

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

RECEIVED

FEB 06 2020

SC Court of Appeals

Appellate Case No:2019-001628

Nathaniel Johnson, Jr. #211574,

Appellant,

v.

South Carolina Department of Corrections,

Respondent,

RECORD ON APPEAL

1s/ Nathaniel Johnson Jr. #211574

Mr. Nathaniel Johnson, Jr. #211574

ACI. Colleton Unit F-1 A#05

1057 Revolutionary Trail Hwy47

P.O. Box 1151

Fairfax, S.C. 29827

Pro-Se Appellant

Ms. Imani Byas, Staff Attorney

Office of General Counsel

South Carolina Department of Corrections

P.O. Box 21787

Columbia, S.C. 29221-1787

(803)896-8508

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1. Order from the Administrative Law Judge dated and filed on Sept. 16th, 2019, pages#1-3.
2. Respondent's Motion Supplement the Record and Motion to Dismiss dated pages#4-17.
3. Appellant's Amended Motion for Summary Judgment filed on August 27th, 2019, pages#18-23.
4. Respondent's response to the Appellant's Motion to Supplement the Record, and Motion for Summary Judgment, dated August 21st, 2019, pages#24-27.
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CERTIFICATE OF APPELLANT

The undersigned hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: January 27th 2020.

1/s/ Nathaniel Johnson, Jr. # 211574

Mr. Nathaniel Johnson, Jr. #211574

ACI. Colleton Unit F-1 A#05

1057 Revolutionary Trail Hwy47

P.O. Box 1151

Fairfax, S.C. 29827

Pro-Se Appellant

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SC Court of Appeals

2.

ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995); see *Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (applying *Sandin* to resolve a condition of confinement claim).


In this appeal, Appellant is requesting reimbursement of the \$250.00 which is assessed to inmates for State Deoxyribonucleic Acid (DNA) Identification Record Database Act purposes. Appellant contends the fee and the collection of the fee is against Department policy and violates South Carolina law. In response to Appellant’s step 2 grievance, the Department explained that it does not have the authority to make the reimbursement because the fee is assessed by the South Carolina Law Enforcement Division (“SLED”). The Department collects the fee from inmates prior to his or her release and remits the fee to the State’s general fund to be credited to SLED.

2.

Additionally, Appellant’s reliance on *Eubanks v. SC Department of Corrections, et al.*, 561 F.3rd 294 (4th Cir. 2009) is misplaced. In *Eubanks*, the court held “the statutory requirement that the \$250 fee must be paid before a prisoner is paroled or released from confinement is unenforceable against him.” However, the DNA sample and processing fee requirements were determined to be not *ex post facto* because they were not punitive. *Id.*

Upon careful review and consideration, I find that Appellant’s issue does not arise from punishment administered for a disciplinary conviction, nor does it relate to Appellant’s sentence, sentence-related credits, or custody. Additionally, this appeal does not involve an “atypical” condition of restraint. Accordingly, Appellant has not alleged deprivation of a state-created liberty or property interest in this matter. Therefore, the Court finds *Howard* to be controlling, and the case must be dismissed for lack of jurisdiction.

**THEREFORE, IT IS HEREBY ORDERED that this appeal is DISMISSED.
AND IT IS SO ORDERED.¹**


SHIRLEY C. ROBINSON
Administrative Law Judge

September 16th 2019
Columbia, South Carolina

¹ Appellant filed a Motion for Summary Judgment and a Motion to Supplement the Record. The Department filed a response in opposition to Appellant’s motion. However, because the Court is dismissing this appeal, Appellant’s Motions are moot. See *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (citation omitted) (The Court “will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.”).

CERTIFICATE OF SERVICE

"This is to certify that the enclosed copy has been served in accordance with the provisions of the Federal Rules of Civil Procedure, and that the enclosed copy has been served on the parties to the above captioned case, hereof, in the United States of America, postage paid or in the emergency Mail Service addressed to the parties or their attorneys at

The 16 day of September 2019

By _____
Judicial Law Clerk



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

4

September 16, 2019

The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Nathaniel Johnson, #211574, vs. SCDC
Docket No. 19-ALJ-04-0271-AP

Dear Judge Robinson:

Find enclosed an original and one copy of the *Respondent's Motion to Supplement the Record* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,

Imani Byas
Staff Attorney
Office of General Counsel

Enclosures

cc: Inmate Nathaniel Johnson, #211574
File

4.

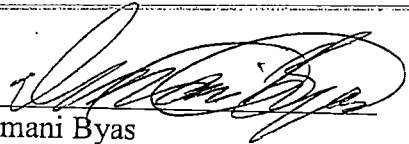
STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

5

Nathaniel Johnson, #211574,)	
)	
Appellant,)	
	)	Certificate of Service
vs.)	
	)	Docket# 19-ALJ-04-0271-AP
South Carolina Department of Corrections,)	
)	
Respondent.)	

I hereby certify that a copy of the foregoing brief was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Nathaniel Johnson
Inmate Number: 211574
Allendale Correctional Institution
Dorm-Room-Bunk: COA-0005-B


Imani Byas
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787
(803) 896-8508

September 16, 2019

5.

INPI350D

SCDC INMATE FINANCIAL SYSTEM
INMATE PAYROLL APPLICATION
SUMMARY OF INMATE RESTITUTION

04/10/19
SMARTMJ

7.

SCDC ID : 211574
JOHNSON, NATHANIEL -

CORR LOC: ALLENDALE

OFFENDER TYPE: ADULT-STRAIGHT

TOTAL AMOUNT OWED: 148.35

TYPE OF RESTITUTION	FUNC AREA	COST CENTER	DATE INCURRED	AMT OF RESTIT	BALANCE
- MEDICAL CO-PAY	7221	N040261010	07/27/16	5.00	0.00
- DNA PROCESSING	000	00000	03/15/07	250.00	0.00

PAGE> 0010

PFKEYS

2:DISREST

3:ADDRESS

4:MODREST

6:VIEW MORE PAGES

7.

8

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 09/13/19
 OMCOMITA COMMITMENT APPLICATION C063785
 SCDC #: 211574 INQUIRY CURR LOC: ALLENDAL
 JOHNSON, NATHANIEL - NONCONFORM SENT: N RTRN TO COURT: N
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
 CONVICTION NUM: S00005 INDICT NUM: 06-GS-07-1641 WARRANT NUM: J330913
 DATE SENTENCED...: 03/14/2007 JUDGE LAST...: KING FI: H
 STATUTE: 16-03-0652 CDR CODE...: 0160 GPS IND: N
 OFFENSE: 1101 CRIMINAL SEX CNDCT 1ST DEG OFFENSE DATE: 02/07/2006
 CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 07 BEAUFORT
 PLEA...: G GUILTY
 TYPE SENTENCE... : S ADULT-STRAIGHT TYPE OF COURT...: 01 GENERAL SESSIO
 TOTAL SENTENCE...: 030 00 000 SCDC JURIS DATE...: 02/13/2006
 INCARC SENTENCE...: 030 00 000 MAND SERV REQMT...: 025 06 000
 PROBATION SENT...: 000 00 000 PAROLE FACTOR...: 2 1/3 SENT. REQ.
 HIP SENT...: 000 00 000 PAROLE SERV REQMT: 999 99 999
 RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00000 HAYES CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 02/13/2006 DOM.IND: N
 CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: VIOLENT
 DNA OFFENSE IND...: Y EEC ELIG: Y SCDC CLASSIFICATION...: VIOLENT
 SEX REG: Y PRED OFF: Y LAST UPDATE: KMINIT DATE: 02/22/12
 NO PAROLE: NO PAROLE CREATED BY.: T SIMMONS DATE: 03/15/07
 PF8-NEXT CONVICTION PF9-DETAIN PF4-RESTITUTION PAID(FA ONLY)

