

STATE OF SOUTH CAROLINA
In The Court of Appeals

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

ALC Case No. 19-ALJ-04-0492-AP-A
APPELLATE CASE NO. 2022-001765

James Millholland 367569 Appellant
v.
South Carolina Department of Corrections Respondent

"INITIAL" REPLY BRIEF
OF APPELLANT

RECEIVED

APR 12 2023

SC Court of Appeals

James Millholland 367569
Appellant

Allendale C.I./BHU-MA221
PO Box 1151
Fairfax, SC 29827

STATE OF SOUTH CAROLINA
In The Court of Appeals

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

ALC Case No. 19-ALJ-04-0492-AP-A
APPELLATE Case No. 2022-001765

James Millholland 367569

Appellant

v.

South Carolina Department of Corrections

Respondent

"INITIAL" REPLY BRIEF
OF APPELLANT

RECEIVED

APR 12 2023

SC Court of Appeals

Table of Contents

Table of Contents	p. II
Table of Authorities	p. III, § IIII
Statement of Issue(s) on Appeal	p. 3
Statement of The Case	p. 1 & 2
Standard of Review	p. 4 & 5
Arguments	p. 6-10
Conclusion	p. 10 & 11
Certificate of Compliance	p. 12

Table of Authorities

South Carolina Cases:

1. Al-Shabazz v. State, 338 S.C. 354 at 381, 527 S.E. 2d 742 at 761 p. 5
2. Brown v. Bilo, Inc. 341 S.C. 611 at 614, 535 S.E. 2d 826 at 828 (1996) p. 4
3. Furtick v. S.C. Dept. of Corr., 374 S.C. 344, 340, 649 S.E. 2d 35, 38 (2007) p. 9
4. Hamm v. S.C. Public Service Comm'n. 309 S.C. 295 422 S.E. 2d, 118 (1982) p. 4
5. Heater of Seabrook, Inc. v. S.C. Public Service Comm'n. 324 S.C. 56 at 60, 478 S.E. 2d 826 at 828 (1996) p. 4
6. Howard v. S.C. Dept. of Corr., 399 S.C. 618, 733 S.E. 2d 211 (2012) p. 9
7. Kiawah Dev. Partners, II v. S.C. Dept. of Health and Env'tl. Control, 411 S.C. 16, 28, 766 S.E. 2d 707, 715, (2014) p. 9

8. Ogburn-Mathews v. Loblolly Brothers, 332 S.C. 551, 505, se. 2d. 603 (Ct. App. 1998) p. 5

9. Skipper v. S.C.D.C. 370 S.C. 267, 635, 370 S.C. 267, 635 se. 2d. 910 p. 4

10. Slezak v. S.C. Dept. of Corr., 361 S.C. 327, 331, 605 S.E. 2d. 506, 508 (2004) p. 9

11. Trisha v. S.C. Dept. of Health & Environmental Control 292 S.C. 190, 335 se. 2d. 531 (1987) p. 4

Federal Cases:

1: Quick, 754 F.2d at 1523 p. 9

Constitutional Cases:

1. Board of Regents v. Horowitz, 435 U.S. 78, 98 5 Ct. 948 (1978) p. 5

Other Authorities

1. S.C. Code Ann. § 23-3-620 p. 6 & 7

2. S.C. Code Ann. § 23-3-670 p. 6, 7, & 8

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 \$250⁰⁰ 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 then 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 Remittitur 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 Honorable Ralph K. Anderson III was issued on Sept. 27, 2022. Appellant responded on October 4, 2022 within the allotted (30) days, giving notice that he would in fact like to file additional arguments. Appellant's Additional Arguments was filed with the ALC on October 18, 2022. And again the ALC ordered this case to be dismissed on December 5, 2022. Appellant then mailed his second Notice of Appeal and Motion to Proceed In Forma Pauperis back to the S.C. Court of Appeals on December 12, 2022.

