

THE STATE OF SOUTH CAROLINA

In The Court of Appeals
In The Supreme Court

RECEIVED

FEB 03 2023

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

APPELLANT'S DESIGNATION OF
MATTER TO BE INCLUDED IN
THE RECORD ON APPEAL

James Millholland
James Millholland 367569
Allendale C.I./F3A34
1057 Revolutionary Trail
PO Box 1151
Fairfax, SC 29827

THE STATE OF SOUTH CAROLINA
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James Millholland 367569

Appellant

v.

South Carolina Dept. of Corrections

Respondent

APPELLANTS DESIGNATION OF
MATTER TO BE INCLUDED IN
THE RECORD ON APPEAL

The Appellant submits that the following should be included in the Record on Appeal:

1. Appellants Inmate Request to Staff Member, kiosk messages dated 6/15/2016 - 6/22/2019
2. Appellants E.H. Cooper Trust Account deductions dated 3/29/2016

3. Appellants Step 1 Grievance dated 7/9/2019
4. Appellants Step 2 Grievance dated 9/18/2019
5. Appellants Notice of Appeal in the ALC dated 9/25/2019
6. Appellants Brief to ALC dated 1/14/2020
7. Appellants Reply Brief to ALC dated 1/21/2020
8. Respondents Motion to Dismiss to ALC dated 2/11/2020
9. Order of Dismissal (ALC) dated 3/4/2020
10. Appellants Initial Brief (COA) dated 6/9/2020
11. Respondents Initial Brief (COA) dated 8/10/2020
12. Appellants Reply Brief (COA) dated 8/18/2020
13. Appellants Final Brief (COA) dated 10/14/2020
14. Respondents Final Brief (COA) dated 11/9/2020
15. Appellants Final Reply Brief (COA) dated 11/16/2020
16. Remittitur (COA) dated 5/25/2022

17. Respondents Petition For Rehearing dated 6/8/2022
18. Order (COA) response to Respondents Petition for Rehearing dated 6/22/2022
19. Ralph K. Anderson III, letter (ALC) dated 9/27/2022
20. Appellants Response to ALC's letter dated 10/4/2022
21. Appellants letter to SLED dated 5/3/2019 (10/18/2022)
22. Appellants letter to Anderson County, Clerk of Court, Richard A. Shirley dated 10/18/2022
23. Appellants sentencing sheets for Burglary in Anderson County, SC (2014) dated (10/18/2022)
24. Appellants Affidavit dated 10/14/2022
25. Appellants Additional Arguments (ALC) dated 10/16/2022
26. Respondents Response to Appellants Additional Arguments dated 11/9/2022
27. 2nd Order of Dismissal (ALC) dated 12/5/2022
28. 2nd Appellants Notice of Appeal (COA) dated 12/22/2022

The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal.

Respectfully Submitted,

x James Millholland

James Millholland 367569

Allendale C.I./F3A34

1057 Revolutionary Trail

PO Box 1151

Fairfax, SC 29827

January 30, 2023

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James Millholland, #367569,)	Docket No. 19-ALJ-04-0492-AP
)	
Appellant,)	
)	
vs.)	ORDER OF DISMISSAL
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by James Millholland (Appellant), an inmate housed with the South Carolina Department of Corrections (Department or SCDC).

On June 25, 2019, Appellant filed a Step 1 Grievance objecting to the deduction of funds from his personal account to pay a DNA processing fee. He argued that he had already paid the fee while on probation in the early 2000s, and he believed it should have been a one-time fee. After the Warden denied the grievance, Appellant filed a Step 2 Grievance asserting that his Fifth Amendment rights were violated when they charged him the fee twice. The Responsible Official denied his grievance citing to SCDC Policy 21.09 and advising Appellant, *inter alia*, that “records indicate [Appellant was] admitted into SCDC as a New Admission on 03/26/16. New admissions will be assessed the fee as required by SLED.”

Appellant filed a Notice of Appeal on September 26, 2019. On January 14, 2020, Appellant filed his brief. On February 12, 2020, the Department filed a Motion to Dismiss (Motion) asserting the Court lacks jurisdiction to hear the case because Appellant’s complaint does not implicate a state-created liberty or property interest. Appellant filed a Response¹ to the Motion on February 25, 2020.

DISCUSSION

This Court must first determine whether it has subject matter jurisdiction to decide this case. “Subject matter jurisdiction is the power to hear and determine cases of the general class to

¹ Appellant labeled this document “Reply Brief,” however, upon reviewing it, the Court interprets this to be his Response to the Motion.