8,

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 09/13/19
 OMCOMITA COMMITMENT APPLICATION C063785
 SCDC #: 211574 INQUIRY CURR LOC: ALLENDAL
 JOHNSON, NATHANIEL - NONCONFORM SENT: N RTRN TO COURT: N
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
 CONVICTION NUM: S00006 INDICT NUM: 06-GS-07-1640 WARRANT NUM: J330912
 DATE SENTENCED...: 03/14/2007 JUDGE LAST...: KING FI: H
 STATUTE: 16-03-0910 CDR CODE.: 0095 GPS IND: N
 OFFENSE: 1000 KIDNAPPING OFFENSE DATE: 02/07/2006
 CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 07 BEAUFORT
 PLEA...: G GUILTY TYPE OF COURT...: 01 GENERAL SESSIO
 TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE...: 02/13/2006
 TOTAL SENTENCE...: 030 00 000 MAND SERV REQMT...: 025 06 000
 INCARC SENTENCE...: 030 00 000 PAROLE FACTOR...: 2 1/3 SENT. REQ.
 PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 999 99 999
 HIP SENT...: 000 00 000 HAYES CRED: 00000
 RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00000 EXTRA CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 02/13/2006 DOM.IND: N
 CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: VIOLENT
 DNA OFFENSE IND...: Y EEC ELIG: Y SCDC CLASSIFICATION...: VIOLENT
 SEX REG: Y PRED OFF: N LAST UPDATE: KMINIT DATE: 02/22/12
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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

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September 16, 2019

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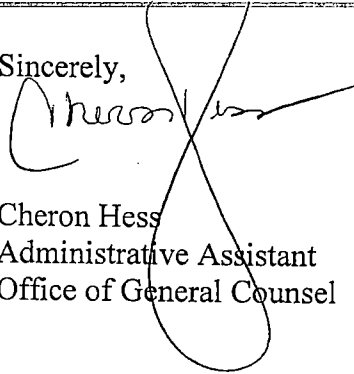
Reference: Inmate Nathaniel Johnson, #211574, vs. SCDC
Docket No. 19-ALJ-04-0271-AP

Dear Judge Robinson:

Find enclosed an original and one copy of the *Respondent's Motion to Dismiss* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,



Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Nathaniel Johnson, #211574
File

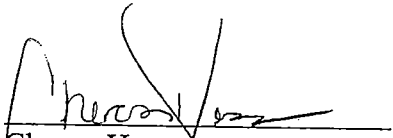
10,

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Nathaniel Johnson, #211574,)	
)	
Appellant,)	
	)	Certificate of Service
vs.)	
	)	Docket# 19-ALJ-04-0271-AP
South Carolina Department of Corrections,)	
)	
Respondent.)	

I hereby certify that a copy of the foregoing motion was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Nathaniel Johnson
Inmate Number: 211574
Allendale Correctional Institution
Dorm-Room-Bunk: COA-0005-B



Cheron Hess
Administrative Assistant
Office of General Counsel
South Carolina Department of Corrections
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Columbia, South Carolina 29221-1787
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September 16, 2019

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Nathaniel Johnson, #211574,	)	Docket No.: 19-ALJ-04-0271-AP
	)	[Grievance No.: ACI 100-19]
Appellant,)	
	)	Hon. Shirley C. Robinson
v.)	
)	
South Carolina Department of Corrections,	)	RESPONDENT'S BRIEF
)	
Respondent.)	
_____)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Nathaniel Johnson ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC" or "Department"). Appellant is appealing SCDC's final agency decision of May 8, 2019, that denied Appellant's Step 2 grievance.

On March 28, 2019, Appellant filed a Step 1 grievance challenging deductions taken by SCDC from his E. H. Cooper account for payment of a DNA processing fee. On April 16, 2019, SCDC denied the Step 1 grievance. Thereafter, on April 17, 2019, Appellant filed a Step 2 grievance asserting that SCDC's policy of deducting the DNA processing fee was in violation of state law. On May 8, 2019, SCDC denied the Step 2 grievance. This appeal followed.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*,

02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, the Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added).

Furthermore, the ALC should not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. *Pearson v. JPS Converter & Ind. Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Stated differently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (amended by 2008 Act No. 334, § 5, eff. June 16, 2008). Additionally, "an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole Record, arbitrary or affected by an error of law." *Matthews v. S.C. Dep't of Corr.*, Case No.: 04-ALJ-04-00248-AP, available at <http://www.scalc.net/decisions.aspx?id=1203&q=4> (filed Dec. 21, 2004) (Anderson, *A.L.J.*); *see*

S.C. Code Ann. § 1-23-380(5)(e); *see also Marietta Garage, Inc. v. S.C. Dep't. of Pub. Safety*, 337 S.C. 133, 522 S.E.2d 605 (1999); *S.C. Dep't. of Labor, Licensing & Regulation v. Girgis*, 332 S.C. 162, 503 S.E.2d 490 (1998).

“Substantial evidence” is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Pub. Svc. Comm’n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

Finally, in deciding appeals from inmate grievances, the ALC must consider that prisons officials are in the best position to decide inmate disciplinary matters. In *Al-Shabazz*, the Supreme Court “underscored that since prison officials are in the best position to decide inmate disciplinary matters, the Courts and therefore this tribunal adhere to a ‘hands off’ approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA.” *Matthews v. S.C. Dep’t of Corr.*, *supra*, page 3 (citing *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757 (stating that “[c]ourts traditionally have adopted a ‘hands off’ doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters”)); *see also Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) (referring to the traditional “hands off” approach of South Carolina courts regarding internal prison discipline and policy).

ARGUMENT

SCDC'S DEDUCTION OF THE DNA PROCESSING FEE FROM APPELLANT'S E.H. COOPER ACCOUNT IS IN ACCORDANCE WITH STATE AND FEDERAL LAW

Appellant was charged a \$250 fee for DNA that was taken by SCDC medical staff. See Summary of Inmate Restitution¹. SCDC takes DNA samples from inmates and provides those samples to SLED for inclusion in the State DNA Database in accordance with S.C. Code Ann. § 23-3-620. That statute states, in relevant part, that DNA samples will be required,

(A) Following a lawful custodial arrest, the service of a courtesy summons, or a direct indictment for: (1) a felony offense or an offense that is punishable by a sentence of five years or more . . .

This sample must be taken at a jail, sheriff's office that serves a courtesy summons, courthouse where a direct presentment indictment is served, or detention facility at the time the person is booked and processed into the jail or detention facility following the custodial arrest, or other location when the taking of fingerprints is required prior to a conviction. The sample must be submitted to SLED as directed by SLED. . . .

