

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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SC Court of Appeals

Kevin Herriott, #313862,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No.: 19-ALJ-04-0544-1

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed on October 22, 2019, by Kevin Herriott (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department).

Appellant filed a Step 1 Grievance on February 5, 2019 asserting his property was seized in violation of his 4th, 5th, and 14th amendment rights. On February 20, 2019, Appellant's grievance was returned because he failed to timely file it. Appellant then filed a Notice of Appeal to this Court on October 22, 2019.

On December 19, 2019, Appellant filed a Motion for Production of Documents and on December 27, 2019, Appellant filed a Motion for Leave to Stay of Proceedings. On January 7, 2020, the Court denied his Motion for Leave to Stay of Proceeding. Appellant filed a brief on January 21, 2020. On January 29, 2020, the Department filed a Response to Appellant's Notice of Request to Supplement the Record as well as a Motion to Dismiss (Motion) because Appellant failed to exhaust his administrative remedies. Appellant filed a document labeled "Motion to Strike" on February 6, 2020, in which he asked the Court for an "Order granting Motion to Strike Respondent's Motion to Dismiss." The Court interprets this request to be a Reply to the Department's Motion to Dismiss.

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. 2012) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). However, before filing an appeal with the ALC, an

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appellant is required to exhaust his administrative remedies unless the appellant establishes an exception to that requirement. *See* S.C. Code Ann. § 1-23-380 (Supp. 2018) (requiring a party to exhaust all administrative remedies available within the agency before appealing to the ALC); *see also Steele v. Benjamin*, 362 S.C. 66, 606 S.E.2d 499 (Ct. App. 2004) (affirming the dismissal of an inmate’s appeal for failure to exhaust administrative remedies).

In this case, the Department moves to dismiss because Appellant did not exhaust his administrative remedies. Specifically, Appellant did not timely file his Step 1 Grievance and, therefore, he was unable to file a Step 2 Grievance or receive a response to a Step 2 Grievance from which he could request this appeal. In Appellant’s Reply, he admits that he “has not exhausted his administrative remedies” but contends that “Respondent has submitted an insufficient defense and it should be stri[c]ken because its redundant, immaterial, impertinent and might confuse the issues in this case.” Appellant also stated that “it is redundant to ask the Appellant to exhaust his administrative remedies when there was none available to him.”

Clearly, Appellant has not exhausted his administrative remedies prior to filing this action. Furthermore, Appellant has not provided an exception to the requirement that he exhaust his administrative remedies prior to filing this action. Absent such exhaustion, this matter is not properly before the Court and the Court does not reach the merits of the case. *See 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.”). For the reasons set forth,

IT IS HEREBY ORDERED that the Department’s 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

February 11, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, hereby certify that I have 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).



Stephanie Michelle Perez
Judicial Law Clerk

February 11, 2020
Columbia, South Carolina