FILED

March 4, 2020

SC ADMIN. LAW COURT

which the proceedings in question belong.” *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994) (internal quotation marks and citation omitted). “The ALC has subject matter jurisdiction under the Administrative Procedures Act (“APA”) to hear properly perfected appeals from the SCDC’s final orders in administrative or non-collateral matters.” *Howard v. S.C. Dep’t of Corr.*, 399 S.C. 618, 625, 733 S.E.2d 211, 215 (2012). Nevertheless, the Court’s jurisdiction in inmate matters is limited to agency decisions implicating a state-created liberty or property interest. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When an inmate’s appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. *Slezak v. S.C. Dep’t of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004).

In his Response to the Department’s Motion, Appellant asserts the Court has jurisdiction pursuant to section 23-3-620(D) of the South Carolina Code (Supp. 2019). He also clarifies he “is not challenging the constitutionality of the manner in which funds were deducted to pay the \$250.00 DNA processing fee,” nor is he challenging the “constitutionality of the DNA law.” Rather, Appellant is challenging being charged again when he already paid for his DNA to be taken for a previous crime. In other words, Appellant does not think he should be charged again when his DNA is already in the State DNA database.

Section 23-3-620(D) provides that:

Unless a sample has already been provided pursuant to the provisions of subsection (A), before a person is released from confinement or released from the agency’s jurisdiction, a suitable sample from which DNA may be obtained for inclusion in the State DNA Database must be provided as a condition of probation or parole.

However, this statute does not grant this Court subject matter jurisdiction; nor does it establish a state-created liberty or property interest in having DNA only collected once.² Because Appellant’s complaint does not implicate a state-created liberty or property interest, the Court does not have jurisdiction and summary dismissal is appropriate. *See Slezak*, 361 S.C. at 331, 605 S.E.2d at 508. Accordingly,

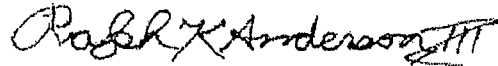
² Even if the Court had jurisdiction, Appellant’s argument is without merit. S.C. Code Ann. § 23-3-670(A) (Supp. 2019) provides that: “A person who is required to provide a sample pursuant to this article . . . **must** pay a two hundred fifty-dollar processing fee which **may not be waived** by the court. *See Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) (emphasis added) (“Under the rules of statutory interpretation, use of words such as “shall” or “must” indicates the legislature’s intent to enact a mandatory requirement.”). Furthermore, the DNA samples are not even taken by the Department but rather by other law enforcement agencies prior to conviction. *See* S.C. Code Ann. § 23-3-620(A). The Department is thus simply charged with collecting the fee for actions taken by another agency. Moreover, Appellant has not presented any evidence that his previous sample was determined to be suitable by SLED.

Attachment
A (3)

16

IT IS HEREBY ORDERED that the Department's Motion to Dismiss is GRANTED and Appellant's appeal is DISMISSED WITH PREJUDICE.

AND IT IS SO ORDERED.

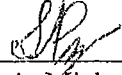


Ralph King Anderson, III
Chief Administrative Law Judge

March 4, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Michelle Perez
Judicial Law Clerk

March 4, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
Administrative Law Court

Ralph K. Anderson, III
Chief Judge

Jana E. Cox Shealy
Clerk



PHONE: (803) 734-0550
FAX: (803) 734-6400
WEB: WWW.SCALC.NET

September 27, 2022

Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221

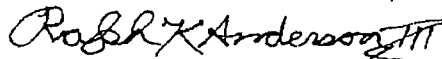
James Millholland, #367569
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

Re: Millholland v. South Carolina Department of Corrections, Docket No. 19-ALJ-04-0492-A-AP

Dear Mr. Vincent and Mr. Millholland,

The above-captioned matter originally was filed by James Millholland (Appellant) on September 26, 2019, in the South Carolina Administrative Law Court (Court). Thereafter, on March 4, 2020, the Court issued an Order of Dismissal (Order of Dismissal) which was appealed to the South Carolina Court of Appeals (Court of Appeals). On August 4, 2022, the Court of Appeals reversed and remanded the decision to this Court for a hearing on the merits. However, the Court clearly does not conduct hearings on the merits in these matters. *See Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Rather, the Court reviews these matters in “an appellate capacity.” *Id.* at 388, 527 S.E.2d at 754. Furthermore, although apparently not recognized by the Department or the Court of Appeals, in the ALC’s Order of Dismissal, the Court addressed the merits of this case in footnote two. Therefore, please notify the Court within thirty (30) days if the parties wish to make additional arguments regarding the merits of this case.