Appellant is currently serving two concurrent thirty year sentences for Kidnapping under SC Code Ann. §16-3-910 and Criminal Sexual Conduct in the First Degree under SC Code Ann.

~~§16-3-652. See SCDC Offender Management System Inquiry Screen². SC Code Ann. §16-3-910~~

provides that Kidnapping is punishable by imprisonment "for a period not to exceed thirty years" SC Code Ann. §16-3-652 provides that criminal sexual conduct is punishable by

imprisonment "for not more than thirty years . . ." S.C. Code Ann. § 23-3-620 requires only that the offense be punishable by five years or more, not that the individual actually receive a sentence

of five years or more, for the statute to apply. Thus, he falls into the category of offenders required to give a DNA sample under S.C. Code Ann. § 23-3-620. SCDC's taking of Appellant's DNA

and provision of that DNA sample to SLED was in accordance with state law. S.C. Code Ann. § 23-3-670 requires that Appellant pay a \$250.00 fee for the processing of his DNA sample. That

¹ Appellant's Summary of Inmate Restitution was filed as a supplement to the Record on this same date.

² Appellant's SCDC Offender Management System Inquiry Screen was filed as a supplement to the Record on this same date.

statute says in relevant part, "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." SCDC's charge for and deductions towards the \$250.00 DNA processing fee were in accordance with state law.

Appellant argues that the DNA processing fee is a violation of the Ex Post Facto Clause of the United States Constitution. Appellant Brief p. 4. He bases this argument on the ruling of the Fourth Circuit in *In re DNA Ex Post Facto Issues* in which the Court ruled that language of SC Code Ann. §23-3-670(a)(1) which states that the DNA fee charged an incarcerated individual "must be paid before the person is paroled or released from confinement" was unenforceable. *Id.* *In re DNA Ex Post Facto Issues v. S.C. Dept. of Corrections*, 561 F.3d 294, 301 (4th Cir. 2009). The Court went on to say that this portion of the law was severable, allowing the rest of the law to stand. *Id.* at 301-02. "To fall within the ex post facto prohibition, a law must be retrospective-that is, "it must apply to events occurring before its enactment"-and it "must disadvantage the offender affected by it," by altering the definition of criminal conduct or increasing the punishment for the crime. *Lynce v. Mathis*, 519 U.S. 433, 441 (1999), citing *Weaver v. Graham*, 450 U.S. 24, 29 (1981). The statute in question here became effective July 1, 1999. Appellant was sentenced on March 15, 2007, nearly eight years after the law went into effect. Additionally, the statute neither alters the definition of the crimes Appellant was convicted of nor increases his sentence. Therefore, Appellant's argument that SCDC's implementation of the processing fee violates the Ex Post Facto Clause fails.

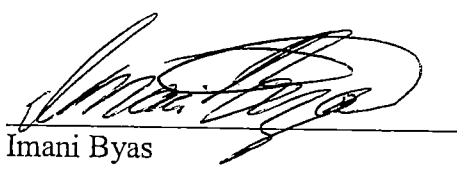
Appellant also argues that the DNA processing fee the DNA processing fee violates his substantial rights. Appellant Brief p. 4. The constitutionality of this statute has been considered by courts in the past. The United States District Court for the District of South Carolina has found that deductions from an inmate's non-wage deposits into his E. H. cooper account for payment

towards the DNA processing fee did not violate the Due Process Clause. *Clayton v. Ozmint*, No. 2:10-CV-00190-RBH, 2011 WL 380149 (D.S.C. Feb. 2, 2011). In deciding a similar case, this same court said, "When the legislature passes a law which affects a general class of persons, those persons have all received procedural due process-the legislative process." *Blackburn v. South Carolina*, No. CIV.A. 2:00-3215-RBH, 2009 WL 4640647 (D.S.C. Dec. 7, 2009) citing *Vanderlinden v. State of Kansas*, 874 F.Supp. 1210 (D.Kan.1995). Therefore, Appellant's argument that his substantial rights were violated by the imposition of the DNA processing fee is without merit.

CONCLUSION

The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. *Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden and his claim should be dismissed with prejudice.

Respectfully Submitted,



Imani Byas
Staff Attorney
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508

September 16, 2019
Columbia, South Carolina

State of South Carolina
Administrative Law Court

Nathaniel Johnson Jr. #211574,
Appellant,

Docket No. 19-ALJ-04-0271-AP
Grievance No: ACI-100-19

v.
SC Department of Corrections,
Respondent,

Amended Motion For
Summary Judgment

To: The Honorable Shirley C. Robinson ALJ

This matter comes before the Administrative Law Judge in pursuant to an appeal by the Appellant from the final decision of the agency (SCDC). Appellant filed his Notice of Appeal on May 17th 2019, along with copies of the complete record, of the request to staff member Atty. Sherman L. Anderson, his response, step 1 grievance and the response from the Warden M. Newton, step 2 grievance and response from Wayne C. McCabe, both responsible prison officials to give an answer. See Brewer v. Wilkinson, 3. F.3d. 816, 825-26 (5th Cir 1993) claim stated by prisoners alleging that prison officials intercepted Appellant's outgoing mail and removed the legal documents.

FILED
AUG 27 2019

The best evidence rule is one that must be produced which are material to the issues filed with the Court, such as the materials that was provided by the Appellant, filed along with his Notice of Appeal, and a certificate showing proof that the Respondents have been served.

Appellant's argument is based upon the mail box rule, in which the acceptance of all relevant documents sent by the Appellant. The Respondents argue that the documents were not included in the record, and that the Appellant has filed a motion to supplement the record is without merits.

~~Appellant asserts that there was some interference by the~~
 agency (SCDC), to exclude the request to staff member Branch Chief Atty. Sherman L. Anderson, along with his response in order to file step 1 grievance ACI-100-19, Warden's response, step 2 grievance, and final response by responsible official Wayne C. McCabe. Therefore, the excluded documents should be included for the completion of the whole record.

The Appellant respectfully asks this Honorable Court to examine the Appellant's Brief, for the Statement of Case. On March 13th, 2019, the Appellant moved with a request to staff member Branch Chief Atty. Sherman L. Anderson, and his response which are a part of the complete record.

Appellant refutes any request to supplement the record, instead, the Appellant seeks to set the record straight by giving Judicial Notice, that the substantial evidence were excluded from the record by interference from the agency (SLDC). The Agency (SLDC) cannot dispute the fact that the Agency (SLDC), is clearly in excess of the statutory authority when it required the Appellant to pay \$250.00 DNA fee.

The Appellant, respectfully asks that this Honorable Court, would not substitute its judgment for the judgment of this Agency (SLDC), and to the weight of the evidence on the question of facts, but, as to whether the substantial rights of the Appellant were prejudiced or violated.

Lastly, South Carolina Administrative Law Court Rule 58 (c) & (d), provides in pertinent part (c) A statement of matters that should be Judicially Noticed; and (d). All proffers of proof of evidence excluded that should be received or considered. Appellant submitted an complete record to the Court and served the Respondents.

Therefore, if the Court may examined step 1 grievance ACI-~~100~~⁰⁰⁷¹-19 and the Warden's response that was unprocessed, advising the Appellant to submit a request to staff member Branch Chief in the office of General Counsel Atty. Sherman L. Anderson, ACI-100-19. The Warden responded to step 1 grievance and

the Appellant moved with his step 2 grievance and received a response from the responsible official Wayne C. McCabe. Appellant alleges that the request to staff member and his response were excluded from the record by interference of the agency (SCDC).

