

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge
Case No:19-ALJ-04-0271-AP

Appellate Case No:2019-001628

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JAN 16 2020
SC Court of Appeals

Nathaniel Johnson, Jr. #211574,

Appellant,

v.

South Carolina Department of Corrections,

Respondent,

REPLY BRIEF IN RESPONSE TO THE BRIEF OF RESPONDENT

131 Nathaniel Johnson Jr. #211574

Mr. Nathaniel Johnson, Jr. #211574
ACI. Colleton Unit F-1 A#05
1057 Revolutionary Trail Hwy47
P.O. Box 1151
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Pro-Se Appellant

Imani Byas, Staff Attorney
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TABLE OF AUTHORITIES

CASES

* Eubanks v. S.C. Department of Corrections, et al 561, F.3d. 294 (4th. Cir. 2009).

* Lynce v. Mathis, 519 U.S. 433, 446-47 (1997)

STATUTES

Article#6 Sec § 73-61 State DNA Database (B)(1)(C), (B)(2)(b).

S.C. Const. & U.S. Constitution

S.C. art#1 Sec§4

S.C. art#1 Sec§23

S.C. art#12 Sec§2

U.S. Const. Fifth Amendment

U.S. Const. Fourteetn Amendment Sec§1

STATEMENT OF ISSUES ON APPEAL

1. Whether the decision of SCDC's policy OP-21.09, that authorized or enforced the taking of \$250.00 for DNA Fee prejudiced the substantial rights of the Appellant which constitutes a violation of State and Federal law?

2. Whether the establishment of taking \$250.00 for DNA Fee from the Appellant's E.H. Cooper Trust Fund Account to pay for what the jurisdictional agency is deemed to be responsible for, made or done upon an lawful procedure?

STATEMENT OF THE CASE

Same as the Initial Brief of the Appellant.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-600(5) Supp. 2016, Section § 1-23-380(5), provides the applicable standard of review:

The (ALC) Administrative Law Court sits in a appellate capacity under the (APA) S.C. Administrative Procedure Act, rather than as an independent finder of fact. The standard used by appellate bodies to review agency decisions is provided by the S.C. Code of laws mentioned above. The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on question of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the substantial rights of the Appellant have been prejudiced because of the Administrative findings, interference, conclusions, or decisions are:

- (a). in violation of constitutional or statutory provisions;
- (b). in excess of the statutory authority of the agency;
- (c). made upon an unlawful procedure;
- (d). affected by other errors of law;
- (e). Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and
- (f). arbitrary or capricious or characterized by abuse of discretion.

ARGUMENT

The Appellant's argument was based solely upon whether the decision of SCDC's policy OP-21.09, that authorized the taking of \$250.00 for DNA Fee prejudiced the Appellant and whether it violated State and Federal Law?

The Respondent filed its Initial Brief and in their response, they evaded the issue being raised by the Appellant. Their response was totally irrelevant to the issue.

The ALC stated, in its order that it lacked jurisdiction, holding that in order to obtain jurisdiction there must be a state-created liberty or protected property interest that exists when (1). an inmate is disciplined and punished or (2). when an inmate alleges that prison officials have erroneously calculated his sentence, sentence related credits, or custody status. See * Howard v. South Carolina Department of Corrections, 399 S.C. 618, 733 S.Ed.2d. 211 (2012).

The Respondent's argued whether the ALC properly dismissed the Appellant's claim because he failed to implicate a state-created liberty or a protected property interest. The Appellant, asserts that he did imply that his rights were violated by force to comply or have his freedom taken away for failure to comply. This practice amounts to a state-created liberty or a protected property interest. The Appellate, did everything he could to protect his freedom from restraint. But, instead he exercise his right to redress and protect his constitutional rights which have been violated. The Fifth and Fourteenth Amendment states, "NO STATE SHALL DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW".

Appellant alleges that SCDC forced the Appellant to consent to the taking the \$250.00 to pay the DNA Fee or be restrained or lock-up. Appellant was forced to be deprived of his freedom or his state-created liberty or protected property interest. The Appellant, respectfully asks this Court, to take full jurisdiction to decide the issues being raised on appeal, whether the procedure was done lawfully.