Sincerely,



Ralph King Anderson, III
Chief Administrative Law Judge

21

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this letter upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

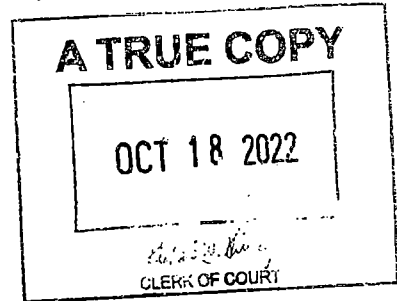
September 27, 2022
Columbia, South Carolina

Attachment
B

James Michael Millholland 367569
Allendale Correctional Inst. / F3A34
1057 Revolutionary Trail
PO Box 1151
Fairfax, SC 29827

18

1/200
2000-15
2000-15
44 W. 1st & Hill, 10-18
Anderson, SC 29606, CP/08



October 13, 2022

Richard A. Shirley
Anderson County Clerk of Court
PO Box 8002
Anderson, SC 29622

G043178
G043195

Re: State v. James Millholland

Dear Clerk;

I'm writing concerning the 2nd Burglary and Grand Larceny that I was convicted of in the years of 1999 to 2001. I can't remember the exact date nor do I have access to the warrant numbers. That is the reason I write. I need to obtain my sentencing sheets and other related materials that was filed in these two charges. To include the restitution that was paid. My name is James Millholland (middle Michael) SS# 414-41-0627, D/O/B 07/28/1982. My address at the time of arrest was 115

REPLY MAIL

Central Ave, Honea Path, SC 29654. So I was sentenced to 5 years probation in Anderson County for these charges and I also need a copy of any probation paperwork that was filed with your office concerning the Burglary charge as well.

To explain, as a condition of my probation, I was required to give my DNA to SLED for inclusion in the State Database because the Burglary charge is a violent conviction. While I was serving my sentence on probation, SLED came to the probation office on S. Towers St. in Anderson, right behind the courthouse. They had a nurse with them and she took tubes of blood from me and they charged me a \$250 dollar processing fee. I'm trying to find out how I can obtain these records. I need to show the Court that my DNA was taken as a part/condition of my probation. Can you please help me find this documentation. And please forward to me everything that was ever filed with your office concerning this case?

Also can you please Clock Stamp this letter and return it with all the other related materials, to the address above. Thank you for your attention in this matter.

Attachment 7
B

Attachment B

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Anderson
STATE VS.

INDICTMENT#:

00 -GS- 04 - 152
CW#: W-04-02-0289 (6-18-02)

James Michael Millholland

Name of Original Offense: Burglary 2nd
Conviction S.C. Code §: 16-11-312 B

AKA: _____

Conviction CDR Code #: 0 1 0 1 8 1 6

Race: W Sex: M

Date of Original Offense: 11-04-99

DOB: _____

Original Sentence: 15yrs ss 5yrs Prob.

SSN: _____

SID#: 1281695

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 01/20/00 in the Court of General Sessions of Anderson County as set forth in the attached warrant or citation dated 06/18/02. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit) 1, 2, 3, 6, 7, 8 - 110

Therefore, IT IS ORDERED that:

the suspended sentence be revoked and the above named defendant be required to serve 90 days months/years, the remainder of the original sentence, and/or pay \$ _____.

the suspended sentence be revoked and the above named defendant be required to serve ~~90~~ months/years of the original sentence and/or pay \$ _____ thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.

the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.

probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

Additional Conditions ordered by the Court:

Term. note Probation

Commitment

7-21-03

The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

The defendant has previously served 0 months/years on this sentence. (split sentence time and/or prior partial revocation time)

This 21st day of July, 03

[Signature]
Presiding Judge

Anderson, SC.

