

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
In The Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph K. Anderson III, Administrative Law Judge

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

Appellate Ca. No. 2020-000521

James Millholland 367569 Appellant

v.

South Carolina Department of Corrections Respondent

INITIAL BRIEF OF APPELLANT

James Millholland 367569
Appellant

A.C.I. / Colleton A-SD
PO Box 1151
Fairfax, SC 29827

Pro se Appellant

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South Carolina Cases :

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Brown v. BiLo, Inc. 341 S.C. 611 at 614, 535 S.E.2d 445 at 447 (Ct. App. 2000)	pg. 2
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Federal Cases :

Board of Regents v. Horowitz, 435 U.S. 78, 98 S. (Ct. 1978) (1978)	pg. 3
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Other Authorities :

South Carolina Code Ann § 23-3-620 (D) subsection (A)	pg. 4+5
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Constitutional Provisions :

Fifth Amendment to the United States Constitution	pg. 1
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Fourteenth Amendment to the United States Constitution	pg. 1+3
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STATEMENT OF THE CASE

The Appellant is an inmate in the South Carolina Department of Corrections (S.C.D.C.) and housed at Allendale Correctional Institution in Fairfax, South Carolina. On June 25, 2019 Appellant submitted a Step 1 grievance appealing being charged two times for a one time DNA processing fee of \$250⁰⁰. Following denial of his Step 1 grievance, Appellant submitted a Step 2 grievance on July 25, 2019 arguing that his fifth amendment right had been violated. Step 2 was denied on September 9, 2019. Appellant then Filed a notice of appeal in the Administrative Law Court on October 24, 2019. This appeal was denied on March 4, 2020 Appellant timely filed a notice of appeal and motion to proceed in forma pauperis to this Court. The motion to proceed in forma pauperis was granted on May 1, 2020

STANDARD OF REVIEW

In appeals from the final decision of the S.C.D.C. summary dismissal is appropriate if the prisoner cannot demonstrate the decision implicated a liberty or property interest sufficient to warrant due process protections of the 14th Amendment

Skinner v. S.C.D.C. 370 S.C. 267, 635 S.E. 2d. 910 (Ct. App. 2006) A

decision by an administrative agency may be modified or reversed if the findings and conclusions of the agency are affected by error of law or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

Brown v. Bilo, Inc., 341 S.C. 611 at 614, 535 S.E. 2d. 445 at 447,

(Ct. App. 2000) Review of an administrative agency decision is deferential and will be upheld if substantial evidence supports it.

Heater of Seabrook, Inc. v. S.C. Public Service Comm'n.

324 S.C. 56 at 60, 478 S.E. 2d. 826 at 828 (1996) substantial evidence is relevant evidence that considering the record as a whole would allow reasonable minds to reach the conclusion that the administrative agency reached its decision must be based on documented factual findings within the record. Hamm v. S.C. Public Service Comm'n 309 S.C. 295, 422 S.E. 2d. 118 (1992)

An administrative agency must follow its own rules and regulations Triska v. S.C. Dept. of Health and Environmental Control, 292 S.C. 190, 335 S.E. 2d. 531 (1987) Although failure to do so does not rise to the level of constitutional violation, administrative

principles do apply. Board of Regents v. Rowitz, 435 U.S. 78, 98 S. Ct. 948 (1978) Olburn-Mathews v. Lablolly Partners 332 S.C. 551, 505 S.E.2d. 603 (S.C. App. 1998) while administrative agencies generally have little or no discretion in deciding whether its actions are rationally grounded as opposed to the arbitrary Al-Shabazz v. State 338 S.C. 354 at 381, 527 S.E.2d. 742 at 761.

STATEMENT OF ISSUE(S) ON APPEAL

Did the South Carolina Dept. of Corrections error when they failed to confirm with S.C.E.D. that the Appellant was already entered into the DNA database and that the \$250⁰⁰ processing fee was already paid?

