

STEVEN R. CLARK

v.

DEPARTMENT OF CORRECTIONS

Argued December 9, 2020  
Decided December 22, 2020

Panel: MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ.

#### MEMORANDUM OF DECISION

Steven R. Clark appeals from a judgment of the Superior Court (Knox County, *Mallonee, J.*) dismissing his M.R. Civ. P. 80C petition for judicial review of the Department of Corrections' denial of his grievance. Contrary to Clark's contention, on this record the court did not err in finding that his petition was untimely, thus depriving the court of jurisdiction. *See* 5 M.R.S. § 11002(3) (2020); *Mutty v. Dep't of Corr.*, 2017 ME 7, ¶¶ 8, 12, 153 A.3d 775; *Fournier v. Dep't of Corr.*, 2009 ME 112, ¶¶ 2, 6-7, 983 A.2d 403.

Even if we assume that Clark included a petition when on or about December 25, 2019, he put his filing fee check in the prison general mail system for transmittal to the court—a claim he asserts clearly for the first time on appeal—he cannot rely on the prisoner mailbox rule to presume a timely filing in the court because such reliance depends upon compliance with the Department's procedures for depositing the petition with the prison for mailing as legal mail, which he did not do. *See Martin v. Dep't of Corr.*, 2018 ME 103, ¶ 19, 190 A.3d 237; Department of Corrections Policy 21.2(VI)(D)(7)-(9) (Sept. 19, 2018). Given the state of the record, the court did not abuse its discretion in dismissing the petition without holding a hearing, which Clark did

not request. *See Most v. Most*, 477 A.2d 250, 260 (Me. 1984); M.R. Civ. P. 7(b)(7) (“Except as otherwise provided by law or these rules, after the opposition is filed the court may in its discretion rule on [a] motion without hearing.”).

The entry is:

Judgment affirmed.

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Roger L. Hurley, Esq. (orally), Camden, for appellant Steven R. Clark

Aaron M. Frey, Attorney General, and Alisa Ross, Asst. Atty. Gen. (orally), Office of the Attorney General, Augusta, for appellee Department of Corrections

Knox County Superior Court docket number AP-2020-01  
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