this appeal, the Court need not address those arguments. *See Allegro, Inc. v. Scully*, 408 S.C. 200, 201, 758 S.E.2d 716, 716 (2014) ("An appellate court need not address remaining issues when disposition of a prior issue is dispositive.") (citations omitted).

[2] In saying that Appellant "never appealed" certain convictions, the Court is referring to the fact that Appellant did not file Step 1 and Step 2 Grievances for those individual convictions within the requisite timeframes following those convictions. As discussed, *infra*, Appellant never filed Step 1 and Step 2 Grievances and appealed regarding Offenses (817), (903), and one of the two counts of Offense (825) of which he was convicted on October 14, 2015.

[3] Though the Department did not refer to the law-of-the-case doctrine by name, it certainly argued accordingly, pointing out the various dispositions of Appellant's previously litigated convictions and arguing that they should, therefore, be dismissed.

appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Sloan Const. Co., Inc. v. Southco Grassing, Inc.*, 395 S.C. 164, 169, 717 S.E.2d 603, 606 (2011) (internal citations and quotation marks omitted). This doctrine "applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case." *Id.* at 170, 717 S.E.2d at 606, 667 (Ct. App. 2009).

Here, the Department sets forth in its motion the various dispositions of the prior disciplinary convictions that Appellant set forth in his brief, and Appellant does not refute with sufficient specificity these dispositions in his Return to Respondent's Motion:[4]

- Appellant's Offense (834) conviction on October 26, 2009 was appealed to the ALC, dismissed, appealed further, was subsequently dismissed by the South Carolina Court of Appeals on June 16, 2010 for failure to pay the filing fee, and remitted on July 8, 2010;
- Appellant's Offense (807) conviction on February 23, 2010 was appealed to the ALC, which affirmed the Department's decision on October 18, 2010. Appellant then appealed this decision to the court of appeals, but his appeal was dismissed on May 24, 2011 for failure to timely file the Record on Appeal and remitted on June 21, 2011;
- Appellant's Offense (853) conviction on May 24, 2010 was appealed to the ALC, which affirmed the Department's decision. Appellant did not appeal this decision any further;
- Appellant's Offense (817) conviction on July 21, 2010 was never appealed. Appellant declined to file a Step 1 Grievance;
- Appellant's Offense (825) conviction on March 30, 2011 was appealed to the ALC, dismissed, and was not appealed any further;
- Appellant's Offense (903) conviction on June 2, 2014 was never appealed. Appellant declined to file a Step 1 Grievance; and
- Appellant's Offense (825) conviction on one count on October 14, 2015 was never appealed. Appellant declined to file a Step 1 Grievance for that

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[4] Appellant states in the first point of his Return that "all of his administrative remedies were exhausted prior to filing with the Administrative Law Court." However, Appellant provides no facts to refute the Department's contention that Appellant never filed Step 1 and Step 2 Grievances and appealed regarding Offenses (817), (903), and one of the two counts of Offense (825) of which he was convicted on October 14, 2015. On the contrary, in point two of his Return, Appellant claims that "in each and every instance the Respondent details how a Step 1, Step 2 and Appeal was taken from these decisions. . . ." Based on the Department's position with respect to Offenses (817), (903), and one of the two counts of Offense (825) of which he was convicted on October 14, 2015, however, this is clearly not the case. Regardless, as will be discussed, *infra*, the decisions from all of Appellant's prior offenses cannot be considered by the Court, either because of failure to exhaust administrative remedies (in the cases of Offenses (817), (903), and one of the two counts of Offense (825) of which he was convicted on October 14, 2015); the law-of-the-case doctrine (in the cases of Offenses (834), (807), (853), and (825)); or lack of ripeness for review (in the case of the other count of Offense (825)).

> conviction. Appellant's conviction on the second count, also on October 14, 2015, is currently being reviewed in the Department's grievance process.

Because the convictions for Offenses (834), (807), (853), and (825) were fully adjudicated and disposed of on appeal, either at the ALC or the court of appeals, the amount of good-time credit lost and the application of good-time credit deductions resulting from these convictions became the law of those cases and cannot be relitigated before this Court, regardless of whether the prior decisions were right or wrong. *See Atl. Coast Builders and Contractors, LLC, supra.* The remaining convictions will be discussed further below.

Exhaustion of Administrative Remedies

Similarly, the convictions for Offenses (817), (903), and one of the two counts of Offense (825) from October 14, 2015 cannot be considered because Appellant never filed Step 1 and Step 2 Grievances in those cases, though he did for the other count of Offense (825). The Department is correct in classifying these inactions as failures by Appellant to exhaust his administrative remedies. Appellant is required to exhaust his administrative remedies before appealing to this Court, unless an exception exists to excuse the failure to do so. *See Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994) ("The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule."); *Brown v. James*, 389 S.C. 41, 48, 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."). The administrative remedies provided for inmates pursuant to the Department's Inmate Grievance Policy are Step 1 and Step 2 Grievances. An inmate cannot bypass the grievance procedure and raise an argument for the first time on appeal; such an argument will not be preserved for appellate review. *See Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 611, 709 S.E.2d 122, 128 (Ct. App. 2011) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [factfinder] to be preserved for appellate review.") (quoting *Wilder Corp. v. Wilke,* 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). Therefore, the Court will not consider one of the two counts of Offense (825).

Ripeness

Finally, as to Appellant's second count of Offense (825), it is currently being reviewed by the Department in its grievance process. Therefore, the matter is not ripe for the Court's review and must be dismissed, though without prejudice. *See Bone v. U.S. Food Serv.*, 399 S.C. 566, 576, 733 S.E.2d 200 (2012) (noting that the APA requires review of a final decision and statutorily mandates the exhaustion of administrative remedies); *S.C. Baptist Hosp. v. S.C. Dep't of Health and Envtl. Control*, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987) ("It would be premature for a court to decide the merits of a dispute when the agency responsible for making the decision has not yet had an opportunity to decide the merits of the case.").

ORDER

IT IS HEREBY ORDERED that the Department's Motion is **GRANTED**, and that this appeal with respect to all of Appellant's past disciplinary convictions other than the October 14, 2015 conviction involving Offense (825) that is currently under review in the Department's grievance process is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Appellant's appeal with respect to the Appellant's October 14, 2015 disciplinary conviction for Offense (825) that is currently under review in the Department's grievance process is **DISMISSED WITHOUT PREJUDICE**.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

June 30, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served the foregoing upon the parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

June 30, 2016
Columbia, South Carolina