Therefore, the documents that were excluded by interference from the Agency (SCDC) should be included in the record as a whole. The Appellant respectfully asks this Honorable Court to use the Appellate body standard of review, of the agency's decision as provided by S.L. Code Ann. § 1-23-600(5) Supp 2016 and Section § 1-23-380(5)(a)-(f), to determine whether the Appellant's substantial rights were prejudiced.

Conclusion

For the foregoing reasons, Appellant requests that this Honorable Court, deny Respondent's request, and grant the Appellant's Amended Motion for Summary Judgment as a matter of law.

August 27th, 2019

Respectfully submitted,
 x Nathaniel Johnson Jr. #211574

State of South Carolina
Administrative Law Court

Nathaniel Johnson Jr. #211574,
Appellant,

Docket No. 19-ALJ-04-0271-AP
Grievance No. ACT-100-19

v.

SC Department of Corrections,
Respondent,

Certificate of Service

I hereby certify that a copy of the foregoing
Amended Motion for Summary Judgment was this 27th

day of August, 2019, served upon the Respondent, Cheron Hess,
Administrative Asst, Office of General Counsel, South Carolina
Department of Corrections, ~~4444~~ Broad River Road,
P.O. Box 21787, Columbia, SC, 29221-1787.

FILED

AUG 27 2019

SC ADMIN. LAW COURT

Respectfully submitted,
~~Nathaniel Johnson Jr. #211574~~
Mr. Nathaniel Johnson Jr. #211574
ACT, Colleton Unit F-1 A#05

P.O. Box 1151

Fairfax, SC. 29827

Pro-se Appellant



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

24.

August 21, 2019

The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

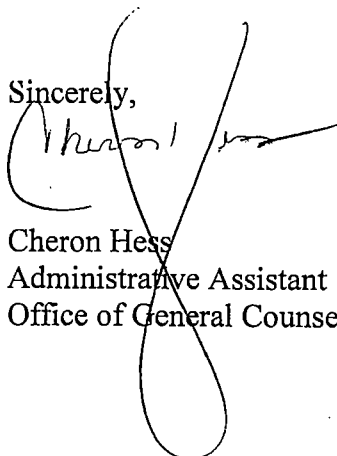
Reference: Inmate Nathaniel Johnson, #211574, vs. SCDC
Docket No. 19-ALJ-04-0271-AP

Dear Judge Robinson:

Find enclosed an original and one copy of the *Respondent's Response to Appellant's Motion to Supplement the Record and Motion for Summary Judgment* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

~~If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.~~

Sincerely,


Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Nathaniel Johnson, #211574
File

24.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Nathaniel Johnson, #211574,	)	Docket No.: 19-ALJ-04-0271-AP
	)	Grievance No.: ACI-100-19
Appellant,)	
	)	Honorable Shirley C. Robinson
v.)	
	)	RESPONDENT’S RESPONSE TO
South Carolina Department of Corrections,	)	APPELLANT’S MOTION TO
	)	SUPPLEMENT THE RECORD
Respondent.	)	AND MOTION FOR SUMMARY
	)	JUDGMENT

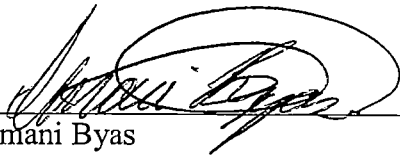
This matter comes before the Administrative Law Judge Division (“Division”) pursuant to the appeal of Nathaniel Johnson (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Respondent”). Appellant filed a Notice of Appeal on May 17, 2019, and this case was assigned to the SCDC on May 29, 2019. Respondent filed the record on July 19, 2019. On July 29, 2019, Appellant requested to supplement the record with a Request to Staff Member (RTSM) dated March 13, 2019, and the letter rejecting the RTSM. The documents were not included in the record ~~because they were not considered by prison officials in either the Step 1 or Step 2~~ Grievance answers. South Carolina Administrative Law Court Rule 58 provides, in pertinent part, that the record shall include all documents filed and evidence received or considered. The documents Appellant requests to supplement the record with were not included in Appellant’s packet nor were they considered by prison officials in reaching their decision. Therefore, the documents should not be included in the record.

On August 8, 2019, Appellant filed a Motion for Summary Judgment. Appellant’s motion is inappropriate because the Court’s review is not like that of a *de novo* hearing when reviewing these type of inmate appeals. *Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000). The Administrative Law Court sits in an appellate capacity when reviewing inmate appeals of final agency decisions by the Department and is confined to the record. *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750; S.C. Code Ann. § 1-23-380(4). The question currently before this Court is whether the Agency’s final decision was supported by substantial evidence. *Pearson v. JPS Converter & Ind. Corp.*, 327 S.C.

393, 489 S.E.2d 219 (Ct. App. 1997). Thus, Appellant's Motion for Summary Judgment should be denied.

For the foregoing reasons, Respondent requests that the Court deny Appellant's Motion to Supplement the Record and Motion for Summary Judgment.

Respectfully submitted,



Imani Byas
Staff Attorney
S.C. Department of Corrections
Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-1278

August 21, 2019
Columbia, South Carolina

Thurs. August 8th 2019

The Honorable Shirley C. Robinson, AJL
 South Carolina Administrative Law Court
 Edgar A. Brown Building, Suite #224
 1205 Pendleton Street
 Columbia, SC. 29201

FILED

AUG 13 2019

SC ADMIN. LAW COURT

Reference: Nathaniel Johnson Jr. #211574 -vs- SCDC
 Docket No: 19-AWJ-07-0271-AP Grievance No: ACI-100-19

Dear Judge Shirley C. Robinson: AWJ

Find enclosed a copy of the Appellant's Motion
 for an Order of Summary Judgment, consisting of
 inmate grievance ACI-100-19 in the above referenced
 case. Please file the original and return a checked-
 in copy of the cover letter and motion if possible sent
 back for my records.

Enclosures

cc: Cheron Hess Administrative Asst.
 Office of General Counsel

Sincerely,

x Nathaniel Johnson Jr. #211574
 Mr. Nathaniel Johnson Jr. #211574
 ACI, Colleton Unit F-1 A#05
 1057 Revolutionary Trail Hwy 47
 P.O. Box 1151
 Fairfax, S.C. 29827
 Pro Se Appellant

State of South Carolina
Administrative Law Court

Nathaniel Johnson Jr. #211574,
Appellant,

Docket No: 19-ALJ-04-0271-AP
Grievance No: ACT-100-19

vs-

South Carolina Dept. of Corrections,
Respondent,

Notice of Motion For Summary
Judgment

Comes now Nathaniel Johnson Jr. #211574, the Appellant, who hereby moves for an Order of Summary Judgment in his favor. This matter is set before the Honorable Shirley C. Robinson, Administrative Law Judge, for consideration. Appellant submits

to this Honorable Court, that any and all allegations of fact exist, specified in his complaint are true, and it appears without substantial controversy, including the extent to which the amount of damages or other relief as deemed fit by this Court, is not in controversy or dispute, and directing that such further proceedings may not be necessary. The Appellant asserts that he is entitled to a judgment as a matter of law.

