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-A-AP
Appellate Case No. 2022-001765

JAMES MILLHOLLAND, # 367569,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Kensey Evans
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. **DID THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRM THE DEPARTMENT OF CORRECTIONS' COLLECTION OF HIS DNA PROCESSING FEE?**

II. **DID THE ADMINISTRATIVE LAW COURT ERR IN NOT HOLDING A HEARING ON THE MERITS?**

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of James Millholland, an inmate incarcerated with the Department of Corrections. On June 25, 2019, Appellant filed a Step One Grievance disputing deductions taken by SCDC for payment of a DNA processing fee. Appellant alleged this occurred in violation of policy because he alleges he previously paid $250.00 to the State Law Enforcement Division ("SLED") prior to these deductions, and he believed this should have been a one-time fee charged to him. Appellant's Step One Grievance was timely reviewed by the Warden and denied based on SCDC Policy OP 21.09: "Inmate Records Plan," whereby "the DNA database is administered under the direction of [SLED] . . . [and] any person incarcerated in SCDC who has been convicted of . . . any of the offenses identified in the DNA Statute will be required to provide a blood sample for inclusion into the State DNA Database" and be required to pay the associated $250.00 fee. Appellant then filed a Step Two Grievance in response to the Warden's decision on July 25, 2019 on the same basis. This grievance was denied by the reviewing Responsible Official on September 9, 2019. They informed Appellant that, although he believes the fee is a one-time fee, "[r]ecords indicate [Appellant was] admitted into SCDC as a New Admission on 03/26/16 . . . [and that n]ew admissions will be assessed the fee as required by SLED." R. p. 18.

Appellant filed a Notice of Appeal in the Administrative Law Court on September 25, 2019. Thereafter, on March 4, 2020, the Honorable Ralph K. Anderson, III issued an order granting the Department's Motion to Dismiss, dismissing Appellant's appeal with prejudice. On appeal, the Court of Appeals reversed and remanded the case for a hearing on the merits. The Administrative Law Court 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); R. p. 11; SC R ADMIN LAW CT Rule 64 (2009). However, additional arguments and supplemental records were accepted by the Administrative Law Court. The Administrative Law Court subsequently affirmed the Department's decision on December 5, 2022. Thereafter, Appellant filed this appeal on December 12, 2022.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

> The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (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).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (S.C. Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.*

ARGUMENT

As an initial matter, the only two issues properly before this Court are whether the Administrative Law Court correctly affirmed the Department regarding Appellant's DNA collection fee and whether the Administrative Law Court correctly decided to not hold a hearing on the merits. The additional issues Appellant presents in his Brief relate to the issue of the ALC's jurisdiction – an issue that was resolved by this Court's first Opinion. Therefore, the ALC did not rule on these issues, and they are not preserved for review. See R. p. 11, fn. 2; *see* App. Final Brief p. 3; *see also State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004) (in order for an issue to be preserved for appellate review, the issue must have been raised to and ruled upon below).

I. THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DEPARTMENT OF CORRECTIONS' COLLECTION OF HIS DNA PROCESSING FEE.

According to S.C. § Code 23-3-620, following a lawful custodial arrest, the service of a courtesy summons, or a 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." S.C. Code § 23-3-620 (A) (emphasis added). 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 or nolo contendere, or forfeiting bond, **must** pay a two hundred fifty dollar processing fee which may not be waived by the court." S.C. Code Ann. § 23-3-670(A) (emphasis added). 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."

S.C Code § 23-3-670 (A) (emphasis added).[1]

It is undisputed that Appellant was arrested and subsequently convicted in 2015 and 2016 of felony offenses, including trafficking in cocaine and several other offenses, and it is also undisputed that Appellant was sentenced to incarceration for these offenses. (*See* R. pp. 23-24). Therefore, pursuant to S.C. Code § 23-3-620 (A), Appellant was required to submit a DNA sample in relation to these offenses, and pursuant to S.C. Code § 23-3-670 (A), Respondent was required to collect the processing fee of two-hundred-and-fifty-dollars during Appellant's incarceration for these offenses. As evidenced by the documentation submitted by Respondent to the ALC, Respondent collected this processing fee only once. (*See* R. pp. 152-159; *See* Supp. R. p. 1).

Appellant argued below that a previous DNA sample had been taken from him over twenty years ago in Anderson County and that he already paid a $250.00 fee. (*See* App. Initial Brief p. 6). The ALC found that there was no credible evidence to support these assertions in the record. (*See* R. p. 7). Furthermore, the ALC also found that Appellant failed to show that even if a sample had been taken, it was suitable or actually included in the State DNA Database. (*See* R. p. 16). Accordingly, the Administrative Law Court properly concluded that "Appellant failed to carry his burden of providing that the Department improperly charged him for this DNA collection." (*Id.*)

II. THE ADMINISTRATIVE LAW COURT DID NOT ERR IN NOT HOLDING A HEARING ON THE MERITS.

Appellant claims that the Administrative Law Court erred in not holding a hearing

[1] Notably, nothing in the statutes specifically prohibits more than one sample collection and fee or sample collections by difference agencies at different times. S.C. Code § 23-3-620 and to S.C. Code § 23-3-670.

on the merits of his case. (*See* App. Initial Brief, pp. 11-12). To the contrary, the Administrative Law "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); (*See* R. p. 11). Rather, the Court reviews these matters in "an appellate capacity." *Id.* at 388, 527 S.E.2d at 754; *Id.* Further, Rule 64 of the South Carolina Administrative Law Court Rules states that "[i]n the discretion of the Administrative Law Judge, oral argument may not be required. Oral argument will ordinarily not be ordered by the Administrative Law Judge unless the proceeding involves a novel issue or a question of exceptional importance." S.C. R. Admin Law Ct. Rule 64 (2009). The Administrative Law Judge appropriately exercised his discretion in not requiring oral arguments and did not err in not holding a hearing on the merits.

CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Kensey Evans
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

September 25, 2023