

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-02-016

JUL 31 5 22 AM '02

UZ-TEH - 2002-7-31-001

STEVEN A. MENDEZ,

Petitioner

vs.

ORDER

STATE OF MAINE,

Respondent

**DONALD L. GARBRECHT
LAW LIBRARY**

SEP 9 2002

The petitioner is incarcerated at the Maine Correctional Center in Windham, Maine. He asserts that he lost good time credits as the result of a disciplinary proceeding, which in turn delayed the release date of the first of his two consecutive sentences from October 28, 2001 to November 11, 2001. On November 13, 2001, he appealed that decision to the Chief Administrative Officer of the correctional center. See 34-A M.R.S.A. §§ 1001(1)(A) & 3032(6)(H). On November 14, 2001, he received notice that his appeal had been denied.

On April 17, 2002, the petitioner filed this 80C action seeking a review of the decision of the Chief Administrative Officer denying his administrative appeal. Proof of service upon the respondent and the Attorney General has not yet been filed. 5 M.R.S.A. § 1103(1).

On July 2, 2002, the petitioner filed a letter with the court, dated June 30, 2002, which appears to be in the nature of a request for an extension of time to complete service of process. M.R. Civ. P. 6(b). Although

there is no expressed deadline in the Administrative Procedures Act, 5 M.R.S.A. § 11001, *et seq.*, or the court's rules for making service of an 80C petition, the Law Court has held "that service on a party must be made within the same time the petition must be filed." *Ogunquit v. Department of Public Safety*, 2001 ME 47, ¶ 8, 767 A.2d 291, 294 (citation omitted). In this case, the petition had to be filed within 30 days from November 14, 2001. 5 M.R.S.A. § 11002(3). As noted, it was not filed until April 17, 2002.

The court reviewed its file for the purpose of acting on the petitioner's request for additional time. As a result of this review, the court determined that the petition was not timely filed and this failure deprives the court of jurisdiction in this matter. *Brown v. State Dept. of Manpower Affairs*, 426 A.2d 880, 888 (Me. 1981).

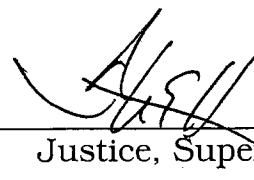
"[t]he [Administrative Procedures] Act's time limitations are jurisdictional.... As limitations on jurisdiction, the Act's time periods for appeal are noticeable *sua sponte*. The Superior Court's duty to dismiss an action when it learns it is without jurisdiction is not affected by the manner in which the jurisdictional facts in the record are brought to its attention."

Id. Based upon the foregoing, the petition must be dismissed.

Accordingly, pursuant to M.R. Civ. P. 79(a), the Clerk is directed to enter this Order on the Civil Docket by a notation incorporating it by reference, and the entry is

Petitioner's 80C petition is DISMISSED.

Dated: July 31, 2002



A handwritten signature in black ink, appearing to be 'A. S. J.', is written over a horizontal line. The signature is slanted and somewhat stylized.

Justice, Superior Court

Action

STEVEN A. MENDEZ

STATE OF MAINE
MAINE CORRECTIONAL CENTER

vs.

Plaintiff's Attorney

STEVEN A. MENDEZ, PRO-SE
P.O. Box 250
S. Windham, ME 04082

Defendant's Attorney

Date of
Entry