10th Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature [Signature]

Witnessed by [Signature]

TRUE COPY
OCT 18 2022
[Signature]
CLERK OF COURT

Signed this 21st day of July, 03 at Anderson, SC

Attachment

21

STATE OF SOUTH CAROLINA)
 COUNTY OF Anderson)
 STATE VS JAMES MICHAEL MILLHOLLAND)
 AKA: _____)
 Race: W Sex: M)
 DOB: _____ AGE: 17)
 SSN: _____ SCDL#: _____)
 SID: SC01281695)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

~~99-03-04~~ 2000 65 04 15-2

AW#: G043195

Date of Offense: 11/04/99

S.C. Code: 16-11-0311 CDR Code#: 0079

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO:

Burglary 2nd

in violation of 16-11-312B of the S.C. Code of Laws, being CDR Code# 0086

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

David Wagner
Solicitor

James Millholland
DEFENDANT

Robert [Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of Fifteen 15 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for Five 5 months/years and subject to South Carolina Department of Probation. Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for _____ days/months jail time.

CONCURRENT or CONSECUTIVE to sentences on: _____

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered

Total: \$ _____ plus 20% fee \$ _____
set by SCDPPPS _____

Recipient: _____

*Fine:.....\$ _____

14-1-206 - Assessments 100%\$ _____

14-1-211 - Surcharge.....\$ 100

(Exceptions: See 14-1-211)

56-5-2995 (DUI).....\$ _____

County(3%).....\$ _____

TOTAL.....\$ 100

Clerk of Court/Deputy Clerk: Linda DeShields

Court Reporter: Wanna

A TRUE COPY

OCT 18 2022

[Signature]
CLERK OF COURT

PTUP _____

_____ days/hours Public Service Employment _____

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE Frank Eggen

Judge Code: 1 01012

Sentence Date 1/20/2000

Attaching...

STATE OF SOUTH CAROLINA
 COUNTY OF Anderson
 STATE VS JAMES MICHAEL MILLHOLLAND
 AKA: _____
 Race: W Sex: M
 DOB: _____ AGE: 17
 SSN: _____ SCDL#: _____
 SID: SC01281695

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: ~~99-06-04~~ 2000 CS04153
 A/W#: G043178
 Date of Offense: 11/04/99
 S.C. Code: 16-13-0030(B)(1) CDR Code#: 0478
 SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO:
Grand Larceny 1-5000
 in violation of 16-13-0030(B) of th S.C. Code of Laws, bering CDR Code# 0478
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
David Wagner Solicitor James Millholland DEFENDANT Robert [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of Five 5 months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation. Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for _____ days/months jail time.
 CONCURRENT or CONSECUTIVE to sentences on: _____

30 days SPECIAL CONDITIONS:
 RESTITUTION Heard, Waived, Ordered
 Total: \$ 1,850.00 plus 20% fee \$ _____
 set by SCDPPPS _____

Recipient: Tammy Baldwin
453 30th St N Rd
Horco. Path SC 29034

*Fine: _____ \$
 14-1-206 - Assessments 100% \$
 14-1-211 - Surcharge \$ 100
 (Exceptions: See 14-1-211)
 56-5-2995 (DUI)..... \$
 County(3%)..... \$
 TOTAL..... \$ 100
 Clerk of Court/Deputy Clerk: Linda DeShields
 Court Reporter: Wannu

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc Rehab. or Job Corps _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund.
 Other: _____

A TRUE COPY
 OCT 18 2022
 Richard X. Kiley
 CLERK OF COURT

PRESIDING JUDGE Frank Eggen
 Judge Code: 10/0/2
 Sentence Date 1/20/2000

ATTACHED WITH

STATE OF SOUTH CAROLINA

County of Anderson
STATE VS.

James Michael Millholland

AKA: _____

Race: W Sex: M

DOB: _____

SSN: _____

SID#: 1281695

B

IN THE COURT OF GENERAL SESSIONS

23

INDICTMENT#:

00 -GS- 04 - 153

CW#: W-04-02-0289 (6-18-02)

Name of Original Offense: Grand Larceny 1-5000

Conviction SIC Code §: 16-13-0080 B1

Conviction CDR Code #: 0141718

Date of Original Offense: 11-4-99

Original Sentence: 5y3 SPP

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 01/20/00 in the Court of General Sessions of Anderson County as set forth in the attached warrant or citation dated 06/18/02. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit) 1, 2, 3, 6, 7, 8 & 10

Therefore, IT IS ORDERED that:

the suspended sentence be revoked and the above named defendant be required to serve 90 days months/years, the remainder of the original sentence, and/or pay \$ _____.

the suspended sentence be revoked and the above named defendant be required to serve 90 days months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.

the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.

probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

Additional Conditions ordered by the Court:

Terminate Probation

Commitment

7-21-03

The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

The defendant has previously served 0 months/years on this sentence (split sentence time and/or prior partial revocation time)

This 21st day of July, 03

Anderson, SC.

