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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Brian Diggs, #248964)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
)

Docket No. 16-ALJ-04-0559-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Mack James Paul, Jr. (Appellant), an inmate housed with the South Carolina Department of Corrections (Department or SCDC). Appellant argues that the Department's withdrawal of funds from his E.B. Trust Fund Account to pay for a Deoxyribonucleic Acid (DNA) processing fee (DNA fee or fee) violates the Takings Clause of the Fifth Amendment to the United States and South Carolina Constitutions and his due process rights under the Fourteenth Amendment to the United States Constitution because it deprives him of his personal funds, in which he has a state-created property interest, without his consent.

On March 10, 2016, Appellant filed his Step 1 Grievance objecting to deduction of funds from his personal (E.H. Cooper) account to pay towards the DNA fee. He argued that he had a protected property and liberty interest in the funds in his account and that the removal of those funds violated the Takings Clause of the Fifth Amendment. After the Warden denied the grievance, Appellant filed a Step 2 Grievance, which was also denied. Appellant filed his Notice of Appeal on July 18, 2016. The Notice of Assignment was filed August 4, 2016. The Record on Appeal was filed October 10, 2016. On October 18, 2016, Appellant filed a "Brief in Support of

FILED

December 29, 2016

SC ADMIN. LAW COURT

Notice of Appeal.”¹ On November 17, 2016, the Department filed its brief.² On December 12, 2016, Appellant untimely filed his reply brief.³

DISCUSSION

As an initial matter, this Court must determine whether it has subject matter jurisdiction to decide this case. In his Notice of Appeal, and throughout his appeal, Appellant has challenged the constitutionality, pursuant to the Takings Clause of the Fifth Amendment to the United States and South Carolina Constitutions and the Fourteenth Amendment to the United States Constitution, of SCDC Policy ADM-15.12, “E.H. Cooper Trust Fund” and its authorization to deduct a \$250 DNA fee pursuant to S.C. Code Ann. § 23-3-670(A) (Supp. 2016). Indeed, Appellant refers repeatedly to the illegality of the “\$250.00 that has been removed from [his] personal account.” However, according to the Warden’s response to Appellant’s Step 1 Grievance, Appellant still has a balance had a balance of \$50.34.⁴ Also, in his Step 1 Grievance, Appellant was “contesting **all/or any deduction** (sic) that have been subtracted from [his] personal money by the South Carolina Dept. of Correction (sic) for D.N.A. . . .” (Emphasis added). Moreover, in his Notice of Appeal, Appellant stated that he was “contesting **all or any deductions that have been made for DNA** by SCDC . . .” and “**objects and contest** (sic) **SCDC policy ADM-15.12 E.H. Cooper Trust** which authorizes SCDC to deduct \$250.00 for South Carolina Law Enforcement Division SLED data-base (sic).” (Emphasis added). Thus, Appellant’s challenge is not to the manner in which the Department has been withdrawing funds from his E.H. Cooper account to pay the DNA fee but rather with the very notion of the Department taking \$250, or any amount of money, from his account to pay the fee. He argues that the withdrawal of this money violates his due process rights

¹ Notwithstanding the caption, the Court considers this document to be Appellant’s initial brief.

² Although the Court appreciates the efforts that the Department put into preparing attachments to its brief, the Court will **not** consider these documents in support of its arguments. Rather, the Court can only consider those documents contained within the Record on Appeal. See SCALC Rule 65 (“The Administrative Law Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record . . .”); see also S.C. Code Ann. § 1-23-610(B) (Supp. 2016) (“The review of the administrative law judge’s order must be confined to the record. . .”).

³ Pursuant to Rule 60(A) of the Rules of Procedure the Administrative Law Court, Appellant’s reply brief was due one hundred twenty (120) days after the date of assignment, or December 2, 2016. Because Appellant’s reply brief was filed on December 12, 2016, it was untimely and will thus not be considered by the Court.

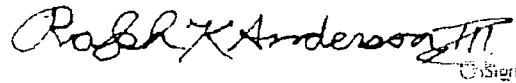
⁴ Because Appellant has a balance left on what he owes for the DNA fee, the Court would not grant the relief of \$250 that Appellant seeks in his brief were the Court to decide in his favor.

and the Takings Clause because it is done without his consent.⁵ Because Appellant has provided no arguments challenging or demonstrating the unconstitutionality of the actual method by which the Department is deducting funds to pay towards the DNA fee, his challenge is, in reality, a facial challenge to the SCDC Policy ADM-15.12 and, by extension, its authorizing statute, S.C. Code Ann. § 23-3-670(A). As such, this Court is without subject matter jurisdiction to consider his challenge. *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 38-39 (2011) (holding that the ALC can rule on as-applied challenges to statutes or regulations but not on facial challenges to the constitutionality thereof).

Since Appellant has presented a facial challenge to the constitutionality of the Department's policy of deducting funds for repayment of the DNA fee, which is a requirement established by S.C. Code Ann. § 23-3-670(A), the Court lacks subject matter jurisdiction to hear and decide this matter and must, therefore, dismiss it. *See McCain v. Brightharp*, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012) ("The lack of subject matter jurisdiction can be raised at any time . . . and can be raised *sua sponte* by the court."). Accordingly,

IT IS HEREBY ORDERED that Appellant's appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 29, 2016
Columbia, South Carolina

⁵ Though Appellant argues in his brief that "the means by which [the Department] deducts these funds do not give [a] way for appellant to object inasmuch as the funds are taken without proper consent or permission[.]" the Department is bound by the statutory requirement under Section 23-3-670(A) to collect funds for the DNA fee without regard to any consent given by the inmates. Thus, again, Appellant's problem is with the statute on its face, which requires the collection of funds regardless of an inmate's consent; he offers no argument against the actual method whereby the Department collects the funds.

Brian A. Diggs #248964
B.R.C.I. No. 260

February 7, 2017

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Columbia, S.C. 29210

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SC Court of Appeals

The South Carolina Court of Appeals

P.O. Box 11629

Columbia, S.C. 29210

Re: Brian Diggs #248964 v. S.C.D.C.
Appellate Case No. 2017-000164

Dear Clerk:

Enclosed is are the documents you requested with regards to my appellate: The Order of Dismissal signed by the Administrative Law Court; A proof of service showing that a copy has been served on the ATC pursuant to Rule 203 (b) (6) SCACR.

Please be aware that I received your letter ~~February~~ ^{February} 6th, 2017 and that I have made due diligence to correct these deficiencies within the allotted 10 days.

With best regards.

Yours truly

Brian Diggs