FILED
AUG 13 2019
29.
SC ADMIN. LAW COURT

Certificate of Service

I hereby certify that a true copy of the foregoing Motion for an Order of Summary Judgment was this date served upon the Respondent, Cheron Hess, Office of General Counsel, addressed to: South Carolina Dept. of Corrections, 4444 Broad River Rd, P.O. Box 21787, Columbia, SC. 29221-1787.

Dated: Thurs. August 8th 2019

Respectfully submitted
x Mr. Nathaniel Johnson Jr. #211574
Mr. Nathaniel Johnson Jr. #211574
ACI. Colleton Unit F-1 A*05
1057 Revolutionary Trail Hwy 47
P.O. Box 1151

Fairfax, SC. 29827

Pro-Se Appellant

FILED

AUG 13 2019

SC ADMIN. LAW COURT



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

31

July 19, 2019

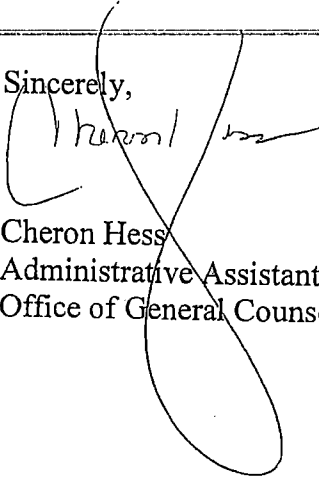
The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, SC 29201

Reference: Inmate Nathaniel Johnson, #211574, vs. SCDC
Docket No. 19-ALJ-04-0271-AP

Dear Judge Shirley C. Robinson:

Find enclosed a copy of the Respondent's Record, consisting of Inmate Grievance ACI 100-19, in the above referenced case. Please file the original and return a clocked-in copy of the cover letter in the enclosed envelope.

Sincerely,


Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

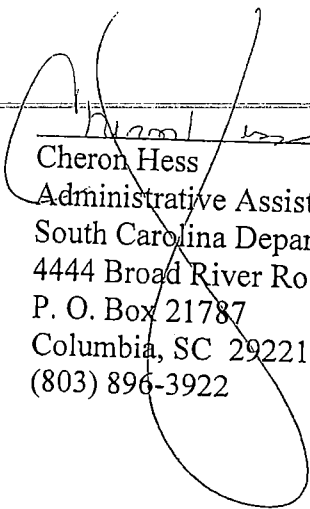
cc: Inmate Nathaniel Johnson, #211574
File

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same via mail to his/her last known address as follows:

Inmate Nathaniel Johnson
Inmate Number: 211574
Allendale Correctional Institution
Dorm-Room-Bunk: COA-0005-B

July 19, 2019


Cheron Hess

Administrative Assistant
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, SC 29221-1787
(803) 896-3922

33

RECEIVED

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

APR 23 2019

STEP 2

RECEIVED

04/20/19 Page 1
2733

INMATE GRIEVANCE

Office Use Only

Grievance No. ACT-0100-19
Code: General PL/IG
Policy _____
Disc. Hear. _____
Class _____
PREA _____
Date Received: 04/18/19
IGC Initials: MS
Date Received: 4/25/19
IGA Initials: _____

INMATE NAME: Nathaniel Johnson, Jr. APR 18 2019
SCDC NUMBER: #211574 ✓ WARDEN'S OFFICE
INSTITUTION: Allendale Correctional Institution
HOUSING UNIT: Colleton Unit F-1 A#02
WORK ASSIGNMENT: Dorm Assigned

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

My reason for appealing is because I am dissatisfied with the Warden's response. My challenge is not only against SCDC's policy but, whether it violated State Law? I am requesting full reimbursement of \$250.00, due to the violation of State Law, under Article#6 73-61 (B)(1)(c), which states that the jurisdictional agencies will incur all costs associated with sample collections and completion of information in the database collection kits.(C)(5), states that all costs associated with shipment, handling, or transportation of database kits are the responsibility of the jurisdictional agency. Jurisdictional agency is the State, that has jurisdiction over a subject.

Grievant Signature Nathaniel Johnson Date 4-17-19

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Your grievance has been reviewed. In it you appeal the collection fee of \$250.00 which is assessed to inmates for State Deoxyribonucleic Acid (DNA) Identification Record Database Act purposes. You would like "full reimbursement of \$250.00" due to SCDC "violating State Law." Pursuant to OP-21.09 Inmate Records Plan the DNA database is administered under the direction of the State Law Enforcement Division (SLED) to ensure the security and implementation of the DNA database. The \$250.00 fee is not established by SCDC, rather, SCDC attempts to collect the fee from the inmate prior to his/her release. The processing fee assessed must be remitted to the general fund of the State of South Carolina and credited to SLED to offset SLED expenses. For this reason, your appeal regards a matter that exceeds the jurisdiction of SCDC authority.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Responsible Official Signature Wanya C. McCauley Date 5-8-19

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature _____ Date _____ IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

33.

INMATE GRIEVANCE FORM

34

PMDD: 080831

STEP 1

INMATE NAME: <u>Nathaniel Johnson Jr. #</u>		OFFICE USE ONLY	
SCDC NUMBER: <u>#211574</u>		Grievance No. <u>AG-0100-19</u>	
INSTITUTION: <u>Allendale Correctional Institution</u>		Code <u>General</u>	<u>PLIG</u>
HOUSING UNIT: <u>Colleton Unit F-1 A#02</u>		Policy _____	
WORK ASSIGNMENT: <u>Dorm</u>		Disc. Hear. _____	
		Class. _____	
		PREA _____	
		Received _____	
		IGC Initials <u>MS-051619</u>	

RECEIVED

APR 11 2019
MAR 29 2019

WARDEN'S OFFICE
ACD

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

On Friday March 29th 2019, I received an response back from the office of General Counsel Atty Sherman K. Anderson, Chief Inmate Grievance Branch, dated March 27th 2019. Stated returned in accordance to SCDC Policy GA-06.04, and that my request to staff is returned for one or more of the following reasons as highlighted below. There were no reasons highlighted. But, numbers #14 and #20 were darkened. My reason for filing this grievance is because I am dissatisfied with the response indirectly. No further communications will be made on this subject.

Nathaniel Johnson Jr. 3/28/19
 Grievant Signature Date

ACTION REQUESTED: Requesting that this grievance be processed to challenge SCDC's Policy and its short legal process of talking \$250.00 from every inmate to pay for DNA fees in which SCDC or jurisdiction agency is responsible for paying. Full reimbursement.

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

Investigation completed by Inmate Grievance Coordinator (IGC). Findings and documentation forwarded to Warden for a response.

[Signature] 04/11/19
 IGC Signature Date

(CONTINUE ON REVERSE SIDE)

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

36

Page 4

ACT-0071-19

10/4/19

TO: NAME: Ms. Derrick	TITLE: Nurse in Medical	DATE: Fri. March 1 st 2019
INMATE'S NAME: Nathaniel Johnson Jr.	SCDC #: #211574	
INSTITUTION: Allendale Correctional Institution	LIVING QUARTERS: Colleton Unit F-1 A#02	

I am requesting full reimbursement of the \$250.00 that was stolen from me for DNA sample. I was made aware of this sham process that took away from every inmate in the Department of Corrections making us responsible for the incurring cost of this sample. Under Article 6 Section 73-61 of the State DNA Database (B)(1)(c) states that the jurisdictional agency will incur all costs associated with sample collections and completion of information in the Database. The costs for sample testing and analysis results are the responsibility of SLED (D)(2). Jurisdictional agency of the State having jurisdiction over a subject. Under the case of *Nathaniel Johnson*

Eubanks v. SC Dept. of Corrections
561 F.3d 294, 301 (4th Cir 2009) Ex Post Facto violation by law requiring DNA sampling!