[Signature]
Presiding Judge

10th Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

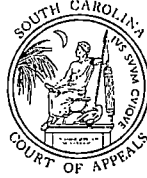
This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature [Signature]

Witnessed by [Signature]

Signed this 21st day of July, 03, at Anderson, SC.

A TRUE COPY
OCT 18 2022
[Signature]
CLERK OF COURT



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 04, 2022

The Honorable Jana E. Shealy
Edgar A. Brown Building
1205 Pendleton Street
Suite 224
Columbia SC 29201

REMITTITUR

Re: James Millholland, #367569 v. SCDC
Lower Court Case No. 2019ALJ040492AP
Appellate Case No. 2020-000521

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: James Millholland, 00367569
Kensley Evans, Esquire

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

James Millholland, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2020-000521

Appeal From The Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge

Opinion No. 5909
Submitted May 12, 2022 – Filed May 25, 2022

REVERSED AND REMANDED

James Millholland, pro se.

Kensley Evans, of South Carolina Department of
Corrections, of Columbia, for Respondent.

PER CURIAM: James Millholland appeals an order from the Administrative Law Court (ALC) arguing the ALC erred in dismissing his appeal from the South Carolina Department of Corrections (SCDC). Millholland argues SCDC violated his right to due process when it automatically charged him a \$250 processing fee for the collection of his DNA pursuant to the South Carolina DNA Identification Record Database Act¹ (the DNA Act) when he had already submitted a DNA

¹ S.C. Code Ann. §§ 23-3-600 to -700 (2007 & Supp. 2021).

sample following a previous conviction. We reverse the ALC's dismissal of Millholland's appeal and remand for a hearing on the merits.

In 2016, Millholland was sentenced to nine years' imprisonment for manufacturing methamphetamine. Pursuant to the DNA Act, SCDC charged Millholland a \$250 DNA-sample processing fee, which it deducted from Millholland's inmate trust account. Millholland asserts that he previously gave a DNA sample pursuant to the DNA Act as a condition of his probation served for a previous offense, and therefore, he contends SCDC should not have automatically applied a second \$250 fee. He filed a Step 1 grievance asserting these claims, and when SCDC denied it, he filed a Step 2 grievance arguing SCDC had violated his Fifth Amendment rights. SCDC also denied the Step 2 grievance, and Millholland appealed to the ALC. The ALC summarily dismissed the appeal, finding it lacked subject matter jurisdiction because Millholland's claim did not implicate a state-created liberty or property interest.

Although we believe the specific issue Millholland raises on appeal was not well articulated, in broadly construing his arguments, we find the ALC erred in summarily dismissing Millholland's appeal because his grievance implicated a protected property interest—his inmate trust account. *See Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000) ("The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." (quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972))). Although no South Carolina case has addressed this issue, federal courts have consistently found that inmates have a property interest in their inmate accounts. *See, e.g., 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 deposit in his prison account."); *Quick v. Jones*, 754 F.2d 1521, 1523 (9th Cir. 1985) ("There is no question that Quick's 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"). Thus, we find Millholland's appeal implicated a protected property interest, and the ALC erred in finding it did not have subject matter jurisdiction to hear the appeal. *See Furtick v. S.C. Dep't of Corr.*, 374 S.C. 334, 340, 649 S.E.2d 35, 38 (2007) ("[T]he ALC has jurisdiction over **all** inmate grievance appeals that have been properly filed; the ALC, however, is not required to hold a hearing in every matter."), *abrogated on other grounds by Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 733 S.E.2d 211 (2012); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004) (holding summary dismissal is appropriate "where the inmate's grievance does not implicate

a state-created liberty or property interest"); *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, we find the ALC erred in failing to hold a hearing to determine whether Millholland's due process rights were violated. See *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env'tl. 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 a statutory provision or it is affected by an error of law."). Thus, we reverse and remand to the ALC for a hearing on the merits.

