

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

ARLEN PORTER SMITH  
and Kenneth Robert Banes,  
*Petitioners,*

*v.*

DEPARTMENT OF CORRECTIONS,  
*Respondent.*

Department of Corrections  
A165756

Submitted May 7, 2021.

Arlen Porter Smith and Kenneth Robert Banes filed the brief *pro se*.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Leigh A. Salmon, Assistant Attorney General, filed the brief for respondent.

Before DeVore, Presiding Judge, and DeHoog, Judge, and Mooney, Judge.

PER CURIAM

Petition for judicial review dismissed.

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**PER CURIAM**

Petitioner, an inmate at Two Rivers Correctional Institution, invokes our authority to review the validity of a rule under ORS 183.400. He challenges three portions of the Offender Information and Sentence Computation Unit Manual that he contends should be deemed invalid as “rules” promulgated without compliance with the rulemaking procedures of the Oregon Administrative Procedures Act. He challenges Chapter 5, Section II.C (describing information in a judgment used in computing a sentence); Chapter 5, Section V (describing interpretation of a judgment); and Chapter 18, Section III.E.2 (describing the process for ensuring that the Department of Corrections complies with the law on alternative incarceration programs). We conclude that the challenges to the first two portions of the manual are moot because the department has subsequently adopted the challenged provisions through formal rulemaking. We also conclude that the third challenged portion of the manual is not a rule (*see* ORS 183.310(9) (defining “rule”)); that ORS 183.400 does not apply; and that we lack authority to determine the validity of the challenged provision as if it were a rule.

Petition for judicial review dismissed.