STATE OF SOUTH CAROLINA
In The Court of Appeals

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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

[FINAL] BRIEF OF APPELLANT

James Millholland 367569
Pro-se Appellant

Allendale C.I/F1A08
1057 Revolutionary Trail
PO Box 1151
Fairfax, SC 29827

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1. Board of Regents V. Horowitz, 435 U.S. 78, 98, 5 Ct. 948 (1978) pg. 5&6

2. Board of Regents of State Colleges V. Roth, 408 U.S. 564, 569 (1972) pg. 10

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1. S.C. Code Ann. § 23-3-620 pg 10

2. S.C. Code Ann. § 23-3-670 pg. 7, 8, &13

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 which was denied by Warden Newton on July 17, 2019 (R.p.17) Following denial of Step 1, the Appellant submitted his Step 2 Grievance on July 25, 2019, which was denied on Sept. 9, 2019 (R.p.18) 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. (R.p.19) This appeal was denied on March 4, 2020 (R.p.1-4) This appeal was then appealed to the South Carolina Court of Appeals on March 15, 2020 (R.p.) 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 (R.p.102-103) which was denied on June 22, 2022 by the S.C. Court of Appeals (R.p.9) The COA issued the Remititur on August 4, 2022 (R.p.5-8) Lastly the ALC, failed to comply with the Order passed down from the COA. Appellant recieved 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 received/issued on Sept. 27, 2022. (R.p. 160-161) Appellant responded on October 4, 2022 within the alloted (30) days giving notice that he would in fact like to file additional arguments (R.p. 162-164) Appellants Additional Arguments was filed with the ALC on October 18, 2022 (R.p. 104-128) And again the ALC ordered this case to be dismissed on December 5, 2022. (R.p. 10-16) Appellant then mailed his 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 (R.p. 133-137) The new case no. is #2022-001765, Millholland v. S.C.D.C. and the Motion To Proceed In Forma Pauperis was approved on Jonuary 25, 2023.

Issue(s) Present

1. Does the funds that are gifted to Appellant on deposit in his inmate Elt 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 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 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 Segbrook, Inc. V. S.C. Public Service Comm'n. 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 Enviromental 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, S Ct. 948 (1978) Cogburn-Mathews V. Loblolly Partners, 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-Shabozz 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 (R.p.1-4) 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) However:((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 alldong because he was required by this same DNA law to provide a suitable sample to S.LED while serving a five year probation sentence in Anderson County, South Carolina for the charge of Burglary during the years of 2000-2003. (R.p.169-172) As stated in previous claims; A nurse come to the Anderson County Probation Office in the company of SLED and collected a suitable sample of blood from the Appellant, to be included in the States DNA Database and they also collected a $250 processing fee at the time of service (R.p. 17-19, 23, 28, 35, 74) This processing fee had to be paid as a condition of probation a stated in S.C. Code Ann.§ 23-3-670 (... payment of the fee must

be a condition of the persons 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. (R.p.169-172) Clearly the Anderson County Probation Office and SLED 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 SLED several hand written letters (R.p. 165-166) asking for documentation of his DNA being submitted in the year of 2000-2003. To this day SLED has not given any response and 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..)(R.p.2) To confirm this statement is false, all you have to do 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 be assumed innocent or before being

found guilty. Websters dictionary defines the word "prior" as being before.

Footnote 2, is again incorrect when it states that "DNA samples are not even taken by the "Department" but rather by other law enforcement agencies (R.p.2) Note: (please see letter of Judge Anderson III, concerning footnote 2, R.p.160) when in fact the "Department" actually did collect a sample of blood DNA from the Appellant. As Appellant has claimed throughout this entire process, a nurse employed by the S.C. Department of Corrections collected this second 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 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 a second time. (R.p.152-159) This is where the mistake was made. Since there is no system in place between SLED and SCDC to know or be able to confirm whether a suitable sample of DNA has been collected and if the required $250 processing fee has already been paid, the Department errered when it automatically administered the DNA requirement for a second time when SLED had previously fulfilled this obligation in 2000-2003. You see, the Appellants 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 Buglary in the years of 2000-2003 (R.p.173) To add the States DNA law is clear and needs no interpetation S.C. Code Anns 23-3-620(D) (. unless a sample has already been provided to the subsection (A)). And not once has the respondents thoughout this entire process denied that the Appellants suitable sample of DNA and the required $250 processing fee was previously paid before his entering S.C.DC. 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. SCDC 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 (R.p. 10-16).

III

Also, the Respondents have asserted there has been no state created liberty or property interest raised in the Appellants claims (R.p. 138-142). But the S.C. Court of Appeals found the ALC erred in summary dismissing Appellants appeal based on these grounds because his grievances did implicate a protected property interest (R. p. 17-19)(Rp.5-8) 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 deposit 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 states that the ALC does not have jurisdiction to hear the Appellant's appeal (R.p. 2 & 160-161) but the S.C. Court of Appeals ruled that it does. The Court of Appeals (COA) ruled that the Appellants 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 (R.p.7) See Furtick V. S.C. Department of Corrections, 374 S.C. 334, 340, 649, Se. 2d 35, 38 (2007) " The ALC has juris-

diction 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 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', 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" Accordinly the COA found the ALC erred in failing to hold a hearing to determine whether Appellants due process rights were violated (R.p.5-8) 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 (R.p 5-8) Unfortunately, the ALC dismissed Appellants cry for relief a second time. (R.p. 10-16) 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 decision to violate the Appellants rights to due process, yet again.

V

To close, SCDC erred when it charged Appellant his second $250 DNA processing fee totaling his sum amount to $500. 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 (6) six years now (R.p.143-151) causing him great mental, physical, and emotional pain/distress. Moreover the ALCs Order of Dismissal, Footnote 2 (R.p. 2 $160) states "Appellant has not presented any evidence that his previous sample was determined to be suitable by SLED". If it pleases the Court, Appellant would like to insert that the Respondent has not presented any evidence that his previous sample was determined not to be suitable by SLED, nor have the Respondents presented any evidence that the Appellants previous sample from the years of 2000-2003 that was included in the States Database, has been determined by SLED to be lost or contaminated. The DNA statute is clear and unambiguous. There is no collection of a second sample of DNA processing to be administered ".. unless the original sample was lost or contaminated". The SCDC made an error of law when it collected the second sample of DNA and charged the Appellant his second $250 processing fee in 2016 because his original sample has never been submitted as stated in S.C. Code Ann. §23-3-670(E) "... lost, damaged, contaminated, or unusable for examination.." The Appellant's DNA obligation (the collection and payment of $250) was fulfilled while serving a probation sentence in Anderson County as a condition of his

sentence in 2000-2003

Conclusion

WHEREFORE,

Appellant prays that this Court will grant the following: That the $250 the S.C.D.C. illegally seized be returned back to the Appellant with interest and be back dated to March 2016 when the first deduction of money was made by the Respondents to his E.H. Cooper Trust Account (R.p. 152-159) and for all relief this Court deems just and proper.

Respectfully Submitted,

James Millholland 367569
Allendale C.I./F1A08
1057 Revolutionary Trail
PO Box 1151
Fairfax, SC 29827

May 15, 2023

CERTIFICATE OF COMPLIANCE

I, James Millholland, hereby certify that this [FINAL] Brief of Appellant complies with Rule (208)(b) and with Rule (267)(A) SCACR.

Respectfully Submitted,

X James Millholland

James Millholland 367569
Allendale C.I. / F1A08
1057 Revolutionary Trail
PO Box 1151
Fairfax, SC 29827

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