DISPOSITION BY STAFF MEMBER:

I am not in charge of the DNA changes
Medical does not handle this

DATE: 2-4-19	SIGNATURE: P. Derrick
-----------------	--------------------------

36.

37

INMATE GRIEVANCE FORM

STEP 1

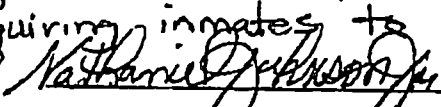
RECEIVED

PMOD:080831

INMATE NAME: <u>Nathaniel Johnson Jr.</u>	MAR 05 2019	OFFICE USE ONLY
SCDC NUMBER: <u>#211574</u>	WARDEN'S OFFICE	Grievance No. <u>ACT-0071-19</u>
INSTITUTION: <u>Allendale Correctional Institution</u>		Policy <u>General</u>
HOUSING UNIT: <u>Colleton Unit F-1 A#02</u>		Disc. Hear. _____
WORK ASSIGNMENT: <u>Dorm Assigned</u>		Class. _____
		PREA _____
		Date Received <u>03/05/19</u>
		IGC Initials <u>MS 041919</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

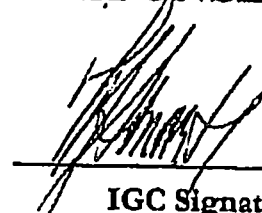
On Friday March 1st 2019, I wrote to medical in reference to the \$250.00 Two Hundred Fifty dollars, that was taken from for DNA sample. I was made aware of this sham process that took away from every inmate in the Department of Corrections, making us responsible for the incurring debt and cost of this DNA sample, Under Article #6 Section 73-61 of the State DNA Database (B)(1)(c). It states that the jurisdictional agency will incur all costs associated with DNA sample collections and completion of information in the Database. The costs for DNA sample tests and analysis results are the responsibility of SLED (D)(2). Jurisdictional Agency of the State having jurisdiction over a subject. Under the case of Eubanks vs. S.C. Dept. of Corrections, 561 F.3d. 294, 301 (4th Cir 2009) Ex Post Facto violation of state law requiring inmates to pay \$250.00 for DNA samples.


 Grievant Signature Date 3/4/19

ACTION REQUESTED: Requesting that this practice be corrected immediately, and a full reimbursement of that \$250.00 ASAP.

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

SEE REVERSE SIDE FOR RESPONSE.


 IGC Signature Date 03/11/19

(CONTINUE ON REVERSE SIDE)

37.

38

WARDEN'S DECISION AND REASON:

GRIEVANCE #ACI-0071-19

INMATE NATHANIEL JOHNSON, JR., #211574

Inmate Johnson:

This grievance is being returned to you as a non-grievable issue. In accordance to SCDC Policy GA-01.12 Inmate Grievance System, Paragraph 8.4, this issue is outside of the control of SCDC. In accordance to SCDC Policy OP-21.09, Inmate Records Plan, Section 16, the DNA database is administered under the direction of the State Law Enforcement Division (SLED). Scdc, THE Department of Juvenile Justice, the Department of Probation, Parole, and Pardon Services, and county Sheriffs work with SLED to ensure the security and implementation of the DNA database. If you do not agree with my decision, unprocessed grievances may be appealed by utilizing SCDC Form 19-11, Inmate Request To Staff Member, to the Branch Chief within ten (10) days of the grievance being returned to you. You must send a copy of the grievance along with your RTSM form. Therefore, this grievance is closed.

Inmate Grievance Coordinator

Date

Warden Signature

Date

I accept the Warden's decision and consider the matter closed.

I do not accept the Warden's decision and wish to appeal.

Grievant Signature

Date

IGC Signature

Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

38.

State of South Carolina
Administrative Law Court

Nathaniel Johnson Jr. # 211574
Appellant,

Case No: 19C0271
Hrivoance No: ACI-0100-19

vs.

South Carolina Dept. of Corrections,
Respondent,

Brief of Appellant

Brief of Appellant

Other Counsel:
General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, S.C. 29221-1787

Mr. Nathaniel Johnson Jr. # 211574
ACI. Colleton Unit F-1A #02
1057 Revolutionary Trail Hwy 47
P.O. Box 1151
Fairfax, S.C. 29827
Mr. Nathaniel Johnson Jr.

FILED

MAY 29 2019

39.

SC ADMIN. LAW COURT

Statement of Issues on Appeal

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1. Whether the decision of SCDC's policy OP-21.09 that authorized the taking of \$250.00 for DNA fee prejudiced the substantial rights of the Appellant?
 2. Whether the establishment of taking \$250.00 for DNA fee from every inmate to pay for what the jurisdictional agency is deemed to be responsible, made upon an unlawful procedure?
-

Statement of Facts of Case

On March 13th, 2019, the Appellant, moved with his (RTSM) Request to Staff Member, directed to the Inmate Grievance Branch Chief, Mr. Sherman L. Anderson. Appellant, received an response dated March 27th, 2019, on Friday March 28th, 2019.

On the same day, the Appellant, moved forward with his step #1 grievance. On April 16th, 2019, the Appellant, received the Warden's decision denying the grievance. The very same day the Appellant proceeded forward with his step #2 grievance.

On May 8th, 2019, a response from the responsible official Wayne C. McCabe, was sent out and received by the Appellant, on May 11th, 2019.

On May 20th, 2019, the Appellant filed his notice of appeal with the S.C. Administrative Law Court.

Argument

1. SCDC's policy OP-21.09 authorizing the taking of \$250.00 from the Appellant's account was indeed prejudice and violated the substantial rights of the Appellant.

See *Eubanks vs. S.C. Dept. of Corrections, (In re DNA Ex Post Facto issues) 561, F.3d. 294, 301 (4th Cir 2009). Ex Post Facto violation of State law requiring inmates to pay \$250.00 fee for DNA sampling.

See *Lynce vs. Mathis, 519 U.S. 433, 446-47 (1997) (ex post facto violation when actual events unquestionably disadvantage the inmate).

2. SCDC's establishment of taking \$250.00 for DNA fee from the Appellant to pay for what the jurisdictional agency is deemed to be responsible for, is made upon an unlawful procedure.

In its response, it is stated that the \$250.00 fee is not established by SCDC, but they are requiring the taking of \$250.00 from every inmate to pay for DNA sampling.

Argument Continued

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The State's statute as seen in Article 6 73-61 of the State DNA Database (B) Sample collection and identification.

(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 recollected 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.

3. 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 full reimbursement upon the clauses of Article VII Sec # 2 of the S.C. Constitution.

Conclusion

Wherefore, the Appellant, Nathaniel Johnson Jr. #211574, prays for the relief sought, by ordering SCDC to refund \$250.00 full reimbursement of his DNA fee, as justice is so required as a matter of law.