REVERSED AND REMANDED.²

THOMAS, MCDONALD, and HEWITT, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

AFFIDAVIT
OF
JAMES M. MILLHOLLAND

I James Michael Millholland, do solemnly swear, to the best of my knowledge affirm that I submitted a suitable sample of blood (DNA) to SLED for inclusion in the State Database and paid a \$250⁰⁰ processing fee as a condition of my 5 year probation sentence in Anderson County, South Carolina for the charge of Burglary in the years of 2000-2003.

x [Signature]

James Millholland 367569
Attendale C.I. / P3A34
PO Box 1151
Fairfax, SC 29827

Sworn and subscribed
this 14th day of October 2022

x Osheep Vandevore / ACE mailroom Admin

my commision expires Sept 9 2032

seal



October 14, 2022
Fairfax, SC

SLED

May 3, 2019

RE: DNA

Attachment E

Dear Sir or Madam,

My name is James Michael Millholland. My date of birth is 07-28-1982 and my SS# is 414-41-0627. I am writing in regards to the DNA that I have been charged two times for. In 1999 I was sentenced to 5 years probation in Anderson County S.C. for a 2nd Burglary and Grand Larceny. While on probation there I had to report to their office and give my blood to SLED during the years of 2000-2004. I was charged \$250⁰⁰. The probation office said this payment was for SLED. I have tried reaching out to the Anderson County Probation Office concerning this matter because I need to obtain a record of this. Thus far I cannot get a response. That is why I am writing you. I am now incarcerated in the South Carolina Department of Corrections. They too have charged me again for my DNA. That is a total of \$250⁰⁰, two times equaling \$500⁰⁰.

Attachment E

The second time the DOC charged me. To my understanding this is only supposed to be a one time payment. They tell me that I need to write SLED concerning this matter. Can you please respond back to me and send something showing proof that I did already give and pay for my DNA in the year of 2000-2004 while on probation in Anderson County. Thank you for your time. My address is

James M. Millholland 367569
Allendale C.I. FIASO
1057 Revolutionary Trail
Po Box 1151
Fairfax, SC 29827

Attachment
F

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James Michael Millholland, #367569,)
)
 Appellant,)
)
 v.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 19-ALJ-04-0492-AP

ORDER

The above-captioned matter was originally filed by James Michael Millholland (Appellant), an inmate housed with the South Carolina Department of Corrections (Department or SCDC), on September 26, 2019, in the South Carolina Administrative Law Court (Court). Thereafter, on March 4, 2020, the Court issued an Order of Dismissal (Order of Dismissal) for lack of jurisdiction. Appellant then appealed to the South Carolina Court of Appeals (Court of Appeals), which found this Court had jurisdiction. *See Millholland v. S.C. Dep't of Corr.*, 436 S.C. 547, 549, 873 S.E.2d 784, 785 (Ct. App. 2022), *reh'g denied* (June 22, 2022). Therefore, in an order issued August 4, 2022, the Court of Appeals reversed and remanded the decision to this Court. Upon reviewing the case on the merits, the Department's decision is affirmed.

BACKGROUND

On June 25, 2019, Appellant filed a Step 1 Grievance objecting to the deduction of funds from his personal account to pay a DNA processing fee. He argued that he had already paid the fee while on probation in the early 2000s, and he believed it should have been a one-time fee. The Warden denied the grievance, and Appellant filed a Step 2 Grievance asserting that his Fifth Amendment rights were violated when they charged him the fee twice. The Responsible Official denied his grievance citing to SCDC Policy 21.09 and advising Appellant, *inter alia*, that "records indicate [Appellant was] admitted into SCDC as a New Admission on 03/26/16. New admissions will be assessed the fee as required by SLED."

Appellant filed a Notice of Appeal on September 26, 2019. On March 4, 2020, this Court summarily dismissed the case because Appellant's complaint did not implicate a state-created liberty or property interest. However, on appeal, the Court of Appeals determined Appellant had a property interest in his trust account from which the DNA fee was taken; therefore, summary



dismissal was inappropriate, and this Court had jurisdiction.¹ The Court of Appeals remanded the case for a hearing on the merits. Yet, the Court does not conduct hearings on the merits in inmate matters. *See Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Rather, the Court reviews these matters in “an appellate capacity.” *Id.* at 388, 527 S.E.2d at 754. Nonetheless, as a result of the decision being remanded, the Court sent a letter to the parties on September 27, 2022, allowing them to submit additional arguments. The Department filed a Motion to Supplement the Record on October 19, 2022. Appellant did not object to the Department’s request, and thus the motion is granted.² On November 2, 2022, Appellant filed his additional arguments, and the Department filed a Response on November 9, 2022.