Issue(s) Present

1. Does the funds that are gifted to Appellant on deposit in his inmate EH Cooper Trust account hold enough merit to be considered a state created liberty or property interest?
2. Did the ALC error by not holding the hearing to determine the merits of this case as ordered by the Court of Appeals?
3. Did the ALC error in summarily dismissing Appellants first appeal stating his grievance 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 \$250 processing fee two times, totaling the amount paid to \$500. Or did S.C.D.C error 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 error in finding it did not have subject matter 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 sufficient to warrant due process protections of the 14th Amendment. Skipper 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 Service Comm'n. 324 S.C. 56 at 60, 478 Se.2d. 826 at 828 (1996) substantial evidence is relevant 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. Triska 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 Brothers 332 S.C. 551, 505 Se. 2d. 603 (Ct. App. 1998) while administrative agencies generally have little or no discretion 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.

Argument

I

Appellants argument throughout this entire process has been simple and to the point. On January 20, 2020 Appellant was sentenced to fifteen (15) years suspended to five (5) years probation in Anderson County, SC for the charge of Burglary 2nd. As the Respondent stated "According to S.C. Code § 23-3-620, Following a lawful custodial arrest, the service of a courtesy summons, or direct indictment for a felony offense or an offense that is punishable by a sentence of five years or more, the offender " must provide a saliva or tissue sample from which DNA may be obtained for inclusion in the State DNA Database." Appellant provided to SLED his suitable sample of Blood DNA at the Anderson County Probation during the years of 2000-2003, while serving his sentence, as a condition of his sentence/probation.

To add, pursuant to S.C. Code § 23-3-670, " a person who is required to provide a sample pursuant to this article, upon conviction, pleading guilty, nolo contendere, or forfeiting bond must pay a two hundred fifty dollar processing fee which may not be waived by the court. You see, not only did the Appellant give his suitable sample of DNA but he also paid SLED the two hundred fifty dollar processing fee through the Anderson County Pro-

bation office in the years of 2000-2003. The Law is clear, S.C. Code Ann. § 23-3-670 "note" (a) However: (If the person is not sentenced to a term of confinement, payment of the fee Must be a condition of the persons sentence...) Appellant met all the requirements of the States DNA Law and fulfilled all of its obligations while serving on probation as a condition of his sentence for a violent crime.

II

Unfortunately, Appellant was sentenced to another felony offense in 2015 & 2016, to include trafficking Cocaine, and sentenced to a term of (9) nine years in the S.C.D.C.. Upon admission into the S.C.D.C., the Department, for the Appellants second time, administered the DNA Law and confiscated more blood samples for DNA, to be included in the States DNA Database and confiscated another \$250 processing fee. This should have never happened and is an error on the S.C.D.C. The DNA statute is a one time obligation both the collection of a suitable sample and the payment of the \$250 processing fee. The Law is clear and needs no interpretation. S.C. Code Ann. § 23-3-620 (d) states (... unless a sample has already been provided pursuant to the subsection A.) This is where the Department made its error. You see, Appellant already provided his sample pur-

suant to the subsection A as a condition of his probation sentence for Burglary 2nd in Anderson County at the probation office in 2000-2003. The Appellant also paid the required processing fee in the amount of \$250 as a condition of his sentence. Again the Law is clear S.C. Code Ann. § 23-3-670 ("payment of the fee must be a condition of the persons sentence".) Therefore S.C.D.C. erred by taking the second sample of DNA and erred when it charged Appellant another \$250 processing fee. This is a \$250 processing fee. No where in the statute does it state this processing fee cost (\$500) five hundred dollars, that which was taxed to the Appellant NOTE: While the statute does not prohibit more than one sample by different agencies at different times, it does make it very clear that no second sample or processing fee is required... S.C. Code Ann. § 23-3-670 (E) ("... unless the original sample was lost, damaged, contaminated, or unusable for examination..") And not once have the Respondents raised the issue of Appellants original sample from 2000-2003 that SLED collected at the Anderson County probation office being lost, damaged, contaminated, or unusable for examination.

