

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from the Administrative Law Court  
Shirley C. Robinson, Administrative Law Judge

Opinion No. 2022-UP-071 (S.C. Ct. App. filed 2/16/22)  
Appellate Case No. 2022-000442

NATHANIEL JOHNSON, JR.,

PETITIONER,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

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**ISSUE PRESENTED**

**The Court of Appeals properly affirmed the Administrative Law Court's dismissal of the appeal where the Court of Appeals correctly concluded that the Administrative Law Court did not have jurisdiction to consider a facial challenge to an SCDC policy and where the Department of Corrections did not violate state law or the state constitution by deducting medical co-pays from Petitioner's inmate trust account.**

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## STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Nathaniel Johnson, Jr., (Petitioner), an inmate incarcerated with the South Carolina Department of Corrections (SCDC). On February 28, 2019, Petitioner filed a Step 1 grievance regarding medical co-payment fees. On March 13, 2019, SCDC denied the Step 1 grievance. Thereafter, on March 14, 2019, Petitioner filed a Step 2 grievance appealing the disposition of his Step 1 grievance. On April 15, 2019, SCDC denied the Step 2 grievance, and Petitioner appealed to the Administrative Law Court. On September 16, 2019, Administrative Law Judge Shirley C. Robinson dismissed Petitioner's appeal. Petitioner then appealed to the South Carolina Court of Appeals, and on February 16, 2022, the Court of Appeals issued an opinion affirming the Administrative Law Court's order. See Nathaniel Johnson, Jr., v. South Carolina Department of Corrections, Op. No. 2022-UP-071 (S.C. Ct. App. filed 2/16/22). Petitioner now seeks review of the Court of Appeals' decision.

## STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

## ARGUMENT

The Court of Appeals properly affirmed the Administrative Law Court's dismissal of the appeal where the Court of Appeals correctly concluded that the Administrative Law Court did not have jurisdiction to consider a facial challenge to an SCDC policy and where the Department of Corrections did not violate state law or the state constitution by deducting medical co-pays from Petitioner's inmate trust account.

The ALC's jurisdiction to hear inmate appeals of final decisions by the South Carolina Department of Corrections is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. This Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of McNeil v. S.C. Dep't of Corr., 02-ALJ-04-00336-AP (September 5, 2001), this Court held that the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. See Sullivan, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, this Court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. See Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); Slezak v. S.C. Dep't of Corr., 361 S.C.

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327, 605 S.E.2d 506 (2004) (holding that the ALC “may summarily dismiss those appeals that do not implicate an inmate’s *state created* liberty or property interest”) (emphasis added).

SCDC interprets Slezak as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. Additionally, the South Carolina Court of Appeals has interpreted *Slezak* to mean that where a state-created liberty interest is not implicated in a prisoner appeal, a judge of the ALC “should” dismiss the appeal. Skipper v. S.C. Dep’t of Corr., 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).

In his Petition for a Writ of Certiorari, Petitioner first argues that the Court of Appeals erred in “holding that the ALC lacks the authority to consider a facial challenge to the constitutionality of SCDC’s policy violating the State’s Constitution Art. 1 Section 13.” (Petition, page 5 of 7). To the contrary, the Court of Appeals correctly held, based upon longstanding case law, that the ALC does not have authority to pass upon the constitutionality of a statute or policy. See Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue, 342 S.C. at 39, 535 S.E.2d at 645 (2000) (explaining a party should seek a declaratory judgement in circuit court rather than going before an ALJ if the issue is the constitutionality of a statute.); Hendricks v. S.C. Dep’t of Corr., 385 S.C. 625, 628, 686 S.E.2d 191, 193 n.3 (2009) (the ALC was correct to abstain from determining the constitutionality of SCDC Policy GA-01.03); Howard v. S.C. Dep’t of Corr., 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012) (the ALC lacks authority to hear a facial challenge to the constitutionality of an SCDC policy).

Nevertheless, the Court of Appeals further correctly concluded that the health care policy in question does not violate article 1, section 13 of the South Carolina Constitution because there was no evidence that SCDC collected the medical co-payments for private use,

and because and SCDC inmates receive “just compensation” in the form of medical services provided by SCDC. See Nathaniel Johnson, Jr., v. S.C. Dep’t of Corr., Op. No. 2022-UP-071 (S.C. Ct. App. filed 2/16/22) (citing S.C. Const. art. I, section 13 (A)). The Court of Appeals also correctly concluded that the policy in question does not violate article XII, section 2 of the South Carolina Constitution, citing S.C. Dep’t of Corr. v. Cartrette, 387 S.C. 640, 649, 694 S.E.2d 18, 23 (Ct. App. 2010), which held that deductions from inmate pay for room and board did not violate the state’s obligation under article XII, section 2 of the state constitution to provide for the custody, maintenance, health, welfare, education, and rehabilitation of its inmates. Id.

Secondly, Petitioner argues that the Court of Appeals “did have jurisdiction to consider a facial challenge” regarding the constitutionality of SCDC’s policy of deducting prescription costs from his E.H. Cooper Trust Account. He further argues that the Court of Appeals erred in relying on the Cartrette case because that case dealt with deductions from inmate pay and not deductions from an E.H. Cooper Trust Account. (Petition, p. 5-6). Respondent submits that reliance on the Cartrette case was proper because deduction of co-payments from an inmate’s pay as opposed to his inmate trust account is essentially the same. In both situations, the deductions are from funds owned by the inmate. Additionally, state law authorizes SCDC to “charge inmates a nominal fee for any medical treatment or consultation provided at the request of or initiated by the inmate, as well as “[a] nominal co-pay . . . for prescribed medications.” H. 3716, Appropriation Bill 2005-2006, Part IB section 37.16 (Act. No. 115, 2005 S.C. Acts 290). Accordingly, the Court of Appeals correctly concluded that the deductions from Petitioner’s inmate trust account did not violate state law or the state constitution.

**CONCLUSION**

For the reasons discussed above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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