ARGUMENT CONTINUED

* Eubanks v. S.C. Department of Corrections, (In re DNA Ex Post Facto issues), 561, F.3d. 294, 301 (4th. Cir. 2009), Ex Post Facto Clause violation of State and Federal Law requiring inmates to pay \$250.00 for DNA Fee sampling.

* Lynce v. Mathis, 519 U.S. 433, 446-47 (1997), Ex Post Facto Clause violation when actual events unquestionably disadvantaged the inmate.

State DNA Database Article#6 Sec § 73-61 (B)(1)(c), Jurisdictional agencies will incur all costs associated with sample collections and completion of information in the database collection kits.

(B)(2)(b), The jurisdictional agency will be responsible for obtaining the recollection sample as described in subsection (B)(1)(c).

(C)(5), All costs associated with shipment and transportation of database collection kits are the responsibility of the jurisdictional agency.

Article#1 Sec §23, of the South Carolina Constitution thus "mandates" that the S.C. General Assembly establish institutions for the confinement of all persons convicted of such crimes "shall" provide for the custody, maintenance, health, welfare, education, and rehabilitation of all inmates.

Therefore, the Appellant, based his demand for an full reimbursement upon the Clauses of Article#12 Sec §2 of the S.C. Constitution.

The Appellant, would like to state, for the record, that he was under the (ADA Act) Americans with Disabilities Act, before being incarcerated for crimes that the Appellant, did not commit. Appellant, was a recipient receiving SSI on the 1st of the month, and receiving SSA Social Security every 3rd of month. The State deprived the Appellant, of Life, Liberty, and Property without proper due process. Since incarceration the Appellant, has paid \$200.00 per year for medical expenses for 13 years. Still maintaining his innocence while being delayed justice. Appellant, is currently litigating for his freedom, liberty, and justice.

CONCLUSION

WHEREFORE, the Appellant, prays that this Honorable Court, find in favor of the Appellant, and grant relief of an reversal with instructions of an further proceeding in this matter or whatever the court deems proper or available to the Appellant. If, the Court, finds that this practice is unconstitutional please order reimbursement to the Appellant, as a matter of law as justice is so required.

Dated: Mon. January 13th, 2020

Respectfully submitted,
/s/ Nathaniel Johnson Jr. #211574
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LEGAL MAIL

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Appellate Case No:2019-001628

Nathaniel Johnson, Jr. #211574,

Appellant,

V.

South Carolina Department of Corrections,

Respondent,

CERTIFICATE OF SERVICE

Undersigned Appellant, hereby certifies that on this 13th day of January, 2020, I mailed a true copy of the Appellant's REPLY BRIEF IN RESPONSE TO THE BRIEF OF THE RESPONDENT, to Ms. Imani Byas, Staff Attorney, Office of General Counsel, S.C. Department of Corrections, P.O. Box 21787, Columbia, S.C. 29221.

Dated: Mon. January 13th, 2020

Respectfully submitted,
/s/ Nathaniel Johnson Jr. #211574
Mr. Nathaniel Johnson, Jr. #211574
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Pro-Se Appellant

Dated: Mon. January 13th 2020

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

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RE: Nathaniel Johnson, Jr. #211574, v. South Carolina Department of Corrections
Appellate Case No's #2019-001627, & #2019-001628.

Dear Ms. Kitchings:

Enclosed please find the Reply Brief In Response to the Brief of the Respondent, two (2) copies of each case number, one to be filed with the S.C. Court of Appeals, and please send back an clocked stamped copy for my records. The Appellant, has made the necessary corrections to each case number in regards to this matter. Also, the Appellant, is requesting an clocked stamped copy back of his Initial Brief submitted to the Court. Along with the Reply is the Appellant's Certificate of Service, served upon the other counsel of record, Imani Byas, Staff Attorney.

Sincerely,

/s/ Nathaniel Johnson Jr. #211574

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The Honorable Jenny A. Kitchings
Clerk of the S.C. Court of Appeals

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