THE STATE OF SOUTH CAROLINA
In The Court of Appeals
In The Supreme Court

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson III, Administrative Law Judge

APPELLATE CASE NO. 2022-001765

James Millholland 367569 — Appellant

V

South Carolina Dept. of Corrections — Respondent

[INITIAL] BRIEF OF APPELLANT

James Millholland 367569
Pro-Se Appellant

Allendale C.I./F3A34
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Statement of The Case

The Appellant is an inmate in the South Carolina Department of Corrections (S.C.D.C.) and housed at Allendale Correctional Institution located in fairfax, South Carolina. On June 25, 2019, Appellant submitted a Step 1 Grievance, appealing being charged two times for a one time DNA processing fee of 250^{00} which was denied by Warden Newton on July 17, 2019. Following denial of Step 1, the Appellant submitted his Step 2 Grievance on July 25, 2019, which was denied on Sept. 9, 2019. Since there was no relief within the Departments administrative procedure, Appellant then filed a Notice of Appeal in the Administrative Law Court on October 24, 2019. This appeal was denied on March 4, 2020. Then this case was appealed to the South Carolina Court of Appeals on March, 15, 2020. There it was reversed and remanded back to the Administrative Law Court on March 25, 2022. Respondent filed a Petition For a Rehearing on June 8, 2022 which was denied on June 22, 2022 by the S.C. Court of Appeals. The COA issued the Remititur on August 4, 2022. Lastly, the Administrative Law Court, failed to comply with the Order passed down from the Court of Appeals. Appellant received a letter From the ALC stating they already ruled in the matter at hand but give the parties involved (30) days to respond

if they wish to make additional arguments. This letter from The Honoroble Ralph K. Anderson III was issued on Sept. 27, 2022 Appellant responded on October 4, 2022 within the allated (30) days, giving notice that he would in fact like to file additional arguments. Appellants Additional Arguments was filed with the ALC on October 18, 2022. And again the ALC ordered this case be dismissed on December 5, 2022. Appellant then mailed his second Notice of Appeal and Motion To Proceed In Forma Pauperis in this matter back to the S.C. Court of Appeals on December 12, 2022. The new case no. is #2022-001765 millholland V. S.C.D.C. and the Motion To Proceed In Forma Pauperis was approved on January 25, 2023.

Issue(s) Present

1. Does the Funds that are gifted to Appellant an deposit in his inmate EH Cooper Trust account hold enough merrit to be considered a state created liberty or property interest?

2. Did the ALC errer by not holding the hearing to determine the merrits of this case as ordered by the Court of Appeals?

3. Did the ALC errer in summarily dismissing Appellants First appeal stating his grievances did not implicate a protected property interest?

4. Does the ALC have jurisdiction over all inmate grievances that have been properly Filed?

5. Was the Appellant required to submit two DNA samples and also required by law to pay two $250 processing fees, totaling the amount paid to $500. Or did S.C.D.C. errer when it collected the second sample and charged him a second time for inclusion in the State Database pursuant to S.C. Code Ann§ 23-3-620 through 23-3-700?

6. Did the ALC errer in finding it did not have subjectmatter jurisdiction to hear the Appellants appeal?

Standard Of Review

In appeals from the final decision of the S.C.D.C. summary dismissal is appropriate if the prisoner cannot demonstrate the decision implicated a liberty or property interest sufficent to warrant due process protections of the 14th Amendment Shipper V. S.C.D.C. 370 S.C. 267, 635 Se. 2d. 910 (Ct. App. 2006) A decision by an administrative agency may be modified or reversed if the findings and conclusions of the agency are affected by error of law or clearly erroneous in view of the reliable, probative and substantial evidence on the whole record Brown V. Bilo Inc. 341 S.C. 611 at 614, 535 Se.2d. 445 at 447 (Ct. App. 2000) Review of an administrative agency decision is deferential and will be upheld if substantial evidence supports it. Heater of Seabrook, Inc. V. S.C. Public Servic Commn. 324 S.C. 56 at 60, 478 Se. 2d. 826 at 828 (1996) substantial evidence is relevent evidence that considering the record as a whole would allow reasonable minds to reach the conclusion that the administrative agency reached, its decision must be based on factual findings within the record. Hamm V. S.C. Public Service Comm'n 309 S.C. 295, 422 Se. 2d, 118 (1982) An administrative agency must follow its own rules and regulations. Trisha V. S.C. Dept. of Health and Environmental Control, 292 S.C. 190, 335 Se. 2d. 531 (1987) Although