ISSUE ON APPEAL

Did the Department err in charging Appellant for his DNA collection pursuant to section 23-3-670(A) of the South Carolina Code (Supp. 2021)?³

STANDARD OF REVIEW

The Court’s jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003). In *Al-Shabazz*, the court held the ALC’s jurisdiction in inmate appeals is

¹ It is notable that this Court had addressed the substantive issue in a footnote in its Order, stating:

Even if the Court had jurisdiction, Appellant’s argument is without merit. S.C. Code Ann. § 23-3-670(A) (Supp. 2019) provides that: “A person who is required to provide a sample pursuant to this article . . . **must** pay a two hundred fifty-dollar processing fee which **may not be waived** by the court. *See Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) (emphasis added) (“Under the rules of statutory interpretation, use of words such as “shall” or “must” indicates the legislature’s intent to enact a mandatory requirement.”). Furthermore, the DNA samples are not even taken by the Department but rather by other law enforcement agencies prior to conviction. *See* S.C. Code Ann. § 23-3-620(A). The Department is thus simply charged with collecting the fee for actions taken by another agency. Moreover, Appellant has not presented any evidence that his previous sample was determined to be suitable by SLED.

² The Department requested to supplement the Record to include an Affidavit of Debra Long as well as the Inmate Restitution display screens referenced in the affidavit to show that Appellant has only been charged once by the Department for his DNA testing.

³ Appellant raises other issues on appeal in his additional arguments filing, including: “[d]oes the funds that are gifted to Appellant and deposited on his inmate EH Cooper Trust account hold enough merit to be considered a state created liberty or property interest?”; “[d]id the ALC err in summarily dismissing Appellants appeal because his grievance did, in fact, implicate a protected property interest – his inmate trust account?”; “[d]id the ALC err in finding it did not have subject matter jurisdiction to hear the Appellant’s appeal?”; and “[d]oes the ALC have jurisdiction over all inmate grievances that have been properly filed?” These issues all relate to whether the Court has jurisdiction, and that issue has already been resolved by the Court of Appeal’s order. Therefore, the Court will not consider these issues.

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Attachment
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limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 382; 527 S.E.2d at 757.⁴ Furthermore, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2021) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Section 1-23-380(A)(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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) (Supp. 2021).

Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." *Id.* Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary, or affected by an error of law. *Id.*; *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492

⁴ In *Sullivan v. South Carolina Department of Corrections*, the Supreme Court also found that other conditions of confinement could potentially implicate state-created liberty interests. 355 S.C. 437, 586 S.E.2d 124 (2003). However, those interests are "generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 442, 586 S.E.2d at 126 (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)); *see also Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004).

(Ct. App. 1998). “‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

DISCUSSION

In Appellant’s additional arguments, he asserts the Department improperly charged him for the DNA processing fee twice for a total of \$500.00. Specifically, he argues his DNA had already been taken and the processing fee paid sometime between 2000-2003 when he was on probation in Anderson County, South Carolina, for a Burglary charge. He therefore claims the Department improperly took another sample and erroneously charged him for the processing fee again in 2016 for his current convictions. Because he was allegedly charged twice, he asserts his fifth and fourteenth amendment rights were violated. Appellant attached documents to support his arguments, including an affidavit and his sentencing sheet from 2000. However, Court’s review is confined to the Record; therefore, the Court cannot consider the documents attached to this filing. S.C. Code Ann. § 1-23-380(4) (Supp. 2021) (“The review . . . must be confined to the record.”); SCALC Rule 36(G) (“The Administrative Law Judge will not consider any fact which does not appear in the Record.”); Rule 210(c), SCACR (explaining a record on appeal “shall not, however, include matter which was not presented to the lower court or tribunal”).

In contrast, the Department argues Appellant was properly charged for the fee. It contends Appellant has presented no documentation to support his claim that he paid for a DNA test in 2000-2003 other than his own affidavit—an assertion the Department does not find credible. Rather, the Department asserts it charged Appellant one processing fee for a DNA sample taken as a result of his current offenses.

Section 23-3-620 governs the collection of DNA and provides that:

(A) Following a lawful custodial arrest, the service of a courtesy summons, or a direct indictment for:

- (1) a felony offense or an offense that is punishable by a sentence of five years or more; or

Attachment F

(2) eavesdropping, peeping, or stalking, any of which are committed in this State, a person, except for any juvenile, arrested or ordered by a court must provide a saliva or tissue sample from which DNA may be obtained for inclusion in the State DNA Database. Additionally, any person, including any juvenile, ordered to do so by a court, and any juvenile convicted or adjudicated delinquent for an offense contained in items (1) or (2), must provide a saliva or tissue sample from which DNA may be obtained for inclusion in the State DNA Database.