Dated: May 29th, 2019

Respectfully submitted,
x Nathaniel Johnson Jr. #211574
Mr. Nathaniel Johnson Jr. #211574
ACI. Colleton Unit F-1 A#02
1057 Revolutionary Trail Hwy 47
PO Box 1151
Fairfax, SC. 29827
Pro-Se Appellant

FILED

Fairfax, SC 29837
P.O. Box 1151
Apt. Collettn Unit #1 A#02

~~X Nathaniel Johnson #211574~~
Respectfully submitted

29221-1787

by depositing into the Allendale Correctional Inst.
mailroom on this 29th day of May, 2019. Addressed
to Sc. Dept. of Corrections, P.O. Box 21787, Columbia, SC.

has been served on the Respondent, General Counsel

certify that a true copy of the Appellant's Brief

the undersigned Nathaniel Johnson #211574, hereby

Proof of Service

Proof of Service

Case No: 19CO271
Affidavance No: AFI-0100-19

Nathaniel Johnson #211574,
Appellant,
vs.
South Carolina Dept. of Corrections,
Respondent,

State of South Carolina
Administrative Law Court

5/29/2019

Dear Appellant:

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

DNA

Case number	Inmate number	Inmate first name	Inmate last name	Grievance No	Respondent	Filing date	Date Assigned	Judge last name
19C0271	211574	NATHANIEL	JOHNSON	ACI 100-19	DOC	5/20/2019	5/29/2019	ROBINSON

You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Dept. of General Counsel, S.C. Dept. of Corrections, PO Box 21787, Columbia, SC 29221.

FILED

MAY 29 2019

SC ADMIN. LAW COURT

46

46.

Administrative Law Court

Ralph K. Anderson, III
Chief Judge

Jana E. Cox Shealy
Clerk



PHONE: (803) 734-0550
FAX: (803) 734-6400
WEB: WWW.SCALC.NET

MAY 29, 2019

Due to a Clerk's Office error, the information regarding your case was not sent to the Department of Corrections at the same time that it was sent to you. As such, the notice originally sent to you with the "Date Assigned" of May 23, 2019 is hereby amended to May 29, 2019 (See attached).

Therefore, the timeframe for the Department to file the Record on Appeal runs from the amended "Date Assigned" of May 29, 2019.

*The Honorable
Jana E. Cox Shealy, Clerk of Court*

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

48

Nathaniel Johnson Jr. #211574)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

NOTICE OF APPEAL

DOCKET NO. 19^C-ALJ-04-0271-
GRIEVANCE NO.: ACT-0100-19

Notice is hereby given that Nathaniel Johnson Jr. #211574 does hereby appeal the final decision of the South Carolina Department of Corrections dated 5/8/19 and received on 5/16/19, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

- 1) Whether the decision of SCDC's policy DP-21.09 that authorized the taking of \$250.00 for DNA fee prejudiced the substantial rights of the Appellant?
2. Whether the establishment of taking \$250.00 for DNA fee from every inmate to pay for what the jurisdictional agency is deemed to be responsible, made upon an unlawful procedure?

Nathaniel Johnson Jr.
Appellant's Name
ACT, Colleton Unit F-1 A #02
P.O. Box 1151
Mailing Address
1057 Revolutionary Trail Hwy 47
Fairfax, S.C., 29827
City, State, Zip Code

Nathaniel Johnson Jr. #211574
Signed
Fri. May 17th 2019
Dated

CERTIFICATE OF SERVICE

I hereby certify that I, N. Johnson Jr. (your name), on the 17th day of May, 20 19, in Fairfax, (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: General Counsel SCDC

Address: P.O. Box 21787

City, State, Zip Code: Columbia, SC, 29221-1787

Print your name: Nathaniel Johnson Jr.
(See reverse side for instructions)

Sign your name: Nathaniel Johnson Jr. #211574
48.

RECEIVED

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
APR 23 2019

Office Use Only
4/22/19
49

STEP 2
RECEIVED

INMATE GRIEVANCE

INMATE NAME: Nathaniel Johnson, Jr. APR 18 2019
SCDC NUMBER: #211574
INSTITUTION: Allendale Correctional Institution WARDEN'S OFFICE
HOUSING UNIT: Colleton Unit F-1 A#02
WORK ASSIGNMENT: Dorm Assigned

Grievance No. ACT-0100-19
Code: General PL/IG
Policy _____
Disc. Hear. _____
Class _____
PREA _____
Date Received: 04/18/19
IGC Initials: MS
Date Received: 4/25/19
IGA Initials: _____

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

My reason for appealing is because I am dissatisfied with the Warden's response. My challenge is not only against SCDC's policy but, whether it violated State Law? I am requesting full reimbursement of \$250.00, due to the violation of State Law, under Article#6 73-61 (B)(1)(c), which states that the jurisdictional agencies will incur all costs associated with sample collections and completion of information in the database collection kits.(C)(5), states that all costs associated with shipment, handling, or transportation of database kits are the responsibility of the jurisdictional agency. Jurisdictional agency is the State, that has jurisdiction over a subject.

Grievant Signature Nathaniel Johnson Date 4-17-19

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Your grievance has been reviewed. In it you appeal the collection fee of \$250.00 which is assessed to inmates for State Deoxyribonucleic Acid (DNA) Identification Record Database Act purposes. You would like "full reimbursement of \$250.00" due to SCDC "violating State Law." Pursuant to OP-21.09 Inmate Records Plan the DNA database is administered under the direction of the State Law Enforcement Division (SLED) to ensure the security and implementation of the DNA database. The \$250.00 fee is not established by SCDC, rather, SCDC attempts to collect the fee from the inmate prior to his/her release. The processing fee assessed must be remitted to the general fund of the State of South Carolina and credited to SLED to offset SLED expenses. For this reason, your appeal regards a matter that exceeds the jurisdiction of SCDC authority.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Responsible Official Signature Wayne Corcoran Date 5-8-19

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Nathaniel Johnson Date 5/16/19

IGC Signature [Signature] Date 05/16/19

INMATE GRIEVANCE FORM

PMDD: 080831

STEP 1

Inmate Copy

INMATE NAME: <u>Nathaniel Johnson Jr. #</u>	RECEIVED WARDEN'S OFFICE ACID APR 11 2019 MAR 29 2019	OFFICE USE ONLY	
SCDC NUMBER: <u>#211574</u>		Grievance No. <u>AG-0100-19</u>	
INSTITUTION: <u>Allendale Correctional Institution</u>		Code: <u>General</u>	<u>PLIG</u>
HOUSING UNIT: <u>Colleton Unit F-1 A#02</u>		Policy	
WORK ASSIGNMENT: <u>Dorm</u>		Disc. Hear.	
		Class.	
		PREA	
		Received	
		IGC Initials	<u>MS - 05/16/19</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

On Friday March 29th 2019, I received an response back from the office of General Counsel Atty Sherman L. Anderson, Chief Inmate Grievance Branch, dated March 27th 2019. Stated returned in accordance to SCDC Policy GA-06.04, and that my request to staff is returned for one or more of the following reasons as high lighted below. There were no reasons highlighted. But, numbers #14 and #20 were darkened. My reason for filing this grievance is because I am dissatisfied with the response indirectly. No further communications will be made on this subject.

