

HORACE SALLEY

v.

DEPARTMENT OF CORRECTIONS

Argued June 13, 2018

Decided July 26, 2018

Panel: SAUFLEY, C.J., and MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Horace Salley appeals from a judgment of the Superior Court (Kennebec County, *Stokes, J.*) granting the Department of Corrections' motion to dismiss, for lack of subject matter jurisdiction, Salley's Rule 80C petition for review of the final action by the Department in Salley's disciplinary proceeding because the petition was not timely filed. 5 M.R.S. § 11008(1) (2017); M.R. Civ. P. 80C; M.R. App. P. 2A(b). Salley contends that as applied to his petition, which left his control upon its delivery into the prison mailbox, the jurisdictional thirty-day filing period of the Administrative Procedure Act denied him the right of meaningful access to the courts. Me. Const. art. I, §§ 6-A, 19; 5 M.R.S. § 11002(3) (2017); *see Houston v. Lack*, 487 U.S. 266, 270-71 (1988); *Me. Med. Ctr. v. Cote*, 577 A.2d 1173, 1176 (Me. 1990). We agree.

We recently announced our adoption of the prisoner mailbox rule in *Martin v. Dep't of Corrs.*, 2018 ME 103, --- A.3d ---, a case procedurally analogous to Salley's, holding on constitutional grounds that the adoption of the rule was necessary to preserve and protect an unrepresented prisoner's right of access to the courts. Accordingly, applying our holding in *Martin* to Salley's case, we vacate the court's order dismissing his petition and remand for the court to

apply the prisoner mailbox rule, as articulated in *Martin*, to the circumstances of this case.¹ *See id.*

The entry is:

Judgment vacated. Remanded to the Superior Court for further fact-finding consistent with this opinion.

E. James Burke, Esq., and Michael Walker, Stud. Atty. (orally), Cumberland Legal Aid Clinic, Portland, for appellant Horace Salley

Janet T. Mills, Attorney General, and Jason J. Theobald, Asst. Atty. Gen. (orally), Office of the Attorney General, Augusta, for appellee Department of Corrections

Kennebec County Superior Court docket number AP-2016-74
FOR CLERK REFERENCE ONLY

¹ Given the lack of evidence in the record concerning when exactly Salley filed his petition, the court will need to make further findings to determine whether it retains jurisdiction over the petition here. *See Muttu v. Dep't of Corrs.*, 2017 ME 7, ¶ 13, 153 A.3d. 775 (requiring an affirmative basis in the record for a determination of subject matter jurisdiction).