This sample must be taken at a jail, sheriff's office that serves a courtesy summons, courthouse where a direct presentment indictment is served, or detention facility at the time the person is booked and processed into the jail or detention facility following the custodial arrest, or other location when the taking of fingerprints is required prior to a conviction. The sample must be submitted to SLED as directed by SLED. If appropriately trained personnel are not available to take a sample from which DNA may be obtained, the failure of the arrested person to provide a DNA sample shall not be the sole basis for refusal to release the person from custody. An arrested person who is released from custody before providing a DNA sample must provide a DNA sample at a location specified by the law enforcement agency with jurisdiction over the offense on or before the first court appearance.

* * *

(D) Unless a sample has already been provided pursuant to the provisions of subsection (A), before a person is released from confinement or released from the agency's jurisdiction, a suitable sample from which DNA may be obtained for inclusion in the State DNA Database must be provided as a condition of probation or parole.

S.C. Code Ann. § 23-3-620 (Supp. 2021). Meanwhile, section 23-3-670 further provides that:

(A) The cost of collection supplies for processing a sample pursuant to this article must be paid by the general fund of the State. A person who is required to provide 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 waived by the court. However:

(1) if the person is incarcerated, the fee must be paid before the person is paroled or released from confinement and may be garnished from wages the person earns while incarcerated; and

(2) if the person is not sentenced to a term of confinement, payment of the fee must be a condition of the person's sentence and may be paid in installments if so ordered by the court.

SC. Code Ann. § 23-3-670(A) (Supp. 2021) (emphasis added). *See Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) (“Under the rules of statutory interpretation, use of words such as “shall” or “must” indicates the legislature's intent to enact a mandatory requirement.”).

Attachment F

Here, despite Appellant's allegations that his DNA was collected and invoiced twice, the Record only shows the Department collected one sample of Appellant's DNA sample in 2016 and charged Appellant the \$250 processing fee in March 2016. Additionally, the Record shows the \$250 fee was collected through a series of thirty-eight deductions from Appellant's account, with the first deduction in April 2016 and the last in May 2018. Furthermore, even if a sample had been taken twice from Appellant, subsection (E) of the statute provides that "a person may be required to submit another sample if the original sample is lost, damaged, contaminated, or unusable for examination prior to the creation of a DNA record or DNA profile suitable for inclusion in the State DNA Database." S.C. Code Ann. § 23-3-670(E) (Supp. 2021). Appellant acknowledges subsection (E) but maintains there was "no need for a second sample or processing fee." Appellant has not presented any evidence that if a sample was taken in 2000-2003, it was determined to be suitable by SLED. Nonetheless, there is no documentation in the Record that shows a previous sample and processing fee was taken from Appellant while he was serving a five-year probation sentence in 2000-2003.

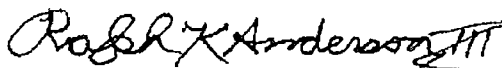
In sum, Appellant failed to carry his burden of proving that the Department improperly charged him for his DNA collection; therefore, the Department's decision must be affirmed. *See Porter*, 333 S.C. at 20, 507 S.E.2d at 332 (holding "the party challenging [an administrative agency's] order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record.").

ORDER

For the reasons set forth in this Order,

IT IS HEREBY ORDERED that the Department's final agency decision is **AFFIRMED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 5, 2022
Columbia, South Carolina

Attachment
E

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

December 5, 2022
Columbia, South Carolina

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

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

APPELLATE CASE NO. 2022-001765 **RECEIVED**
FEB 03 2023

James Millholland 367569

SC Court of Appeals

Appellant

v.

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

James Millholland
James Millholland 367569
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RECEIVED

FEB 03 2023

SC Court of Appeals

January 30, 2023

Jenny A. Kitchings, clerk
SC Court of Appeals
PO Box 111629
Columbia, SC 29211

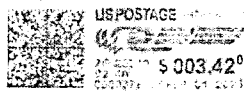
Re: James Millholland 367569 v S.C.D.C.
Appellate Case No. 2022-001765

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.

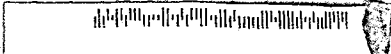
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FEB 03 2023
SC Court of Appeals

South Carolina Court of Appeals
% Jenny Abbott Kitchings, Clerk
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LEGAL MAIL