

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-12-49

5/12/2014

KEVIN COLLINS,

DHM-KEN -05-12-14

Plaintiff

v.

ORDER

JOSEPH PONTE, Commissioner,

Defendant

The matter before the court is a motion by the Commissioner-respondent to dismiss Petitioner's petition for judicial review of final agency action. The petitioner asserts that the action is brought pursuant to M.R. Civ. P. 80C, as authorized by 5 M.R.S.A. § 11001, *et. seq.* This agency action complaint is of a decision of November 5, 2012, by the Commissioner of the Department of Corrections denying the Petitioner's grievance regarding the nature of meals served during an alleged religious holiday as well as complaining about the telephone system available to the inmates at the Maine State Prison.

Petitioner's right for review is found in 5 M.R.S.A. § 11001(1), "any person who is aggrieved by final agency action shall be entitled to judicial review thereof in the Superior Court in the manner provided by this subchapter." The procedural history is that Petitioner filed his petition on December 5, 2012, along with a request to proceed without payment of fees pursuant to M.R. Civ. P. 91, accompanied by an indigency affidavit. The application to proceed without payment and fees was insufficient in that it did not contain the certificate by the Maine State Prison as to the status of the prisoner's general trust account. Such information is necessary for the court to determine whether a prisoner has the means to pay all or part of the filing and service

fees. The certificate was finally filed with the court on December 20, 2012. The certificate is essential to the filing documentation.

The Respondent has moved to dismiss the petition on the grounds that the filing was not in compliance with 5 M.R.S.A. § 11001, *et. seq.*, and further that the requirements of the statutory provisions are jurisdictional and the court is without authority to proceed to review a matter filed in violation thereof. Title 5 M.R.S.A. § 11002(3) requires that "The petition for review shall be filed within 30 days after receipt of notice if taken by a party to the proceeding of which review is sought."

The notice of the agency action by the Commissioner was provided to Petitioner on November 5, 2012. The complete filing of his petition was not accomplished until December 20, 2012. The court is satisfied that this is a jurisdictional requirement.

The entry will be:

The petition is DISMISSED for lack of jurisdiction in this court.

DATED: May 12, 2014

  
Donald H. Marden  
Superior Court Justice