

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James Millholland, #367569,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 19-ALJ-04-0492-AP

ORDER OF DISMISSAL

RECEIVED

MAR 20 2020

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by James Millholland (Appellant), an inmate housed with the South Carolina Department of Corrections (Department or SCDC).

On June 25, 2019, Appellant filed a Step 1 Grievance objecting to the deduction of funds from his personal account to pay a DNA processing fee. He argued that he had already paid the fee while on probation in the early 2000s, and he believed it should have been a one-time fee. After the Warden denied the grievance, Appellant filed a Step 2 Grievance asserting that his Fifth Amendment rights were violated when they charged him the fee twice. The Responsible Official denied his grievance citing to SCDC Policy 21.09 and advising Appellant, *inter alia*, that “records indicate [Appellant was] admitted into SCDC as a New Admission on 03/26/16. New admissions will be assessed the fee as required by SLED.”

Appellant filed a Notice of Appeal on September 26, 2019. On January 14, 2020, Appellant filed his brief. On February 12, 2020, the Department filed a Motion to Dismiss (Motion) asserting the Court lacks jurisdiction to hear the case because Appellant’s complaint does not implicate a state-created liberty or property interest. Appellant filed a Response¹ to the Motion on February 25, 2020.

DISCUSSION

This Court must first determine whether it has subject matter jurisdiction to decide this case. “Subject matter jurisdiction is the power to hear and determine cases of the general class to

¹ Appellant labeled this document “Reply Brief,” however, upon reviewing it, the Court interprets this to be his Response to the Motion.

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SC ADMIN. LAW COURT

which the proceedings in question belong.” *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994) (internal quotation marks and citation omitted). “The ALC has subject matter jurisdiction under the Administrative Procedures Act (“APA”) to hear properly perfected appeals from the SCDC's final orders in administrative or non-collateral matters.” *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 625, 733 S.E.2d 211, 215 (2012). Nevertheless, the Court’s jurisdiction in inmate matters is limited to agency decisions implicating a state-created liberty or property interest. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When an inmate’s appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004).

In his Response to the Department’s Motion, Appellant asserts the Court has jurisdiction pursuant to section 23-3-620(D) of the South Carolina Code (Supp. 2019). He also clarifies he “is not challenging the constitutionality of the manner in which funds were deducted to pay the \$250.00 DNA processing fee,” nor is he challenging the “constitutionality of the DNA law.” Rather, Appellant is challenging being charged again when he already paid for his DNA to be taken for a previous crime. In other words, Appellant does not think he should be charged again when his DNA is already in the State DNA database.

Section 23-3-620(D) provides that:

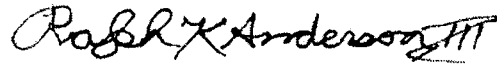
Unless a sample has already been provided pursuant to the provisions of subsection (A), before a person is released from confinement or released from the agency's jurisdiction, a suitable sample from which DNA may be obtained for inclusion in the State DNA Database must be provided as a condition of probation or parole.

However, this statute does not grant this Court subject matter jurisdiction; nor does it establish a state-created liberty or property interest in having DNA only collected once.² Because Appellant’s complaint does not implicate a state-created liberty or property interest, the Court does not have jurisdiction and summary dismissal is appropriate. *See Slezak*, 361 S.C. at 331, 605 S.E.2d at 508. Accordingly,

² Even if the Court had jurisdiction, Appellant’s argument is without merit. S.C. Code Ann. § 23-3-670(A) (Supp. 2019) provides that: “A person who is required to provide a sample pursuant to this article . . . **must** pay a two hundred fifty-dollar processing fee which **may not be waived** by the court. *See Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) (emphasis added) (“Under the rules of statutory interpretation, use of words such as “shall” or “must” indicates the legislature's intent to enact a mandatory requirement.”). Furthermore, the DNA samples are not even taken by the Department but rather by other law enforcement agencies prior to conviction. *See S.C. Code Ann. § 23-3-620(A)*. The Department is thus simply charged with collecting the fee for actions taken by another agency. Moreover, Appellant has not presented any evidence that his previous sample was determined to be suitable by SLED.

IT IS HEREBY ORDERED that the Department's Motion to Dismiss is GRANTED and Appellant's appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

March 4, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Michelle Perez
Judicial Law Clerk

March 4, 2020
Columbia, South Carolina