

NICHOLAS A. GLADU

v.

DEPARTMENT OF CORRECTIONS

Submitted on Briefs February 26, 2020

Decided March 17, 2020

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

#### MEMORANDUM OF DECISION

Nicholas A. Gladu appeals from a judgment of the Superior Court (Kennebec County, *Stokes, J.*) denying his petition for judicial review of the dismissal of his grievance by the Department of Corrections. *See* 5 M.R.S. § 11001 (2018); M.R. Civ. P. 80C.<sup>1</sup>

Gladu made a request to Department staff “to be provided the intensive programming and education set forth in [Department of Corrections] Policy 15.5.” When his request was not granted, Gladu filed a prisoner grievance form, pursuant to Department of Corrections Policy 29.01 (Aug. 15, 2012), in which he again sought “intensive programming and education while in the [Administrative Control Unit].”

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<sup>1</sup> Although we initially dismissed Gladu’s appeal as untimely, *see* M.R. App. P. 2B(b)(1), we reinstated his appeal upon entry of the trial court’s order accepting Gladu’s representation that he had timely submitted his notice of appeal to prison officials. Gladu’s notice of appeal is therefore deemed to have been timely filed.

Gladu's grievance was dismissed by a Grievance Review Officer because "[a] separate appeal procedure exists." The Department's policy concerning prisoner grievances provides that "[a] prisoner *may not file a grievance* regarding . . . [c]lassification procedures and decisions including . . . participation in an institutional or community-based program" because there are "separate appeal procedures for these matters."<sup>2</sup> Department of Corrections Policy 29.01(VI)(A)(4) (Aug. 15, 2012) (emphasis added).

We conclude that the Department did not err or abuse its discretion in dismissing Gladu's grievance, and the Superior Court did not err in affirming the dismissal. *See Somerset Cty. v. Dep't of Corr.*, 2016 ME 33, ¶ 14, 133 A.3d 1006 (stating the applicable standard of review).

The entry is:

Judgment affirmed.

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<sup>2</sup> Department of Corrections Policy 23.1 (Apr. 18, 2018) sets forth the procedure for appealing a classification decision regarding programming and education. "[P]risoners newly committed to the [Department]" are given an initial classification review, Policy 23.1(VI)(B)(1), and a committee "make[s] recommendations as to . . . applicable classification matters, such as referrals for mental health services, *program needs*, etc.," Policy 23.1(VI)(B)(13) (emphasis added). "[T]he Department's Director of Classification makes decisions on the recommendations" and each prisoner is provided with a copy of "the Prisoner Classification Action form," which summarizes the Director's decisions. Policy 23.1(VI)(B)(19). Prisoners access programs and services according to their individualized case plan. *See* Policy 23.4 (Apr. 18, 2018). Thereafter, the Department "conduct[s] reclassification reviews" either annually or bi-annually, depending on how much time a prisoner has left to serve on their sentence. Policy 23.1(VI)(C)(1), (D)(1). These reviews include consideration of the prisoner's individualized case plan and associated programming. *See* Policy 23.4(VI)(C); Policy 23.1(VI)(D)(5)-(8).

"A prisoner may appeal a classification decision [related to program needs] . . . to the Chief Administrative Officer, or designee, within five (5) working days *of receiving the decision as recorded on the Prisoner Classification Action form.*" Policy 23.1(VI)(I)(1) (emphasis added).

Nicholas A. Gladu, appellant pro se

Aaron M. Frey, Attorney General, and Jason Anton, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellee Department of Corrections

Kennebec County Superior Court docket number AP-2018-56  
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