

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-072 (S.C. Ct. App. filed 2/16/22)
Appellate Case No. 2022-000444

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 a Department of Corrections policy and where the Department of Corrections did not violate state law or the state constitution by deducting a DNA processing fee from Petitioner's inmate trust account.

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 March 28, 2019, Petitioner filed a Step 1 grievance regarding the \$250.00 DNA processing fee. On April 16, 2019, SCDC denied the Step 1 grievance. Thereafter, on April 17, 2019, Petitioner filed a Step 2 grievance appealing the disposition of his Step 1 grievance. On May 8, 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 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-072 (S.C. Ct. App. filed 2/16/22). Petitioner appealed to this Court.

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 a Department of Corrections policy and where the Department of Corrections did not violate state law or the state constitution by deducting a DNA processing fee 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. 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 “concluding that ALC lacked authority to determine whether SCDC’s policy OP-21.09 violated State Law.”¹ (Petition, page 5 of 6). However, the Court of Appeals did not, in fact, make this conclusion. The Court of Appeals held instead that “the ALC correctly concluded it lacked authority to determine whether SCDC Policy OP-21.09 violates **the South Carolina Constitution.**” See Nathaniel Johnson, Jr., v. South Carolina Department of Corrections, Op. No. 2022-UP-072 (S.C. Ct. App. filed 2/16/22) (emphasis added). However, the Court of Appeals further correctly concluded that SCDC Policy OP-21.09 did not violate the South Carolina Constitution, analogizing the situation to the case of S.C. Dep’t of Corr. v. Cartrette, where the Court of Appeals found that deductions from inmate pay for room and

¹ To the extent Petitioner makes a slightly different argument in his “Questions Presented” on page 3 of his Petition (i.e., that the Court of Appeals erred in concluding the ALC lacked authority to determine whether the SCDC policy in question violated the S.C. Constitution), Respondent submits that the Court of Appeals properly concluded that the ALC lacked authority to consider a facial challenge to the constitutionality of the policy. See Nathaniel Johnson, Jr., v. South Carolina Department of Corrections, Op. No. 2022-UP-072 (S.C. Ct. App. filed 2/16/22) (citing Video Gaming Consultants, Inc., v. S.C. Dep’t of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) (“AL[C]s have no authority to pass upon the constitutionality of a statute or regulation.”); Howard v. S.C. Dep’t of Corr., 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012) (stating the ALC lacks authority to consider a

board did not violate the state's obligation under the South Carolina Constitution to provide for the custody, maintenance, health, welfare, education, and rehabilitation of inmates. Additionally, the Court of Appeals also correctly found that "SCDC Policy OP-21.09 was not unlawful," citing Sanders v. S.C. Dep't of Corr., 379 S.C. 411, 418-19, 665 S.E.2d 231, 234 (Ct. App. 2008), which held that S.C. Code 23-3-670 authorizes SCDC to deduct the \$250 DNA processing fee from an inmate's account. See id.

Secondly, Petitioner argues that the Court of Appeals "did have proper jurisdiction and authority to determine whether SCDC violated the State's Constitution and the Petitioner's property liberty interest." (Petition, page 5 of 6). He then contends that "the S.C. Court of Appeals has failed to exercise its authority or Opinion related to the facts of this case." (Petition, page 5 of 6). To the contrary, as stated above, the Court of Appeals did, in fact, rule that the SCDC Policy in question did not violate either the state constitution or state law. Significantly, Petitioner does not make an argument that the Court of Appeals erred on these points. Accordingly, this Court should deem the issue resolved and should deny the Petition.

facial challenge to the constitutionality of a SCDC policy).

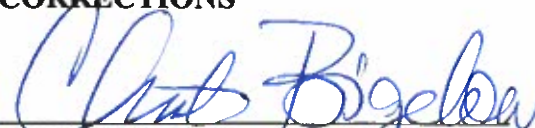
CONCLUSION

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

Respectfully submitted,

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