failure to do so does not rise to the level of a constitutional violation. administrative principles do apply Board of Regents V. Horowitz 435 U.S. 78, 98 5 Ct. 948 (1978) Ogburn-Mathews V. Loblolly Partners, 332 S.C. 551, 505 Se. 2d. 603 (Ct. App. 1998) while administrative agencies generally have little or no descretion in deciding whether its actions are rationally grounded as opposed to the arbitrary. Al-Shabazz V. State, 338 S.C. 354 at 381, 527 Se. 2d. 742 at 761.

Arguments

I

The Appellants Arguments throughout this entire process have been simple but to the point and holding significant merrit. The ALC's Order of Dismissal, Footnote 2 (See Attachment A) stating S.C. Code Ann. § 23-3-670(A) (The cost of collection supplies for processing a sample pursuant to this article, upon conviction, pleading guilty or nolo contendere, or forfeiting bond must pay a two hundred fifty dollar processing fee which may not be waved by the Court) Hawever: (A) if the person is not sentenced to a term of confinement, payment of the fee must be a condition of the persons sentence and may be paid in installments if so ordered by the court) This has been the Appellants argument all along because he was required by this same DNA law to provide a suitable sample to S.L.E.D. while serving a five(5) year probation sentence in Anderson County, South Carolina for the charge of Burglary during the years of 2000-2003. (See Attachment B) As stated in previous claims, A nurse came to the Anderson County Probation Office in the company of S.L.E.D. and collected a suitable sample of blood from the Appellant to be included in the States DNA Database and they also

collected a $250.00 processing fee at the time of service. This processing fee had to be paid as a condition of probation as stated in S.C. Code Ann. §23-3-670 (. . . payment of the fee must be a condition of the person's sentence) Since the charge of Burglary is a violent charge, the Appellant was required by State law to provide this sample of DNA for the Database (See Attachment B) Clearly the Anderson County Probation Office and S.L.E.D. would not have missed this most important factor of the Appellants probation, with his charge being a most serious and violent crime. Appellant has mailed S.L.E.D. several handwritten letters (See Attachment E) asking for documentation of his DNA being submitted in the year of 2000-2003. To this day S.L.E.D. has not given any response and the Appellant is without knowledge of law with no training on how to force them to turn over this very vital piece of evidence.

II

Furthermore, the ALC's Order of Dismissal, Footnote 2, is again incorrect when it states ("... DNA samples are not even taken by the Department but rather by other law enforcement agencies prior to conviction..") (See Attachment A) To confirm, this statement is false. All you have

is read S.C. Code Ann § 23-3-670(A) one time to confirm that in fact, (A person is required to provide a sample pursuant to this article upon conviction, pleading guilty...) Upon, does not mean before or prior to conviction no matter how many ways you try to bend the word to fit your perseption. There is no way someone should have to provide a sample of DNA for the States Database prior to being convicted while they should still be assumed innocent or before being found guilty. Webster's dictonary defines the word "prior" as being before.

Footnote 2, (See Attachment A) is again incorrect when it states that the "DNA samples are not even taken by the "Department" but rather by other law enforcement agencies.." When in fact the "Department" actually did collect a sample of blood DNA from the Appellant. As the Appellant has claimed throughout this entire process, a nurse employed by the S.C. Department of Corrections collected this second suitable sample of blood DNA upon his admission into the S.C.D.C. while he was at the Kirkland R&E center in Columbia, SC in March of 2016. Then a second 250^{00} processing fee was charged to the Appellants E.H. Cooper Trust account by the medical department. After this happened, everytime the Appellant would receive money on his account, 5% would be