III

To close, this case has already been before this

Court as Appellate Case No. 2020-000521, which was reversed and remanded back to the ALC on August 8, 2022 to hold a hearing on the merits of the case and decide what process is due. The S.C. Court of Appeals ruled that the ALC erred in finding it did not have subject matter jurisdiction to hear Appellants appeal. See Furtick v. S.C. Dept. of Corr., 374 S.C. 344, 340, 649, S.E. 2d 35, 38 (2007) ("[T]he ALC has jurisdiction over all inmate grievances 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. Dept. of Corr., 399 S.C. 618, 733 S.E. 2d 211 (2012); Slezak v. S.C. Dept. of Corr., 361 S.C. 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"); 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, this Court found the ALC erred in failing to hold a hearing to determine whether Appellants due process rights were violated 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") Thus,

Appellate Case No. 2020-000521 was reversed and remanded to the ALC for a hearing on the merits. Instead of holding this hearing and deciding what process was due, the ALC, only continued violating the Appellants 5th and 14th Amendment Rights with yet another Order of Dismissal. There seems to be no due process rights nor justice for the "little people". This brings us to this point which is now named Appellate Case No. 2022-001765.

Conclusion

WHEREFORE,

Appellant prays that this Court will grant the following: 1. That the \$250⁰⁰ the S.C.D.C. illegally seized be returned back to Appellant with interest and be back dated to March 2016, when the first deduction of money was made by the Respondents to his EIT Cooper Trust Account. 2. That a system be put in place that would confirm between S.C.D.C. and SLED if an inmates suitable sample of DNA has been submitted and/or if the \$250⁰⁰ processing fee has been paid previously upon entering the S.C.D.C. 3. and that this Court award the Appellant with punitive damages for the physical, mental, emotional, and financial burden of depriving him of his rightfully owned property since 2016, in an amount to be determined by the

RECVT IVAT

Court and for all relief this Court deems just and proper.

Respectfully Submitted,

X James Millholland

James Millholland 367569
Allendale C.I./RHU-MA221
PO Box 1151
Fairfax, SC 29827

April 7
Fairfax, SC

,2023

CERTIFICATE
OF
COMPLIANCE

I James Millholland hereby certify that this [INITIAL]
Reply Brief of Appellant complies with Rule 208(b)
SCACR and with Rule 267(a) SCACR

Respectfully Submitted,

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

April 7
Fairfax, SC

,2023

RECEIVED

APR 12 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 12 2023

SC Court of Appeals

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

APPELLATE CASE NO. 2022-001765

James Millholland 367569

Appellant

v.

South Carolina Department of Corrections

Respondent

PROOF OF SERVICE

I James Millholland, pro-se, Appellant hereby certify that I have this date served this [Initial] Reply Brief of Appellant on S.C.D.C. at PO Box ²¹⁷⁸⁷ 4444 Broad River Rd, Columbia, SC 29221 by depositing a copy hereof in the United States mail with postage pre-paid.

April 7, 2023
Fairfax, SC

X James Millholland
James Millholland 367569
Allendale, O.I.
PO Box 1151
Fairfax, SC 29827

James Millholland 367569
A.C.I. / RHU-MA 221
PO Box 1151
Fairfax, SC 29827

RECEIVED

April 6, 2023

APR 12 2023
SC Court of Appeals

Jenny A. Kitchings, Clerk
S.C. Court of Appeals
Columbia, SC 29211
PO Box 11629

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

Dear Ms. Kitchings;

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

James Millholland

James M. Millholland 367569
Allendale C.I./RHU-MA 221
1057 Revolutionary Trail
PO Box 1151
Fairfax, SC 29827



RECEIVED

APR 12 2023
SC Court of Appeals

The Honorable Jenny Kitchings
S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

"In House"

LEGAL MAIL Legal mail