ARGUMENT

In the years of 2000-2003, Appellant was charged and convicted of 2nd degree burglary in Anderson County, South Carolina Appellant was sentenced to five years probation. Since the burglary charge was a violent crime, the Appellant was required by the Dept. of Probation, Parole, and Pardon Services to provide a sample of blood for the DNA database. A nurse came to the Anderson Probation Office and collected a blood sample and the Appellant

had to pay a \$250⁰⁰ processing fee to S.L.E.D. at the time of service. South Carolina Code Ann. §23-3-620(D) is clear and needs no interpretation "unless a sample has already been provided pursuant to the subsection (A) before a person is released from confinement or released from the agency jurisdiction a suitable sample from which DNA may be obtained for inclusion in the state database must be provided as a condition of probation or parole" further "anyone required to provide a sample must also pay a processing fee and if the person required to provide the sample is not sentenced to a term of confinement, payment of the fee must be a condition of the persons sentence.

Then in 2016, Appellant was sentenced to nine years in the S.C.D.C. for trafficking meth. At this time S.C.D.C. proceeded in charging Appellant a second time for the same database. This time the fee was taken out of Appellants E.H. Cooper account. 5% of every money order deposited on Appellants account was taken for S.L.E.D. until the \$250⁰⁰ fee was paid in full again. Appellant sent several request to staff to inmate

financial and to the Warden explaining this error, and also wrote a letter to S.L.E.D. asking them for their help in resolving this mistake made by S.C.D.C. Appellant has claimed throughout this grievance process, notice of appeal, brief and reply brief to the Administrative Law Court and in this initial brief to the Court of Appeals that the required processing fee of \$250⁰⁰ for the state DNA database was paid to S.L.E.D. as a condition of his sentence while serving on probation in Anderson County for burglary in the years of 2000-2003.

Therefore, S.C.D.C. should have never charged the Appellant in 2016, an additional \$250⁰⁰. This is not a \$500⁰⁰ fee, only \$250⁰⁰ one time. S.C. Code Ann. 23-3-620 "unless the original sample was lost or contaminated" no second sample would be required and no second processing fee would be required either.

Again I ask this Court to take notice that I am not challenging the constitutionality of the DNA law in any form. Only that I paid the \$250⁰⁰ DNA processing fee as a condition of my probation sentence in Anderson County for 2nd burglary in 2000-2003. And that S.C.D.C. made an error when they

charged me a second time for S.L.E.D. DNA database when I entered S.C.D.C. in 2016.

Furthermore, Respondents have never once, through out this entire process denied that Appellant paid this fee two times and the statute is clear, this is a one time fee not to be paid twice.

CONCLUSION

For the reasons listed above, this Court should order the S.C.D.C. to refund the \$250⁰⁰ to the Appellant that they overcharged him or reverse the judgement of the Administrative Law Court and remand back to the Lower Court.

WHEREFORE, Appellant prays this Court grant the relief requested; and for such other relief as this Court deems just and proper.

Respectfully Submitted,



James Millholland 367569
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June 9, 2020
Fairfax, SC

CERTIFICATE OF COMPLIANCE

I hereby certify that this Initial Brief of Appellant complies with Rule 208(b) and with Rule 267(a) SCACR.

Respectfully Submitted,

James Millholland

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Ralph K. Anderson III, Administrative Law Judge

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James Millholland 367569, Appellant
South Carolina Department of Corrections ^{V.} Respondent

PROOF OF SERVICE

This is to certify that a true and correct copy of the Initial Brief of Appellant, Designation of Matter to Be Included In the Record on Appeal, and proof of service has been served on the following listed by depositing a copy in the U.S. mail with postage prepaid on this 9 day of June, 2020:

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RE: James Millholland, 367569 v. S.C.D.C.

Appellate Case No. 2020-000521

Dear Ms. Kitchings:

I am in receipt of your letter dated June 1, 2020 concerning the deficiencies in my brief. I have corrected the mistakes. Enclosed is the corrected Initial Brief, Designation of matter and proof of service. All parties have been served with a copy. Thank you.

J. Millholland

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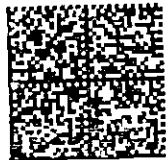
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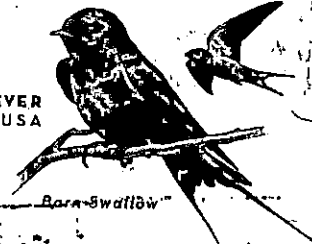
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