

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

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MAY 19 2023

SC Court of Appeals

APPELLATE CASE No. 2022-001765

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James Millholland 367569

Appellant

v.

South Carolina Dept. of Corrections

Respondent

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"FINAL" REPLY BRIEF OF  
APPELLANT

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James Millholland

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Pro-Se Appellant

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## South Carolina Cases:

1. Al-Shabazz v. State, 338 S.C. 354 at 381, 527, Se. 2d 742 at 761 p.4
2. Brown v. Bilo Inc., 341 S.C. 611 at 614, 535 Se. 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.7
4. Hamm v. S.C. Public Service Comm'n., 309 S.C. 295, 422 Se. 2d. 118 (1982) p.4
5. Heater of Seabrook, Inc. v. S.C. Public Service Commn., 324 S.C. 56 at 60, 478 Se. 2d. 826 at 828 (1996) p.4
6. Howard v. SC. Dept. of Corr., 399 S.C. 618, 733, S.E. 2d 211 (2012) p.7
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.7
8. Ogburn-Mathews v. Loblolly Partners, 332 S.C. 55, 505 Se. 2d. 603 ( Ct. App. 1998) p.4

9. Skipper v. S.C.D.C. 370 S.C. 267, 635, Se. 2d. 910 (Ct. App 2006) p. 4

10. Slezak v. S.C. Dept. of Corr., 361 S.C. 327, 331, 605 S.E. 2d. 506, 508 (2004) p. 7

11. Triska 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. 7

### Constitutional Cases:

1. Board of Regents v. Horowitz, 435 U.S. 78, 98, 5 Ct. 948 (1978) p. 4

### Other Authorities:

1. S.C. Code Ann § 23-3-620 p. 5 & 6

2. S.C. Code Ann § 23-3-670 p. 5 & 6

# 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<sup>00</sup> which was denied by Warden Newton on July 17, 2019 (A.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 (A.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 (A.p.19). This appeal was denied on March 4, 2020 (A.p.1-4) Then this case was appealed to the South Carolina Court of Appeals on March 15, 2020 (A.p.6) 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 (A.p.102-103) which was denied on June 22, 2022 by the S.C. Court of Appeals (A.p.9) The COA issued the Remittitur on August 4, 2022 (A.p. 5-8) Lastly the Administrative Law Court failed to comply with the order passed down from the Court of Appeals. Appellant recieved a letter from the ALC stating they already ruled in the matter at hand but give the parties involved (30) thirty 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 (A.p.160-161) Appellant responded on October 4, 2022 within the allotted (30) days, giving notice that he would in fact like to file additional arguments. (A.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 second Notice of Appeal and Motion to Proceed In Forma Pauperis back to the S.C. Court of Appeals on December 12, 2022 (R.p 133-137)

## Issue(s) Present

1. Does the funds that are gifted to Appellant on deposit in his 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 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 S.E.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 S.E.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 Commn. 324 S.C. 56 at 60, 478 S.E.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, S.E.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, S.E.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, S.E.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-Shabbaz v. State 338 S.C. 354 at 381, 527 S.E.2d. 742 at 761

# Argument

## I.

Appellants argument throughout this entire process has been simple and to the point (R.p. 11-19) On January 20, 2000, Appellant was sentenced to (15) Fifteen years suspended to (5) Five years probation in Anderson County, SC for the charge of Burglary 2nd (R.p. 169-172). As the Respondent stated "According to S.C. Code Ann. § 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 Office during the years of 2000-2003, while serving his sentence as a condition of probation (R.p. 173) To add, pursuant to S.C. Code Ann. § 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 through the Anderson County Probation office in the years of 2000-2003. (R.p. 173) 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. (R.p. 173)

## 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 another \$250 processing fee (R.p 152-158) 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 had already provided his sample pursuant to the subsection "A", as a condition of his probation sentence for Burglary 2nd in Anderson County at the probation office in the years of 2000-2003. The Appellant also paid the required processing fee in the amount of \$250 as a condition of his sentence (R.p. 169-172) 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. errored by taking the second sample of DNA and errored 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 was 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 App-

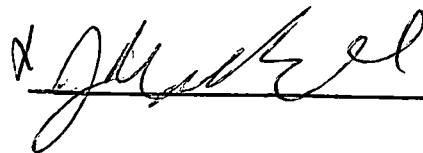
ellate Case No. 2020-000521 (R.p. 69-78, 79-91) which was reversed and remanded back to the ALC on August 8, 2022 (R.p. 5-8) to hold a hearing on the merits of the case and decide what process is due. The S.C. Court of Appeals ruled that the ALC erred in finding it did not have subject matter jurisdiction 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 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. 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 (R.p. 5-8) See Kiawah Dev. Partners v. S.C. Dept. 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, Appellate Case No. 2020-000521 was reversed and remanded to the ALC for a hearing on the merits (R.p. 5-8) Instead of holding this hearing and deciding what process was due, the ALC, only continued violating the Appellants 5<sup>th</sup> and 14<sup>th</sup> Amendment Rights with yet another Order of Dismissal (R.p. 10-16) 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 foll-

owing: That the \$250 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 E.H. Cooper Trust Account and for all relief this Court deems just and proper.

Respectfully Submitted,



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May 16, 2023

CERTIFICATE  
OF  
COMPLIANCE

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

Respectfully Submitted,

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