deducted immediately until this outstanding bill was paid in full for the second time. This is where the mistake was made. Since there is no system in place between S.L.E.D. and S.C.D.C. to know or be able to confirm whether a suitable sample of DNA has been collected and if the required 250^{00} processing fee has already been paid, the Department errered when it automatically administered the DNA requirment on the Appellant for a second time when S.L.E.D. had previously fulfilled this obligation in 2000-2003. You see, the Appellant's argument is simple, he only claims his obligations were fulfilled and that he met all the necessary requirements to please the States DNA statute while serving a 5 year probation sentence in Anderson County, South Carolina for the charge of burglary in the years of 2000-2003. (See Attachment B) To add the States DNA law is clear and needs no interpetation. S.C. Code Ann. § 23-3-620(D)(... unless a sample has already been provided pursuant to the Subsection (A). And not once has the respondents throughout this entire process denied that the Appellants suitable sample of DNA and the required 250^{00} processing fee was previously paid before his entering S.C.D.C. To do so would show the mistake they have been making and ultimately open the door for so many others to receive justice. This can of

Worms S.C.D.C. isnt ready to open, so the Administrative Law Court has continued to tip the great scales of justice their way with yet another rubber stamped order of dismissal.

III

Also the Respondents have asserted there has been no state created liberty or property interest raised in the Appellants claims. But the S.C. Court of Appeals found the ALC erred in summarily dismissing Appellants appeal based on these grounds because his grievances did implicate a protected property interest (See Attachment C) - in his inmate trust account. See Al-Shabazz v. State, 338 S.C. 354, 369, 527 Se.2d 742, 750 (2000) ("The requirements of procedural due process apply only to the deprivation of interest encompassed by the Fourteenth Amendments' protection of liberty and property") quating Board of Regents of State Colleges V. Roth, 408 U.S. 564, 569 (1972) There is no doubt the Appellants grievances and appeals have subject matter. Although no South Carolina case has addressed this issue, Federal Courts have consistantly found that inmates have a property interest in their inmate accounts. See Campbell v. Miller, 787 F.2d 217, 222 (7th Cir. 1986) ("It is beyond dispute that Campbell has a property interest in the funds on dep-

osit in his prison account.") Quick v. Jones, 754 F.2d 1521, 1523 (9th Cir. 1985)" There is no question that Quicks interest in the funds in his prison account is a protected property interest" Jensen v. Klecker, 648 F.2d 1179, 1183 (8th Cir. 1981) stating inmates "obviously have a property interest in the funds on deposit in their inmate accounts "Hopefully, all reasonable minds can reach the same conclusion, that the money on deposit in the Appellants account is a protected interest outlined by the Constitution of the United States.

IIII

To add, the ALC's Order of Dismissal, Footnote 2 also states that the ALC does not have jurisdiction to hear the Appellant's appeal but the S.C. Court of Appeals ruled that it does. The Court of Appeals (COA) ruled that the Appellant's appeal implicated a property interest - in his inmate trust account and thus, the ALC erred in finding it did not have subject matter jurisdiction to hear his appeal (See Attachment C) see Furtick v. S.C. Department of Corr., 374 S.C. 334, 340, 649, Se. 2d 35, 38 (2007)" The ALC has jurisdiction over all inmate grievance appeals that have been properly filed; however is not required to hold a hearing in every matter" abrogated on other

grounds by Howard V. S.C. Department of Corr., 361 S.E. 2d 211 (2012); Slezak V. S.C. Dept of Corr. 361 SC. 327, 331, 605 S.E. 2d 506, 508 (2004) holding summary dismissal is appropriate "where the inmates grievance does not implicate a state created liberty or property interest". if it pleases the Court, Appellant respectfully request it take notice of Quick, 754 F. 2d at 1523. "Once a protected interest is found the Court must then decide what process is due. This is a question of law" Accordingly, the COA found the ALC erred in failing to hold a hearing to determine whether Appellants due process rights were violated (See Attachment C) see Kiawah Dev. Partners II V. S.C. Dept. of Health & Envtl. Control, 411 S.C. 16, 28, 766 S.E. 2d. 707, 715 (2014) "[T]he Court may reverse the decision of the ALC where it is in violation of statutory provision or it is affected by an error of law" The S.C. Court of Appeals was correct when it reversed and remanded this case back to the Administrative Law Court to determine what process is due to the Appellant. (See Attachment C) Unfortunately, the ALC dismissed Appellants cry for relief a second time (See Attachment F) after being shown by the COA what errers in law it made and ordering them to be corrected. This only confirms one thing; that the ALC made a deliberate and conscience dec-

ision to intently violate the Appellants rights to due process, yet again.