Nathaniel Johnson Jr. 3/28/19
 Grievant Signature Date

ACTION REQUESTED: Requesting that this grievance be processed to challenge SCDC's Policy and its sham legal process of taking \$250.00 from every inmate to pay for DNA fees in which SCDC or jurisdiction agency is responsible for paying. Full reimbursement.

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

Investigation completed by Inmate Grievance Coordinator (IGC). Findings and documentation forwarded to Warden for a response.

[Signature] 04/11/19
 IGC Signature Date

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Docket No: 19-AWJ-04-0271-AP
Grievance ACT-100-19 51.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF GENERAL COUNSEL—INMATE GRIEVANCE BRANCH
INMATE CORRESPONDENCE**

INMATE: Inmate Nathaniel Johnson | 211574
INSTITUTION: Allendale Correctional Institution | COA-0002-X
FROM: Atty. Sherman L. Anderson | Chief
Inmate Grievance Branch | Office of General Counsel
SUBJECT: RTSM dated 3/13/19 | Received on 3/18/19
DATE: March 27, 2019

I am in receipt of your inmate correspondence/Request to Staff Member. Your correspondence is being returned in accordance to SCDC Policy, GA-06.04, Request to Staff Member and returned to you for one or more of the following reasons as highlighted below:

1. Inmates must use the correct form (Request to Staff Member SCDC 19-11). Attachments will NOT be accepted.
2. Inmates are only allowed to submit one issue per RTSM, which must be written legibly (to the appropriate area) and must be limited to a single sheet.
3. Inmates are prohibited from sending a duplicate or similar RTSM to multiple staff members.
4. Use SCDC proper grievance forms.
5. The RTSM is intended for use by an individual inmate (An inmate may not send a RTSM from multiple inmates).
6. Enter your concerns through the KIOSK Automated Request to Staff Member System.
7. Your request for a transfer should be directed to SCDC Classification Case Worker/Manager.
8. Your medical issues can be addressed by requesting sick calls at your local institution.
9. State one issue that is a problem so that it can be fully addressed.
10. Please refrain from sending multiple RTSMs addressed to multiple areas. We only review Grievance issues.
11. Grievances MUST be placed in the box marked "Grievance" at your local institution before it will be considered.
12. You filed a duplicate grievance. It will be Processed and Returned.
13. Please review Policy GA-06.04, Request to Staff Member" for proper procedures on how to address your issues. Emergency grievances must come through the IGC's office.
14. **Contact your local Inmate Grievance Coordinator for assistance in filing grievance.**
15. Grievances must filed within timeframes as stated in Grievance Policy.
16. If you have not received a response to your RTSM after 45 days, you may file a grievance.
17. Your grievance is being processed at the Central Office. Please wait for a response.
18. Step 2 Grievances have up to 90 days to be answered. There are two months remaining.
19. Use of the grievance system for frivolous complaints will result in placing limitations.
20. **Other: You are required to pay for DNA. It is not unconstitutional. There will be no reimbursement. No further communications will be made on this subject.**

Thank you.

51.

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Docket No. 19-ALJ-04-0271-1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER
Grievance ACT-100-19

TO: NAME: Inmate Grievance	TITLE: Branch Chief	DATE: March 13 th 2019
INMATE'S NAME: Nathaniel Johnson	SCDC #: 211574	
INSTITUTION: Allendale Correction Institution	LIVING QUARTERS: Colleton Unit F-1 A#02	

To: ~~Headquarter~~ Branch Chief in Columbia
 I received an response back from the Institution here saying that they are not responsible for talking \$250.00 from my EH Cooper to pay for DNA. DNA Fee was required at R+E through Kirkland. But, I found out that it was unconstitutional violating inmates Ex Post Facto rights. See Eubanks vs. SC, Dept of Corrections
 The Warden refered me to get a response from the Branch Chief in regards to reimbursement of that DNA Fee of \$250.00



RECEIVED
 MAR 18 2019
 INMATE GRIEVANCE

DISPOSITION BY STAFF MEMBER:

DATE: _____ SIGNATURE: _____

52.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

RECEIVED

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PMOD:080831

INMATE NAME: <u>Nathaniel Johnson Jr.</u>	MAR 05 2019	OFFICE USE ONLY
SCDC NUMBER: <u>#211574</u>	WARDEN'S OFFICE	Grievance No. <u>ACI-0071-19</u>
INSTITUTION: <u>Allendale Correctional Institution</u>		General <u>MEHL</u>
HOUSING UNIT: <u>Colleton Unit F-1 A#02</u>		Policy _____
WORK ASSIGNMENT: <u>Dorm Assigned</u>		Disc. Hear. _____
		Class. _____
		PREA _____
		Date Received <u>030519</u>
		IGC Initials <u>MS 041919</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

On Friday March 1st 2019, I wrote to medical in reference to the \$250.00
 Two Hundred Fifty dollars, that was taken from for DNA sample.
 I was made aware of this sham process that took away from every
 inmate in the Department of Corrections, making us responsible for
 the incurring debt and cost of this DNA sample. Under Article #6
 Section 73-61 of the State DNA Database, (B)(1)(c). It states that
 the jurisdictional agency will incur all costs associated with
 DNA sample collections and completion of information in the
 Database. The costs for DNA sample tests and analysis results
 are the responsibility of SLED (D)(2). Jurisdictional Agency of the
 State having jurisdiction over a subject. Under the case of
 *Eubanks vs. S.C. Dept. of Corrections, 561 F.3d. 294, 301 (4th Cir 2009)
 Ex Post Facto violation of state law requiring inmates to pay
 \$250.00 for DNA samples.

Nathaniel Johnson Jr. 3/4/19
 Grievant Signature Date

ACTION REQUESTED: Requesting that this practice be corrected immediately, and a full reimbursement of that \$250.00 ASAP.

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER
SEE REVERSE SIDE FOR RESPONSE.

[Signature] 03/11/19
 IGC Signature Date

(CONTINUE ON REVERSE SIDE)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

ACTI-0071-19

03/18/19

TO: NAME: Ms. Derrick	TITLE: Nurse in Medical	DATE: Fri. March 1 st 2019
INMATE'S NAME: Nathaniel Johnson Jr.		SCDC #: #211574 Inmate Copy
INSTITUTION: Allendale Correctional Institution		LIVING QUARTERS: Colleton Unit F-1 A#02

I am requesting full reimbursement of the \$250.00 that was stolen from me, for DNA sample. I was made aware of this sham process that took away from every inmate in the Department of Corrections making us responsible for the incurring cost of this sample. Under Article 6 Section 73-61 of the State DNA Database²(B)(1)(c) states that the jurisdictional agency will incur all costs associated with sample collections and completion of information in the Database. The costs for sample testing and analysis results and the responsibility of SLED

(D)(2). Jurisdictional agency of the State having jurisdiction over a subject. Under the case of *Nathaniel Johnson*
* *Eubanks v. SC Dept. of Corrections*
561 F.3d 294, 301 (4th Cir 2009) Ex Post Facto violation by law requiring DNA sampling!

DISPOSITION BY STAFF MEMBER:

I am not in charge of the DNA changes
Medical does not handle this

DATE: 3-4-19	SIGNATURE: P. Derrick
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