

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles Allison, #170512,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 18-ALJ-04-0277-IJ

ORDER

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Charles Allison (Appellant), an inmate housed with the South Carolina Department of Corrections (Department or SCDC).

Appellant was convicted of several crimes and, on August 29, 1990, he was sentenced as follows: (1) two concurrent sentences of twenty-five years' imprisonment for two counts of Armed Robbery (indictments 90-GS-10-3259 and 90-GS-10-3260); (2) two concurrent sentences of twenty years' imprisonment for two counts of Assault and Battery with Intent to Kill (ABWIK) (indictments 90-GS-10-3263 and 90-GS-10-3264), to run consecutive to his sentences for Armed Robbery; and (3) two concurrent sentences of thirty years' imprisonment for two counts of Burglary First Degree (indictments 90-GS-10-3261 and 90-GS-10-3262), to run consecutive to his sentences for ABWIK and Armed Robbery. Combined, Appellant's sentences totaled seventy-five years' imprisonment.

On July 25, 2017, Appellant filed a Step 1 Grievance asserting that his credits were not being applied correctly with the result that he was going to serve 85% of his sentence rather than 51%. The Warden denied the grievance and indicated that Appellant's max-out date was May 30, 2030. Appellant then filed a Step 2 Grievance that the Department denied as being untimely and closed the grievance.

On April 6, 2018, Appellant filed another Step 1 Grievance, again asserting that the classification and sentence calculations were incorrect because the Department was applying the Sentencing Act of 1996 to his 1990 sentences. The Department informed Appellant that the grievance was being returned unprocessed as it was a duplicate of the July 25, 2017, grievance that

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was closed. Appellant then filed his Notice of Appeal on May 25, 2018. The Notice of Assignment was filed June 1, 2018.

The Record on Appeal (Record) was filed August 10, 2018, and supplemented on September 27, 2018.¹ Appellant filed his brief on August 23, 2018. Because Appellant neglected to sign his initial brief, he refiled his brief on August 31, 2018. The Department filed a Motion to Dismiss or, in the Alternative, Brief for Affirmation on September 27, 2018. Appellant filed a Reply Brief on November 8, 2018.

DISCUSSION

The Court's jurisdiction to hear this matter 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). In *Al-Shabazz*, the Court held that when reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2015) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Before filing an appeal with the ALC, an appellant is required to exhaust his administrative remedies prior to filing an appeal unless the appellant establishes an exception to that requirement. S.C. Code Ann. § 1-23-380 (Supp. 2016); *see also* *Steele v. Benjamin*, 362 S.C. 66, 606 S.E.2d 499 (Ct. App. 2004).

In order to exhaust his administrative remedies, Appellant is required to submit both a Step 1 Grievance and a Step 2 Grievance pursuant to the Department's Inmate Grievance Policy. Neither the Record on Appeal nor the Notice of Appeal contain a Step 2 Grievance. Since there is no evidence in the Record that Appellant filed a Step 2 Grievance, Appellant failed to exhaust his administrative remedies and this matter can be dismissed for lack of jurisdiction. *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

¹ The Court issued an order granting the Department's Motion to Supplement the Record on October 25, 2018. The October 25, 2018 Order also granted the Department's Motion to Enlarge Time to File a Brief and granted Appellant additional time to file a reply brief.

courts will act.”). Furthermore, in *Gatewood v. South Carolina Dept. of Corrections*, the South Carolina Court of Appeals cited the following passage with approval:

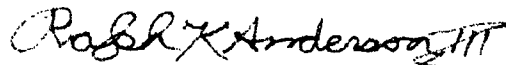
There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised *by the appellant*, (3) *raised in a timely manner*, and (4) raised to the trial court with sufficient specificity. (emphasis added) (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed.2002))

Gatewood v. S.C. Dep't of Corr., 416 S.C. 304, 325, 785 S.E.2d 600, 612 (Ct. App. 2016), *reh'g denied* (June 2, 2016), *cert. denied* (May 30, 2017) (citing *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007)).

However, the Court notes that even if it had jurisdiction to hear this matter, Appellant has not shown that the Department calculated his sentence incorrectly. As noted above, Appellant was sentenced to incarceration for a total of seventy-five years. The Record reflects that Appellant is earning work credits and good time with a max-out date of 2030. Presuming a max-out date of 2030, Appellant will serve approximately 53% of his sentence. Therefore, there is nothing in the Record to indicate that the Department is requiring Appellant to serve 85% of his sentence. In addition, Appellant has been eligible for parole and has appeared before the parole board every two years since 2005.

IT IS THEREFORE ORDERED that the Motion to Dismiss is **GRANTED**, and this appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 3, 2018
Columbia, South Carolina