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SC Court of Appeals

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 Ronald Coulter, #300410)
 Plaintiff,)
 vs.)
 South Carolina Department of Corrections,)
 Defendant.)

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2006-CP-40-01252

**ORDER AFFIRMING DECISION OF
THE ADMINISTRATIVE LAW COURT**

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 RICHLAND COUNTY

This matter is before the undersigned pursuant to an appeal from the Administrative Law Court. Both parties having had an opportunity to present their positions in this matter at a hearing on June 9, 2016, I now affirm the findings of the ALC and dismiss this case with prejudice.

Plaintiff is an inmate incarcerated with the South Carolina Department of Corrections (SCDC). He has been incarcerated since March 11, 2004, after he was convicted of kidnapping. In his appeal to the ALC, filed February 8, 2005, Plaintiff contested SCDC's final decision to his grievance challenging the imposition of a mandatory \$250.00 fee for DNA processing. On January 20, 2006, the Honorable Carolyn C. Matthews issued an order dismissing Coulter's appeal on the grounds that Coulter had not been denied a state created liberty interest. This appeal followed.

I. DISMISSAL FOR INSUFFICIENT SERVICE OF PROCESS IS APPROPRIATE PURSUANT TO RULE 12(b)(5).

A civil action is commenced by filing a Summons and Complaint with the court. Then, the complaint and the summons must be served in accord with Rule 4(d)(5), SCRCF, on the defendants for the court to have jurisdiction over the defendants. Rule 4(d)(5), SCRCF, requires plaintiffs suing state officers, or agencies, to serve a copy of the Summons and Complaint to the officer or agency and the Attorney General by registered or certified mail. However, Plaintiff

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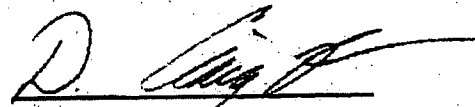
has not properly served Defendant. Defendant has not been served with any filings or pleadings, more specifically, the notice of appeal associated with this case. Therefore, dismissal is appropriate pursuant to Rule 12(b)(5), SCRPC.

II. THIS COURT, IN THE ALTERNATIVE, AFFIRMS THE FINDING OF THE ADMINISTRATIVE LAW COURT.

However, in the alternative, this Court affirms the finding of the ALC in that Appellant has not been deprived of a state created liberty or property interest. As Judge Matthew's stated in her order, Slezak v. S.C. Dep't of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004), is controlling in this matter. Appellant has no state created liberty or property interest in SCDC's enforcement of S.C. Code § 23-3-600 requiring him to pay a "processing fee" for required DNA testing. The requirement does not implicate a due process issue as required by Wolff v. McDonnell, 418 U.S. 539 (1974). The requirement does not present a significant hardship on the inmate; it does not affect the inmate's release date. See Sandin v. Connor, 515 U.S. 472 (1995). The Supreme Court of South Carolina has held, "[s]ummary dismissal may be appropriate where the inmate's grievance does not implicate a state-created liberty or property interest." Slezak v. S.C. Dep't of Corrections, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004).

Therefore, for the above reasons **IT IS HEREBY ORDERED** that the decision of the ALC is **AFFIRMED** and this appeal is dismissed.

AND IT IS SO ORDERED.



Hon. D. Craig Brown
Judge, Fifth Judicial Circuit

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