V

To close, S.C.D.C. erred when it charged Appellant his second 250^{00} DNA processing fee totaling his sum amount to 500^{00}. Thus, the Appellants 5th and 14th Amendment rights have been violated throughout this entire process and his God given right to his rightfully owned property has been withheld from him for over six years now causing great mental, physical, and emotional distress. The only chance for the Appellant to have a bite of the apple is if the Court of Appeals appoints him an attorney to make sure his rights are protected.

Moreover, the ALC's Order of Dismissal, Footnote 2 states "Appellant has not presented any evidence that his previous sample was determined to be suitable by S.L.E.D." If it pleases the Court, the Appellant would like to insert that the Respondent has not presented any evidence that his previous sample was determined not to be suitable by S.L.E.D.. Nor have the Respondents presented any evidence that the Appellants previous sample from the years of 2000-2004 that was included in the States Database, has been determined by S.L.E.D. to be

lost or contaminated. The DNA statute is clear and unambiguous. There is no collection of a second sample of DNA to be administered "... unless the original sample was lost or contaminated..". The S.C.D.C. made an error of law when it collected the second sample of DNA from the Appellant in 2016 because his original sample has never been submitted as stated in S.C Code Anns 23-3-670 (E)"... lost, damaged, contaminated, or unusable for examination." The S.C.D.C. also made an error of law when when it charged the Appellants E.H. Cooper Account and seized the money that was on deposit until the 250^{00} processing fee was paid in full because he had already paid this fee to S.L.E.D. in the years of 2000-2004.

Conclusion

WHEREFORE,

1. Appellant prays this Court will grant his Motion for Appointment of Counsel to ensure his Constitutional Rights are protected. 2. That a system be put in place between S.C.D.C. and S.L.E.D. that would be able to confirm if an inmates suitable sample of DNA has been submitted and/or if the $250 processing fee has been paid previously upon entering the S.C.D.C. 3. That the 250^{00} the S.C.D.C. illegally seized from the Appellant be returned with interest and that the interest be back-

dated all the way back to March 2016, when the first deduction of money by the Respondents occurred. That this Court award the Appellant with punitive damages for the physical, mental, emotional, and financial burden inflicted upon him by the Respondents throughout this entire case dated back to March 2016, in an amount to be determined by this Court s) And for all relief this Court deems just and proper.

Respectfully Submitted,

James Millholland

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January 30, 2023
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CERTIFICATE OF COMPLIANCE

I, James M. Millholland, hereby certify that this [INITIAL] BRIEF OF APPELLANT complies with Rule 208(b), SCACR and with Rule 267(a) SCACR.

Respectfully Submitted,

/s/ James Millholland
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South Carolina Dept. of Corrections — Respondent

PROOF OF SERVICE

I James Millholland, pro-se, Appellant hereby certify that I have this date served this Initial Brief of Appellant and Designation of Matter(to be included in the record on appeal) on S.C.D.C. at PO Box 21787, 4444 Broad River Road, Columbia, SC, 29221 by depositing a copy hereof in the United States mail with postage prepaid

January 30, 2023

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January 30, 2023

Jenny A. Kitchings, clerk
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: James Millholland 367569 V S.C.D.C.
Appellate Case No. 2022-001765

Ms. Kitchings,

Please find enclosed the [Initial Brief of Appellant] and Designation of Matter that I would like to file with your office. Can you please send a clocked-stamped copy back to me at the address above. Thank You.

J Millholland

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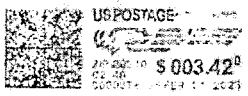

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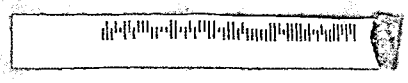

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